

Independent Review of Hate Crime Legislation in Scotland

Summary Document



“ Racism, intolerance and prejudice of all kinds are a constant threat to society, and while Scotland is an open and inclusive nation, we are not immune from that threat...this review will help ensure we have the right legislative protection in place to tackle hate crime wherever and whenever it happens.”

Annabelle Ewing,
Minister for Community Safety and Legal Affairs, on the
appointment of Lord Bracadale to conduct the Independent
Review of Hate Crime Legislation in Scotland

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PROCESS



“ I want to ensure that any proposals I advance are meaningful to victims and workable for the legal system.”

Lord Bracadale,
Independent Review of Hate Crime
Legislation in Scotland

Lord Bracadale was asked by the Scottish Ministers to consider:

- the current law and consider how well it deals with hate crime behaviour
- whether new statutory aggravations should be created for example in relation to age and gender
- whether the religious statutory aggravation is fit for purpose or should be expanded
- whether we should make hate crime laws simpler by bringing them all together in one place
- any issues or gaps in the framework for hate crime laws and to make sure that hate crime laws are compatible with laws that protect human rights and equality

Lord Bracadale began work at the end of January 2017.

Following a period of fact finding and research he produced his consultation paper and undertook a series of events to hear from a wide range of people and learn from their experiences of hate crime and the impact that this has had on them and their communities.

Lord Bracadale spent time looking at:

-  Whether hate crime laws are needed
-  What is working well under the current system and should be retained
-  What should be changed and what the benefit would be
-  What policy and procedural developments are underway or planned

WHAT LORD BRACADALE HAS TAKEN INTO ACCOUNT

A range of discussions



Responses to his questionnaire



Parliamentary and policy developments



The Scottish Parliament
Pàrlamaid na h-Alba

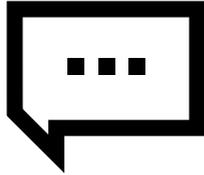


UK
Parliament



CONSULTATION

Consultation paper



457
Responses



Events held to encourage debate



17
From Shetland to Dumfries

CONSULTATION CONTINUED

A number of key themes emerged from the consultation exercise that Lord Bracadale carried out.

There were differing views about whether there should be hate crime laws.

“It is important that hate crime is identified and dealt with at a higher level so that those who use hate as their reason to offend and break the law know they risk a stronger punishment.”

“Hate crime laws create a situation where some potential victims are more protected than others and this is wrong.”

There should be more user-friendly language and awareness raising about what hate crime is.

“Current legislation appears difficult to enforce due to the complexity of the definition and terminology and this may prevent many victims from receiving access to justice.”

All respondents strongly supported protecting the right to free speech.

“There has been an upsurge of attempts to use hate crime as an excuse to silence those who disagree with personal belief. To disagree is not to hate, and should not be made a crime.”

Widespread support for legislation to cover gender-related hate crime particularly to deal with online and physical hate crimes towards women.

“Crimes motivated by hatred of women are well documented and including this as an offence would be a progressive step in tackling misogyny.”

There were lots of views about how to address problems with online hate crimes.

“This should be tackled through prosecution of individuals and regulation of social media companies.”

“There needs to be greater awareness of the issue of online hate...this is an issue of education and awareness raising rather than reform of legislation.”

Agreement that there should be appropriate support for victims of hate crime.

“We believe there is a need for greater understanding of the routine, everyday nature of many experiences of hate victimisation and the impact this ‘drip-drip’ prejudice has on victims.”

“There is a need to build trust among hate crime victims, organisations out with the criminal justice system, police and the Procurator Fiscal service.”

Consolidation (bringing all pieces of legislation together) could make hate crime laws easier to understand.

“This would send a clear message regarding what society finds as intolerable attitudes and beliefs, provide consistency across the legislation, and offer clarity to communities who may struggle to understand the current piecemeal approach to hate crime legislation.”

As a result of everything he has heard Lord Bracadale has found that:

- There can be confusion about what a hate crime is and how it is dealt with.
- The language used in the law can be difficult to understand.
- It can be unclear what sort of behaviour makes something a hate crime and why that's appropriate.
- Not everyone agrees that there should be hate crime laws: it can be unclear what the benefits are in singling out this type of crime.

ADDRESSING PREJUDICE: A RANGE OF RESPONSES

In a civilised society or country people should be able to live together, respecting one another and treating each other fairly, regardless of differences. It is important to remember that people are free to express their views.

For example:



People should keep their religious beliefs to themselves

However, in some cases the law needs to step in to:

- Discourage behaviour which might be offensive or causes harm
- Tackle discrimination and prejudice



REGULATORY FRAMEWORKS

These can be used to make sure people who carry out certain activities follow set standards.

For example:



The Advertising Standards Authority upheld a complaint about some posters advertising the Channel 4 series 'Big Fat Gypsy Weddings' on the basis that they were offensive and reaffirmed negative stereotypes and prejudice against the Traveller and Gypsy communities.



