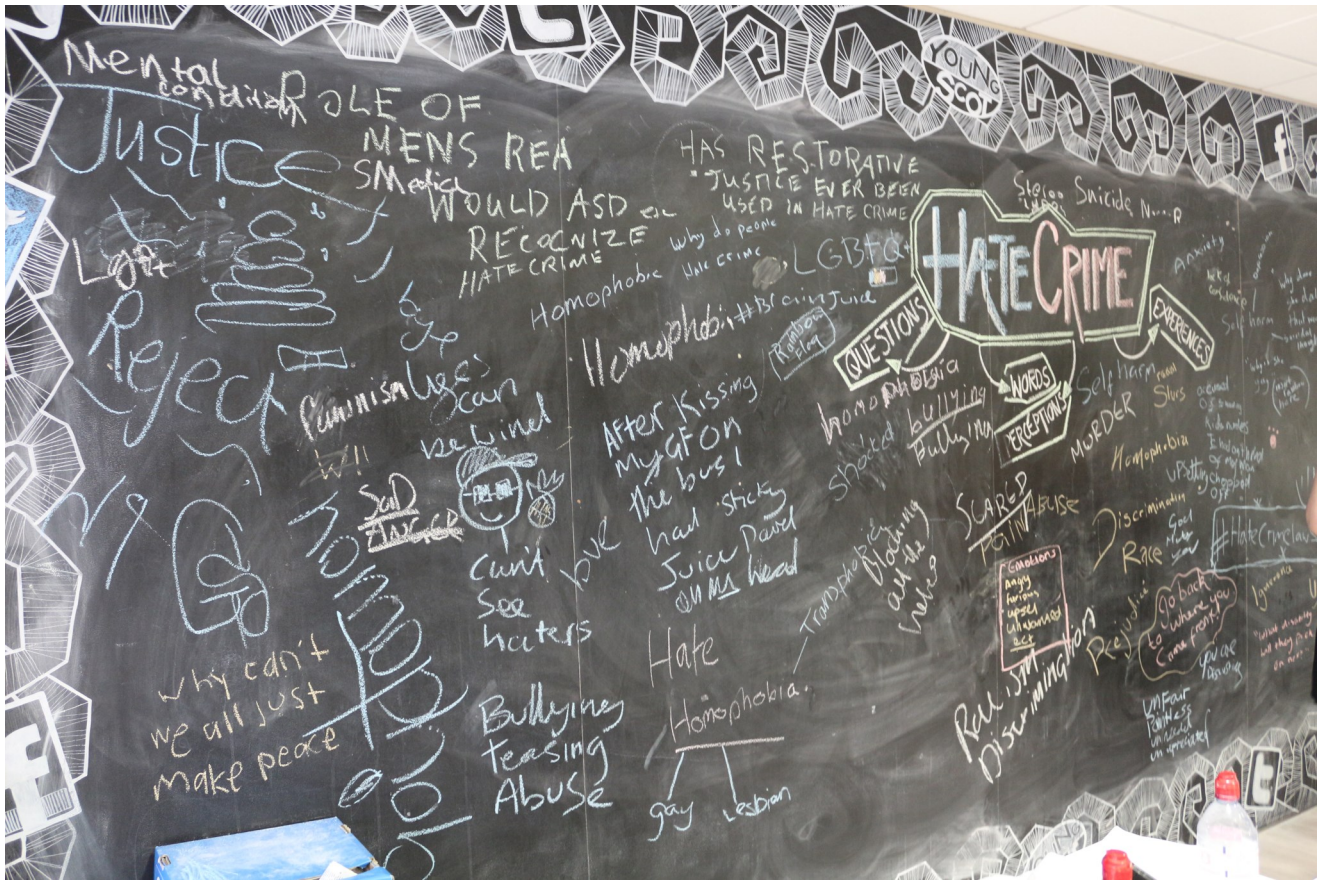


# Independent Review of Hate Crime Legislation in Scotland



Consultation Response from Young People following a workshop led by Young Scot, YouthLink Scotland and The Scottish Youth Parliament

October 2017



This response is based on the input of 27 young people from across Scotland in a workshop organised and facilitated by Young Scot, YouthLink Scotland and The Scottish Youth Parliament. This response will reflect what the young people felt was important to raise in terms of Hate Crime Legislation, including what they identify as hate crime, what should be included in legislation, how to address under-reporting and whether other aggravators should be included. This response does not represent the views of the partnership organisations who facilitated the session.

