

Scottish Women's Convention response to:

Lord Bracadale Independent Review of Hate Crime Legislation in Scotland

May 2017

The Consultation

Lord Bracadale has been appointed by the Scottish Ministers to undertake an independent review of hate crime legislation in Scotland. Looking at the existing offences that come under the umbrella of "hate crime", views will be taken as to how well the present law works; whether changes need to be made; whether the offences should be extended to cover other groups; and whether all hate crimes should be brought into one area of legislation. The review covers questions that will allow him better to understand what people identify as hate crime; and learn about personal experiences and the impact that hate crime has had on those affected. This includes hate crime committed online.

The Scottish Women's Convention is happy for any of this response to be used to be used as part of the consultation paper.

The Scottish Women's Convention (SWC)

The Scottish Women's Convention (SWC) is funded to engage with women throughout Scotland in order that their views might influence public policy. The SWC uses the views of women to respond to a variety of Parliamentary, Governmental and organisational consultation papers at both a Scottish and UK level.

The SWC engages with women using numerous communication channels including Roadshow events, Thematic Conferences and regional contact groups. This submission provides the views of women and reflects their opinions and experiences in a number of key areas relevant to the issues around the absence of gender as a protected characteristic in current hate crime legislation within Scotland.

Question 1:

What do you consider to be hate crime?

Before carrying out the consultation exercise we want to know what people mean when they talk about "hate crime". That will help Lord Bracadale to have a clearer understanding of what behaviour should be described as "hate crime". We would welcome your views on the definition of "hate crime".

There has undoubtedly been advancement in gender equality in Scotland. The Scottish Parliament and Scottish Government (SG) have taken positive and pro-active steps in advancing equality, with the introduction of legislation, policies and practices in a number of key areas. The enactment of the Equally Safe Scotland Strategy by the SG illustrates the high degree of commitment by the government to eliminating all forms of VAWG. However, failure to encompass gender as a protected characteristic not only fails to recognise VAWG as a cause and consequence of gender inequality, it also allows for perpetrators to escape justice through the failure to enact statutory aggravators in terms of violence carried out as a result of gender inequality.

The Offences (Aggravation by Prejudice) (Scotland) Bill, 2009, for example, enacts a statutory aggravator for what it defines as hate crime misdemeanours committed against those with a disability, sexual orientation or transgender identity. This is illustrative of the high degree achieved within Scotland of safeguarding those with protected characteristics. However, the enactment of women as a specific group which can experience discrimination is lacking at both a Scottish and UK Government level.

At present, many perpetrators of VAWG can often be overlooked due to the limitations of current legislation. The ways in which criminal conduct can be carried out against women is vast. Implementing a definition that illustrates the many forms gendered abuse can take would highlight the Scottish Government's continuing commitment in emphasising a zero tolerance approach to VAWG. More convictions and harsher sentences would make clear to those who commit these offences that they will not "get off lightly".

Additional issues can increase this problem further in relation to women. Many have voiced concerns to the SWC over the trouble of "double discrimination" when being a victim of crime. Under current UK and Scottish law, hate crime is only prosecuted under the protected characteristic, e.g. disability, and not because the victim is a disabled woman. Many have reported that they often feel the law is not on their side when it comes to reporting this behaviour. It is vital that the wide range of actions that form VAWG are included within any consultation on hate crime.

"This issue is so important. The only way to ensure women have access to justice, support and most importantly safety, is by putting laws in place which punish those who abuse"

Question 2:

Please tell us about any specific experience(s) you have had of hate crime.

We'd like to know about either your own personal experience of hate crime or your experience of having witnessed or been aware of hate crime which has been committed against others. You may wish to include when and where the experience happened and who committed the hate crime (including hate crime committed online). This will help us gain a better understanding of the issues involved.

One of the major concerns highlighted by women is the rise that new forms of VAWG can take in an increasingly digitalised world. A consultation addressing the enactment of any new hate crime legislation must specifically include online forms of abuse in order to tackle this pressing issue.

"It's difficult to have a private life and do something innocent such as taking a picture when people play their lives out through social media. Sadly, you can't trust that other people will use the picture in the way you intended to."

The SWC has consulted with young women on the sharing of intimate and explicit images, as well as the impact this can have. Discussions have taken place around how quickly an image can spread and the backlash often faced by the women who find themselves in these situations.

"When this happens to girls we get called 'sluts' and 'whores' and it's our fault, even though all we did was let someone we trusted take a picture in what we thought was a safe environment. There are absolutely no repercussions for the guys who think it's all 'lads banter'."