CIVIL LAW

The civil law plays a key role in addressing prejudice where this results in discrimination in relationships between individuals. The Equality Act 2010 prohibits discrimination in the workplace, education and the way that services and public functions are supplied.

For example:



The Act makes it unlawful for employers not to take someone on because they are a Muslim.



The Act can be used to challenge the lack of disabled facilities on public transport.



CRIMINAL LAW

Some conduct is so morally wrong and harmful that society chooses to deal with it through the criminal law.

This is a serious step and shows society's condemnation.

Such action may lead to:

- Penalty
- Loss of liberty
- Hate crime being recorded on a criminal record

WHAT HATE CRIME LAW LOOKS LIKE

Hate crime is the term used to describe behaviour which is both criminal **and** rooted in prejudice.

The core method of prosecuting hate crimes in Scotland involves applying a statutory aggravation to an underlying criminal act (baseline offence).

A statutory aggravation recognises a motive or demonstration of hostility directed at a target based on a protected characteristic.

SOME EXAMPLES OF BEHAVIOUR THAT COULD BE TAKEN TO COURT AS A HATE CRIME

Abusive shouting by a person who is annoyed that their neighbour creates a noise when putting their bins out early in the morning. In the heat of the moment the offender makes comments about their neighbour's sexuality and says he hopes "people like you die of Aids"

Tipping a disabled person out of their wheelchair in the street

A murder committed because of someone's skin colour

Vandalism/graffiti on a mosque which says "terrorists go home"

THE LAWS THAT CAN BE USED TO ADDRESS HATE CRIME

EXAMPLES OF AN UNDERLYING CRIMINAL ACT INCLUDE:

Common law offences:

For example – breach of the peace, assault, theft, murder, vandalism, uttering threats

Threatening or abusive behaviour:

Section 38 of the Criminal Justice and Licensing (Scotland) Act 2010

Sending grossly offensive, indecent, obscene or menacing messages via a public electronic communications network: Section 127 of the Communications Act 2003

UNDER CURRENT SCOTS LAW A STATUTORY AGGRAVATION MAY BE APPLIED IN RESPECT OF THESE PROTECTED CHARACTERISTICS:

Race

Crime and Disorder Act 1998

Religion

Criminal Justice (Scotland) Act 2003

Sexual orientation or transgender identity

Offences (Aggravation by Prejudice) (Scotland) Act 2009

Disabled people

Offences (Aggravation by Prejudice) (Scotland) Act 2009

PREJUDICE OR HOSTILITY ALSO LIES AT THE HEART OF SOME OTHER OFFENCES WHICH ARE RECOGNISED AS HATE CRIME. THESE ARE SOMETIMES REFERRED TO AS ‘STANDALONE’ OFFENCES BECAUSE A STATUTORY AGGRAVATION DOES NOT NEED TO BE APPLIED:

Stirring up racial hatred
Public Order Act 1986

Racially aggravated harassment
Section 50A of the Criminal Law (Consolidation) (Scotland) Act 1995

WHY HAVE HATE CRIME LEGISLATION?

LEGISLATION HELPS RECOGNISE THE PARTICULAR IMPACT AND HARM CAUSED BY HATE CRIME



Harm to the victim

- Harm can cause mental distress such as depression, anger, anxiety, trauma
- Harm has a social impact as victims/ groups change their behaviour to avoid further victimisation
- May move home/ job, avoid public spaces and become socially isolated



Harm to the group the victim belongs to

- Hate crimes remind members that they are potential targets
- Members can be fearful of those with the same identity as the perpetrator



Harm to wider society

- Undermines society's moral values
- Less tolerant society
- Hatred not recognised or challenged because it becomes the 'norm'
- May increase social unrest

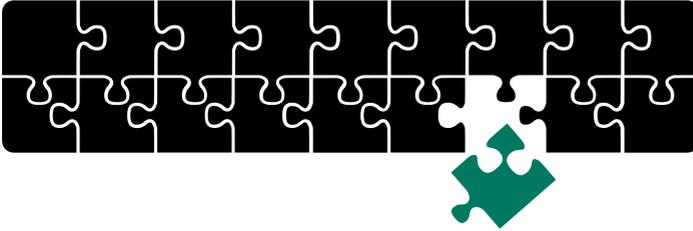
HATE CRIME LAWS PROVIDE A SYMBOLIC FUNCTION AND TELL SOCIETY THAT SUCH BEHAVIOUR IS NOT ACCEPTABLE

- Important to send a message to victims, offenders and wider society that hate crime behaviour will not be tolerated and that justice will be done.
- Shows society's disapproval of the deliberate targeting of an individual who is a member of a particular group that may be at an unfair disadvantage in society.
- Enables people to recognise what a hate crime is; encourages reporting and increases awareness of how hate crime will be dealt with and how victims will be supported.
- Provides an opportunity to educate people and encourages long term cultural change and acceptance of diverse communities.