This response is structured in relation to some of the questions posed in the consultation paper.

## **Question:**

*Do you consider that the working definition adequately covers what should be regarded as hate crime by the law of Scotland?*

We asked the young people in the group to write or draw what Hate Crime meant to them on a blackboard. The activity allowed them to explore what they identified as hate crime and we are using these responses to understand how their understanding of hate crime relates to the working definition.

Some wrote specific words or emotions while others wrote down their experiences.



These included feelings of anger, fear, anxiety, unfairness, pointlessness and a feeling of being unneeded and unappreciated. They also identified prejudice, discrimination, racism and homophobia as key words related to hate crime. The experiences that were shared related to transphobic slurs, homophobia in school, threats of violence, being called a terrorist and what disability will be picked on next amongst others.

These responses suggest that the current working definition relates quite closely to young people's understanding of hate crime in how it describes a crime's reference to an aspect of the victim's identity. The experiences shared by the young people suggest that a part of their identity was the trigger for the treatment they received, for instance having a walking stick stolen or being knocked because the attacker knew they would fall over due to their disability. One young person even described instances of bullying with relation to discrimination because of race, sexuality or background as hate crime.

In terms of bullying, this is a topic that was raised a lot by young people and raises the question about where it sits in relation to hate crime. One young person wrote that "bullying = hate crime" but that it may not be that practitioners, police or prosecutors will always see the associations between bullying and hate crime. Clarification of where bullying sits in relation to hate crime is needed as it may be that young people are experiencing hate crimes in school or other situations where it is treated as bullying and therefore not reported as a hate crime.

## **Question:**

*Should we have specific hate crime legislation?*

The overriding answer to this question from young people was 'yes - we should have specific hate crime legislation'. They felt that hate crime has extremely negative effects on individuals, from the physical harm it can cause to serious mental harm. They all described hate crime as something that can cause not just upset but the need to self-harm, depression, suicidal thoughts as well as a fear to leave the house due to threats based on malice or ill-will towards their protected characteristics.

With regards to the argument that it creates an extreme form of 'political correctness', the opinion of young people was that 'freedom of expression' becomes hate speech when it causes harm and impedes the rights of others.

## **Question:**

*Do you consider the current Scottish thresholds to be appropriate?*

In order to discuss the thresholds of when a general offence could be considered aggravated as a hate crime, we undertook an activity with the young people where they applied a scale to different situations. At one end of the scale the actions are 'just nasty', and at the other, they are 'criminal'. The young people discussed what kind of actions would be included on the scale and then where to place them.

For the most part, actions such as name-calling and other verbal abuse were put down as 'just nasty' and as the actions became more physical, they moved further along the scale towards 'criminal'. However, when it came to specific protected characteristics they were more likely to be at the 'criminal' end of the scale. For instance, two groups put homophobia as a criminal action along with murder and assault. Another example of this was where someone put being "targeted because of race" and "getting called names based on sexuality" as criminal actions.

The responses suggest that the current thresholds of a crime becoming aggravated when it is motivated by malice or ill-will towards a protected characteristic are appropriate. However, the responses from young people also showed that what is and isn't a hate crime and how this can be proved needs to be distinguished. For instance, the idea of bullying in the majority of groups was placed on the 'just nasty' end of the scale, including when it was verbal or physical abuse in relation to a protected characteristic. This discrepancy raises the question of how bullying is perceived differently and when a bullying incident would otherwise be classed as a hate crime. In the discussions, there was a lot of indecision about when something became an aggravated offence, the general feeling was that if a person's rights were infringed, then the action that caused this infringement should be addressed or even punished. This also depended on the environment they were in. Decisions about whether it was something for teachers or youth workers to deal with or whether an action was something that should lead to prosecution was hard to distinguish.



