

JUSTICE COMMITTEE

HATE CRIME AND PUBLIC ORDER (SCOTLAND) BILL

SUBMISSION FROM FOR WOMEN SCOTLAND

We should like to put it on the record that we do not believe the addition of sex to the Hate Crime Bill has been given enough discussion or consideration. We remain troubled by the remit of the working group and concerned that any resulting legislation will be limited in scope and may not even pertain to women as a sex class.

We continue to be dismayed by the determination of some in the Scottish Government and funded organisations to dismiss and undermine important work on sex in hate crime because it does not suit a predetermined political agenda. In writing his [report](#), Lord Bracadale consulted widely and concluded that an aggravator of gender (sex) should be added to the Hate Crime Bill.

While taking on board the objections raised by a tight knit group of Scottish organisations, he nevertheless felt that a stand alone offence would be superfluous and risk confusion. He was also concerned that momentum might be lost if there was further delay in meaningful action.

4.48. In general terms, I think the clearest and most effective way to mark out hate crime is a scheme involving baseline offences and statutory aggravations which reflect identity hostility. That is the underlying philosophy which I have applied throughout the scheme which I am recommending. I would depart from that approach if I felt that it was necessary in order to achieve effective recognition of gender-based hate crime. However, based on the evidence and arguments which I have heard, I do not think there is any real gap in relation to patterns of conduct against women which ought to be criminal but are not. Any new standalone offence would therefore have a considerable cross-over with other existing offences, which risks causing confusion and undermining the aim of collecting reliable data. I understand the concerns which have been voiced about the way that a statutory aggravation might work but, for the reasons set out at paragraph 4.42, I consider that such concerns can be managed through appropriate implementation measures. I do not think the concerns warrant taking a materially different approach to gender when compared to any other protected characteristic.

4.49. I also have some doubts about whether a collaborative, participatory approach could result in meaningful change within a realistic time frame. I consider that there is currently some momentum and political will to take renewed action in relation to offending involving gender hostility, and there is a risk that would be lost.

It is astonishing, therefore, that the same arguments which Lord Bracadale rejected were accepted without demur by the Cabinet Secretary when the Bill was drafted.

Perhaps more concerning has been the wholesale dismissal – indeed belittling – of some important bodies of work and trials on sex-based or misogynistic hate crime. This either demonstrates an incomprehension of the purpose or findings of trials, or they are a

deliberate attempt to misrepresent. As Lord Bracadale reported, these trials did not change the law, yet nevertheless carried useful lessons for the police and public. Indeed, the very act of putting the policy together had a positive impact.

4.42. I consider that the identification of hostility based on gender can be dealt with through the careful consideration of the evidence available in each individual case, the development of training and awareness materials, and learning from the experience of others. I am aware that Nottinghamshire police developed a comprehensive package of training materials with the involvement of local stakeholders, and their experience suggests that the very act of putting together the policy, training those who will apply it, and raising awareness with the public can have a positive effect in tackling behaviour and expectations, regardless of the number of successful prosecutions. I would propose that it be left to the prosecutor's discretion whether it is appropriate to add an aggravation to any offence at the point that it is charged, including a sexual offence.

Lessons learned from police practice in England

4.36. A number of consultation respondents and the Fawcett Society Sex Discrimination Law Review referred to the exercises being conducted by certain police forces in England to flag misogynistic or gender-hostility incidents as hate crimes. I have considered the information available in relation to these exercises. To date, four forces have adopted new recording processes. Nottinghamshire and North Yorkshire forces focus specifically on misogyny; Northamptonshire and Avon and Somerset record events based on gender. In practice, the nature of the incidents recorded under both approaches are the same. They have generally been concerned with public order offences, harassment and stalking.

4.37. These projects have involved no change in the criminal law. Police officers have flagged incidents as involving either misogyny or gender hostility, but prosecutors and the courts continue to deal with each case reported to them as they would have done previously. The projects are therefore different from the statutory aggravation approach being advocated by a number of respondents to my consultation. However, they may be used to obtain an insight into what the consequences of creating a new statutory aggravation might be.

4.38. No formal evaluation has yet been completed in relation to the projects⁶. The data from the Nottinghamshire pilot shows that there have been approximately 170 incidents reported to the police over 18 months, of which slightly under half were identified as crimes. There have been very few arrests or charges, and this is thought likely to be because most incidents involve strangers and the police therefore find it difficult to identify specific offenders. Notwithstanding that, the satisfaction rate amongst complainers is apparently relatively high. There are anecdotal reports that complainers feel that the behaviour in question is now taken more seriously by the police and it is possible to do something about it rather than simply having to accept it.

Therefore, dismissing the important Nottingham trial (which had an 87% approval rating) and the substantial [report](#) from Nottingham & Nottingham Trent Universities with a picture of a post-it note, as one member of the working group did last week, appears unprofessional at

best. It is interesting to note that this objection was based on the low number of charges which were brought under the Nottingham trial. However, it is clear that the aim of women's centres and police forces in England is far deeper and more holistic, involving changing awareness and disrupting behaviour: a preventative as much as a punitive approach. For example, see [Women's Centre Cornwall](#).

The Women's Centre Cornwall, together with Devon Rape Crisis & Sexual Abuse Services, will be reporting centres in this pilot study and will work in partnership with Devon & Cornwall Police to achieve the following outcomes:

- raise awareness of the seriousness of these incidents and encourage women to report them;
- better support affected women and girls;
- raise public and professional awareness and understanding of the nature and frequency of misogynistic incidents affecting women in Devon, Cornwall and the Isles of Scilly, including street harassment, sexual assault and unwanted sexual advances, cyber harassment and verbal and physical assault;
- increase public confidence in Devon and Cornwall Police and other agencies to effectively progress reported incidents;
- gather better intelligence to disrupt activities/perpetrators and prevent such incidents.