THE BENEFITS OF IDENTIFYING HATE CRIME BEHAVIOUR WITHIN THE CRIMINAL JUSTICE SYSTEM

- Ensures offenders understand their actions are morally wrong: the hate crime element of an offence is recorded and may attract a more severe punishment.
- Marks out repeat offenders: the hate crime element of the offence appears on the criminal record of the individual and may be taken into account if any future offences are committed.
- We can produce statistical information and monitor trends.
- We can remain vigilant about the scale of hate crimes being committed.

INTEGRAL PARTS IN TACKLING HATE CRIME



**HATE CRIME
LEGISLATION IS
ONLY ONE PART
OF THE SOLUTION**

PREVENT

Society needs to understand what hate crime is and why its not acceptable.

People will feel safer and diversity will be accepted.

REPORT

Unless hate crime is reported no legal remedy is possible and victims will not receive justice.

Having clear and well implemented procedures in place will help to ensure that we recognise the harm caused to victims and communities.

RESPOND

The criminal justice system needs effective legal principles supported by a coordinated framework of key partners.

Having hate crime laws means that we can monitor trends and understand the scale of the problem.

RECOMMENDATIONS

Based on his findings Lord Bracadale has provided the following recommendations.



Statutory aggravations should continue to be the core feature of how hate crimes are prosecuted in Scotland.

- > A statutory aggravation can only apply when an offence, such as assault, has been committed and that offence involves hostility based on a protected characteristic.
- > This is not about creating new offences but rather flagging up the hate crime aspect.



The current legal tests of what a hate crime is should be maintained with updated language.

The statutory aggravation should apply when

- > The offender demonstrates **hostility** towards the victim, based on a protected characteristic, in the course of the offence. This includes even words uttered in the heat of the moment.
- > If the offence is motivated (wholly or partly) by **hostility** based on a protected characteristic.



Transgender identity and intersex

In relation to the statutory aggravations intersex should be made a separate characteristic from transgender identity and consideration should be given to removing outdated terms from the definition of transgender identity in hate crime law.

RECOMMENDATIONS CONTINUED



Association with a protected characteristic

Provisions should be created to ensure that hate crime offences based on someone's association with a protected characteristic are covered by statutory aggravations. At present this applies only to crimes relating to race and religion.



Religious aggravation

- > It is not necessary to extend the religious aggravation to capture religious or other beliefs held by an individuals rather than a group.
- > The courts can use common law powers to impose higher sentences in such cases if necessary.



Additional characteristics

There should a new statutory aggravation (with the same legal tests applied) in relation to gender as a protected characteristic.

There should be a new statutory aggravation (with the same legal tests applied) in relation to age as a protected characteristic.



Ministers might wish to consider a new provision that would allow the courts to recognise offences that involve the exploitation of vulnerable people.

- This might include fraud offences where the victim has been chosen because they are perceived to be an easy target, perhaps because of their age or because they have a disability.
- This behaviour does not necessarily involve hostility based on a protected characteristic and should not be treated as a form of hate crime.



It should be an offence to stir up hatred in relation to groups based on each of the protected characteristics.

- Stirring up offences involve threatening or abusive behaviour which has the intention of encouraging others to hate people who have a protected characteristic or which in the circumstances is likely to do so.
- The current law only deals with the stirring up of racial hatred: this recommendation ensures that stirring up offences apply to all protected characteristics.
- The legal provisions should include measures that protect freedom of expression.

RECOMMENDATIONS CONTINUED



Online hate crime: no new legislation is necessary.

- Online behaviour is capable of being dealt with in the same way as if it were committed in person.
- The extension of the statutory aggravation on gender and the stirring up offences will ensure that the courts can address issues we have been made aware of in relation to online hate crime.
- Scottish Ministers should also consider the outcomes of policy developments around online safety including a review of the offences which apply to online communication that will be undertaken by the Law Commission.



The offence of racial harassment and conduct (section 50A of the Criminal Law (Consolidation) (Scotland) Act 1995) should be repealed.

- At the moment race is the only protected characteristic group to have a 'standalone' offence in addition to the statutory aggravation.
- Removal of this standalone offence does not mean that racial harassment is permitted and will not be punished but that hate crime across all of the protected characteristics will be dealt with in the same way, namely by using statutory aggravations in conjunction with an underlying criminal offence.



It is not necessary to create new provisions to deal with offensive behaviour at regulated football matches.

- Section 1 of the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012 Act has been repealed. Hate crime behaviour at football can be effectively dealt with by using other offences, for example breach of the peace, with a statutory aggravation.
- The proposed new stirring up offences will also apply to hate crime behaviour at football.
- The Scottish Government has set up a working group to look at the definition of sectarianism.



All Scottish hate crime legislation should be consolidated (brought together in one place).



There are a number of procedural issues which extend beyond Lord Bracadale's remit but which he has reflected on.

- He outlines and commends the practical measures being taken to coordinate the response to reporting, preventing and responding to hate crimes.
- He encourages practitioners to be aware of and learn from developments in the provision of restorative justice and diversion from prosecution services.



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