It is also worth noting that the young people felt that being discriminated against in the workplace due to a protected characteristic is at the criminal end of the scale. They clearly believe that work related discrimination should be classed as criminal and potentially a hate crime. This also became evident in terms of discrimination on a national level, in later discussions the topic of the 'tampon tax' as

well as a lower minimum wage dependent on age were raised as examples of when a government can discriminate against part of the population. In the tampon tax example, it was made clear that women are paying extra tax for what is considered a luxury item but is in fact a necessity based on their gender. It was suggested that the Equality Act be changed to prevent this kind of discrimination on a national level and to make it illegal.

### **Question:**

*Should an aggravation apply where an offence is motivated by malice and ill-will towards religious or other beliefs that are held by an individual rather than a wider group?*

When discussing this topic with the young people there was a general unhappiness with the assumption that one individual should hold all the same beliefs as the group they are associated with. The general view was that if someone is targeted for their beliefs, regardless of whether those beliefs tie in with the general beliefs of the group they are associated with, it should be deemed a hate crime. It was made clear that an individual may belong to a particular group but that this does not mean they hold all of the same beliefs, in fact they may hold their own individual beliefs for which they can also be targeted. As such the young people seemed to agree that the approach currently taken is too narrow and the law should apply to offenses motivated by intolerance of the expression of an individual's beliefs.

One young person explained that 'an individual's beliefs should not need to fit a broad sense of community – that while their beliefs may be tangibly linked to that community they do not need to be representative of the group.'

### **Question:**

*Does the current legislation operate effectively where conduct involves malice and ill-will based on more than one protected characteristic?*

While this was not a question that was directly addressed with the young people in the group it is one that was raised by them directly. The overall feeling was that the legislation should change to allow for prosecutions to include multiple protected characteristics. They felt that currently when a hate crime is dealt with by police and prosecutors, it is focused on malice and ill-will based on just one protected characteristic that a person holds, when in reality they could have been targeted due to multiple protected characteristics. It was felt that this intersectionality should be an additional aggravation and should include additional sanctions.



## **Question:**

*Should there be offences relating to the stirring up of hatred against groups? If so, which groups?*

When this question was raised with the young people it led to significant debate on where the line between freedom of expression and hate speech was to be drawn. The general view was that there are people who use their right to freedom of expression to undermine the rights of others and that this was not acceptable. They felt that once free speech becomes harmful, either mentally or physically, it became hate speech and should be considered unacceptable. When someone uses their right to freedom of expression to deny someone else that right based on their religion, race or other protected characteristic the young people considered this hate speech and stirring up of hatred.

It was felt that people should take responsibility for what they say and while every individual has the right to their opinion, their beliefs and to protest peacefully they do not have the right to incite hatred and to cause physical or mental harm to others. A definition of hate speech and stirring up of hatred provided by one of the young people was when the use of freedom of expression dehumanises someone else and when others then use that expression to justify their actions. It was believed that this kind of behaviour and hate speech can cause long term mental harm in particular and that legislation should deal with it in some way.

“We have the right to our opinions – we have no right to be racist.”

## **Question:**

*Does the current law deal effectively with online hate? Are there specific forms of online activity which should be criminal but are not covered by the existing law?*

Young people felt that it is very difficult for the law to take effect with online hate. The main reason given for this was that many users use pseudonyms making them unidentifiable. A lot of people hide behind their online identities and use these channels to share their hate as they believe themselves to be anonymous. The other difficulty in identifying individuals was seen to be the terms and conditions of social media platforms, which could restrict a company sharing information about the individuals posting offensive material. The group felt, however, that online hate should be addressed in the same way with the same sanctions as any face to face hate behaviour or crime.

A number of the participants told of their experiences of online hate and made it clear that while to some online may not be perceived as ‘real life’, for them it affected them just as much as any face to face interaction and this was very much part of their ‘real life’.

When asked about what kind of online activity should be considered criminal, a number of examples were raised. Trolling was the first mentioned especially with regards to when it specifically targets an individual. They felt that this is already treated as criminal but were not sure how seriously it is taken when targeted at a group more generally. There was debate about whether trolling a group or community should be considered criminal but the majority felt that it should be. This reflects the discussion that was held about whether something should be considered a hate crime when a perpetrator targets someone for their individual beliefs rather than the beliefs understood to be held by a group. The general consensus was that if trolling is targeted at an individual, this should be considered criminal, but also if trolling is targeted at a group for their beliefs.