The SWC has also consulted directly with women who have spoken of the impact revenge porn has had on them.

“My ex posted topless pictures of me on a website, along with details of my Twitter and Facebook accounts, the town I live in (which is a small town) and where I work. I have never been so embarrassed in my whole life. I could have lost my job, but thankfully my employers were extremely understanding. That didn’t stop the whispers and rumours going round the office though. People would stop my parents in the street and talk to them about it. It got to the stage where I didn’t even want to leave the house. Meanwhile he was walking about completely scot free because there was nothing the police could really do about it.”

This increase of so-called ‘revenge porn’ is having a significant impact on women. The use of various forms of technology and social media, particularly amongst young people, means that images can be anonymously shared to many in a very short space of time. Whilst a specific offence of disclosing, or threatening to disclose, an intimate photograph or film, is disclosed under section 2 of the Abusive Behaviour and Sexual Harm Bill, 2016, enacting legislation which places these under hate crime legislation would ensure perpetrators are brought to justice and illustrate the victim-centred response taken by the SG.

Question 3

What impact did the experience have on you?

We want to understand the wider and unseen impact that hate crime can have on individuals and communities. Your responses will help us to identify the consequences of hate crime behaviour and allow us to consider how far the criminal justice system can realistically address this.

Despite the positive steps taken by the Scottish Government to ensure that the elimination of VAWG is a key priority for policy makers, the police and the courts, ingrained attitudes concerning crimes motivated due to gender inequality still remain.

“It always comes back to being the fault of the woman. Either our skirts are too short, we’ve had too much to drink, we were ‘asking for it’.”

Women are still victims of harassment in all manners of society today, this is in part due to normalisation of many forms of offensive behaviour by the media. The likes of cat calling and online trolling are often perceived as “harmless” and “a bit of fun”, failing to recognise the impact that this can have on women’s mental wellbeing. The gendered nature of society means that it is many women that suffer due to this. An examination of current legislation concerning hate crime must take into account these over-looked forms of gender inequality in order to highlight why sex must be recognised as a protected characteristic.

Overall, any reforms concerning criminal procedure are welcomed by the SWC as a positive step in dealing with gender inequality. For the vast majority of women who have experienced criminal conduct as a result of their gender, having to then go through the reporting procedure and questioning can put them at an extreme disadvantage when this is not recognised. Therefore, restructuring of existing legislation to include gender as a protected characteristic not only encompasses a victim-centred approach, but also ensures perpetrators do not escape justice.

“Too many vulnerable women are frightened of the legal system and do not know where to turn for help.”

Question 4

Is there anything else you'd like to share with us?

The SWC welcomes the opportunity to comment on factors pertaining to hate crime legislation within Scotland. In addition to the issues raised above, it is the SWC's belief that a concise and effective consultation should include the following in order to articulate a clear gendered focus concerning the implementation of subsequent legislation.

If the consultation chooses to encompass sex as a protected characteristic given the prevalence of VAWG, the SWC is hopeful that this would also include mention of an increase in “new forms” of gendered inequality. The rise in these, particularly for young women, including through social media, online and street harassment, sexting, revenge porn etc, as well as the increasing sexualisation of women through e.g. advertising must be given a clear emphasis.

A stress should be placed when consulting on any amendments to current hate crime legislation concerning intersectionality between sex and other protected characteristics such as disability or race. Failure to include this raises concerns amongst many women who could be discriminated against based on their gender and other protected characteristics that these are not adequately treated within justice proceedings.

Laws enacted by the SG which recognise gender inequality as an explicit form of hate crime will go a long way to reducing VAWG. These will ensure that criminal conduct in any form against women is victim-centred and recognises the inequality which continues to be faced by women across Scotland.

Conclusion

The SWC welcomes and fully supports the independent review of current hate crime legislation by Lord Bracadale. The absence of sex as a protected characteristic within present law often means many perpetrators escape justice when carrying out unacceptable conduct against women specifically because of their gender. Enactment of this will have a significant impact on reducing VAWG throughout Scotland, recognising that the Scottish Government takes a robust and victim-centred approach to this problem of inequality.

**For further information, please contact
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The Scottish Women’s Convention engages with women using numerous communication channels including Roadshow events, Thematic Conferences and regional contact groups. This submission paper provides the views of women and reflects their opinions and experiences in a number of key areas relevant to mental health in Scotland.

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