The long-term aim is to nudge people towards a culture shift and to re-frame these behaviours as socially undesirable.

The sad fact is that there are many crimes on the statute book which disproportionately (or almost wholly) affect women. A tiny fraction of rape is reported, a fraction of that reaches court. Why add more crimes which might go unpunished or undetected?

Changing society and collecting data to enable resources to be deployed correctly would seem better than finding more people to criminalise. This focus on attitudes (police and public) has been the reason that many trials in England have been hailed as positive. The [report](#) on the Nottingham trial identifies areas of success and areas for improvement. Ironically, of course, one of the objections in the focus groups was to the word "misogyny" itself which was felt to be elitist or academic and poorly understood. Despite this clear and unequivocal finding, the Scottish Government appointed working group is to consider a stand alone offence of misogynistic harassment.

Sex and sexism are terms that are more widely understood – especially by women who have suffered from the latter. If we really wish to make laws with women's experience in mind, why would the Scottish Government and women's organisations ignore this? We are also extremely concerned that some members of the working group have already demonstrated

an unwillingness to accept that women might be affected by issues as a sex-class and we fear that the resultant output will, again, confuse issues of gender-identity and sex.

While England has been gathering a substantial and impressive body of work on the subject thanks to police trials and work by the Fawcett Society and Women's Aid, Scotland seems to have resolutely decided to ignore this evidence.

4.20. The Fawcett Society published a comprehensive and authoritative Sex Discrimination Law Review in January 2018¹. That Review included discussion of effective means to tackle violence against women and girls. It considered the practical steps that have been taken by some police forces in England to record misogyny as a hate crime and noted this was thought to raise awareness of the seriousness of these incidents and encourage women to report them. These exercises did not change the law, but the intention was to enable the police to gather better intelligence, to disrupt activities and perpetrators, improve risk management and support the women affected. The long-term aim is to nudge people towards a culture shift and to reframe misogynist behaviour as socially undesirable. The Sex Discrimination Law Review recommended that this approach should be adopted more widely and that the law should be changed to require misogyny to be considered as a hate crime within the legal framework. I shall explore this in more detail later in the chapter.

According to [Sam Smethers](#), former CEO of the Fawcett Society: *"We have to recognise how serious misogyny is. It is at the root of violence against women and girls. Yet it is so common that we don't see it. Instead it is dismissed and trivialised. By naming it as a hate crime we will take that vital first step. We recognise the pressure the police are under and will support their efforts to secure more resources. But at a time of rising hatred in our society, much of it targeted at women, we have to take this seriously and act."*

The Scottish Government would no doubt claim that they are taking this seriously, but action is far off and far from guaranteed. Meanwhile, for reasons of politics or expediency, they appear to wish to reinvent the theoretical wheel in their approach and ignore the practical trials.

We wonder if the Justice Secretary, Humza Yousaf, read any of these important studies? Did he speak to those who undertook the research? Has he asked the [Fawcett Society](#), [Women's Aid](#) and the [Jo Cox Foundation](#) why they believe this should be tackled by hate crime legislation and does he understand why?

If not, this is surely an extraordinary dereliction of duty and the worst sort of Scottish Exceptionalism. The argument is "We can do better", but without evidence or models for legislation, this is a leap of faith.

Unlike the women's organisations in England pressing for change, the Scottish Government funded groups resistant to protecting women under this bill have not undertaken any work to explore the practical implications of this, or indeed **any**, approach.

They have not even consulted with the women who are, nominally, members. The CEO of Engender said herself at the recent AGM “I would like to be clear here – that Engender is not funded for a huge amount of engagement and are not presenting our work as advocating on behalf of the members or as representative of women.”

A couple of questions on hate crime: the first one which is linked to a later question is around how Engender is seeking members view on the hate crime bill. And a question about how priorities are set and discussed with members. Are we consulted and can we have any impact? Another one hate crime Bill, why have a working group on misogyny?

I would like to be clear here - that Engender is not funded for a huge amount of engagement and are not presenting our work as advocating on behalf of the members or as representative of women. The colleagues at the Scottish Women's Convention are funded in this way and we are glad to hear from members but our work is quite technical. I would not want to give the impression that membership privileges certain perspectives above others.

Why have a working group that doesn't include sex in the existing bill? We don't think this will help women and the working group will develop responses to women's harassment.

It seems that one of their objections to adding sex, is a rejection of the aggravated model. This applies, however, to **ALL** characteristics and would, by logic, be a reason for Humza Yousaf to abandon the entire Bill.

All that has been held out to date as an example of good practice is the Domestic Abuse Act, referred to as “gold standard”. This act is, indeed, very important. It has also been drafted using gender neutral language, the other objection raised to adding sex to the Bill.

As Lord Bracadale and the English organisations note, legislation can send a message and it can affect awareness. The lack of legislation can also send a message. In this case, the Scottish Government signals that sexism is more complicated and of less pressing importance than other forms of hate.

While the working group deliberate toward an uncertain outcome, a sledgehammer is being taken to women's freedoms and protections. There are no awareness programmes, no data is being collected. Long before legislation manifests, women will have borne the brunt of this inaction. We also wonder why the opportunity was not taken to ensure that Hate Crime reporting and data collection could be done on a truly intersectional basis. The Committee heard evidence that the sex of the victim may be intrinsic to the crime alongside other characteristics. If monitored under the same legislation, it might be possible to record this and understand these patterns better.

Just today, Holyrood magazine [reported](#) that one third of female MSPs have received a threat of violence. We find it extraordinary that such open, blatant hatred of women can be seen as too complicated or not urgent enough for Parliament to address.