Another type of activity was public online posts which are derogatory towards a protected characteristic. The young people felt that public posts should be continually monitored and immediately taken down if they are derogatory or offensive towards one or more protected characteristics. However, it was also raised that this can be very difficult to balance with freedom of expression and returned to the conversation of when freedom of expression becomes hate speech.

Examples of public posts were given which included homophobic comments, anti-gay and sexist remarks as well as other gender related harassment around anti-abortion campaigns for example or those advocating rape with comments such as “no means yes”. A number of public individuals were also specifically mentioned for voicing hateful content about protected characteristics including Katie Hopkins and Donald Trump.

Overall it was felt that online hate speech should be regarded in the same way as face to face hate speech and hate crime and that trolling in particular should be looked at as a specific online activity which is regularly fuelled by hate.

### **Question:**

*Do you consider any change to existing criminal law is required to ensure that there is clarity about when bullying behaviour based on prejudice becomes a hate crime?*

This was not a question that was specifically discussed with the young people who attended the workshop but was a topic that was raised in discussion. When looking at the scales young people created to determine where the line was between ‘just nasty’ actions and ‘criminal’ actions it became clear that the majority of participants viewed bullying instances as less serious than assault, murder or other specifically named actions in relation to hate crime. This raises some concern as the examples of bullying given included physical abuse relating to a protected characteristic, as well as other examples, which in perhaps another context or with an older person as the victim, would be considered hate crime.

It raises the question of why young people view bullying based on prejudice as less serious and different to hate crime. Is this due to the context in which they experience this and how it is dealt with when reported? for instance, if it takes place in school is it categorised as bullying due to their age and the place in which it took place?

This suggests that a change in the existing law is required to ensure that clarity about what is bullying and what is a hate crime is needed.

### **Question:**

*Do you think that specific legislation should be created to deal with offences involving malice or ill-will based on:*

- *Age*
- *Gender*
- *Immigration status*
- *Socioeconomic status*
- *Membership of gypsy/traveller community*
- *Other groups*

### **Age**

There was a definite feeling amongst the group that young people are treated differently because of their young age, whether it is that they are not taken as seriously, paid less in work or treated with suspicion. They felt stereotyped by their young age and pre-judged for negative behaviour expected of them as young people e.g. the assumption that they will cause trouble as a group even if they are just meeting to socialise. A particular example of this was the use of mosquito devices to keep young people away from certain areas. This was not only viewed as discriminatory but also by some of the young people as a hate crime as it is targeted at them specifically because of their age and the stereotypes that go with that.

It was pointed out that in a number of instances young people are in a worse position than most adults due to their low income, socio-economic background and that their age is a reason for them not being able to progress. Their life experiences in these cases are not seen as beneficial as that of an adult and they are less likely to be able to improve their life chances due to not being taken seriously.

Having earlier discussed the thresholds of when something becomes a hate crime, we need to consider the views of the young people around this and age. If they feel that freedom of expression becomes hate speech when it causes physical or mental harm and that hate crime is targeted because of a protected characteristic held by an individual, then surely age should come under this too.

It was mentioned earlier that discrimination by a government should also be made illegal and this included the example of lower wages with regard to age. This also ties in with the feelings young people expressed about being treated differently due to their age and that in some cases, such as with mosquito devices, they are specifically targeted because of it. As such, the group believed that age should become a factor for the legislation to consider as young people do experience harm because of malice or ill-will based on their age.



## Other groups

It was specifically mentioned that all protected characteristics, as noted in the Equality Act 2010, should be included as aggravators for hate crime, including age and gender. It was made clear that they felt all protected characteristics, including intersex/non-binary individuals should be included in hate crime legislation in order to ensure every individuals' rights are protected. A five year revision period was also recommended.

There was also discussion about socio-economic background being considered in terms of hate crime, due to being treated differently depending on the area you come from and the prejudices that go with this.

### **Question:**

*Do you have any views as to how levels of under-reporting might be improved?*

In this discussion, there was a lot of emphasis on education. Educating people in schools about what hate crime is, more clearly and ensuring that there is knowledge about how to report hate crime was seen as key. There was a clear feeling that when hate crime was committed against young people it was felt that it wasn't serious enough to report and so the group felt that better education was a big part of improving under-reporting.



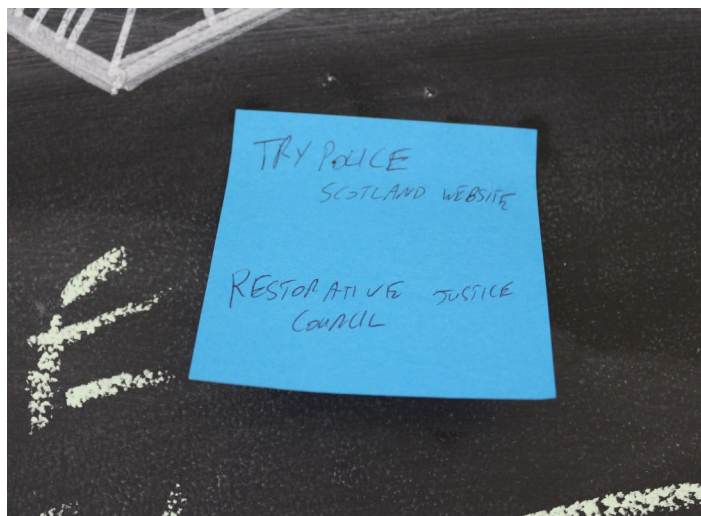
There was a distinct feeling that if something was reported to a teacher, nothing would be done and that teachers should do more to report hate crime. This came from direct experiences of the young people reporting an incident to a teacher and the head teacher refusing to do anything about it. The recommendations of the young people not only talked about educating them about hate crime but also making sure teachers understood what a hate crime was and mechanisms to support their pupils in reporting them.

Other suggestions included building better relationships with the local police and also having a way to report a hate crime to police online rather than face to face. This included the recommendation that police liaison officers are trained in hate crime to work with communities of interest directly to encourage reporting and develop trust. Other suggestions included the provision of hotlines and apps where someone could go to for support.

Another key part of this is the support for people to report, especially around confidentiality. A suggestion for this in the context of young people was a change in the law to allow appropriate adults to stand in for parents or guardians when a competent young person wished to give a statement in confidence.

## **Question:**

*Are diversion and restorative justice useful parts of the criminal justice process in dealing with hate crime?*



This again was not something directly addressed with the young people but was a topic that they brought up themselves. Restorative justice was seen as a good alternative to typical prosecution for first time offenders and was recommended at the start of the workshop and then raised again throughout. It was raised by individuals who had experienced it from the victim's side and they felt that it made a difference to the attitude of the perpetrator moving forward.

## **Conclusion**

There are a number of key points we would like to highlight from the discussions with young people and reiterate in this conclusion.

First of all, the issue of how bullying is regarded in terms of its severity and in comparison to hate crime was concerning. More clarity in schools and with young people is needed to ensure that if an individual is targeted due to malice or ill-will towards a protected characteristic they hold, this should be treated as a potential hate crime, regardless of the age of the perpetrator and victim. Clear guidance on the difference between bullying and hate crime is needed.

It is also quite clear that young people feel that all protected characteristics, as determined by the Equality Act 2010, as well as non-binary/intersexuality should be included as aggravators of hate crime. This especially pertains to age for them as they feel themselves to be treated differently because of their young age. There was a lot of emphasis on making sure every individual was protected by legislation in the same way.

Finally, the young people felt strongly about online hate crime being treated in the same way as face to face incidents. They made it clear that for them their online life was real life and not separate. Their experiences of online hate crime have had the same effects on them as any face to face encounters making them feel isolated, afraid and in some cases threatened.

In the workshop and discussions, the young people were very engaged and interested in voicing their views on hate crime legislation. We feel that what they contributed is very valuable and that this consultation response reflects accurately what they felt was important to consider in a review of hate crime legislation.

This report was written by Sarah Robinson Galloway at YouthLink Scotland on behalf of the partnership between YouthLink Scotland, Young Scot and The Scottish Youth Parliament.

For more information about the workshop and the co-design methods or for any questions about the report please get in touch with the relevant individuals mentioned below:

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