

Offences (Aggravation by Prejudice) (Scotland) Bill

Evidence to the Justice Committee

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Equality Network, 30 Bernard St, Edinburgh, EH6 6PR

Tel: 07020 933 952

en@equality-network.org

www.equality-network.org

The Equality Network is a network of around one thousand lesbian, gay, bisexual and transgender (LGBT) individuals and organisations in Scotland, working for LGBT equality. The Equality Network's policy work is based on consultation with LGBT communities across Scotland, and reflects the concerns that LGBT people have raised with us. We welcome the opportunity to provide evidence to the Justice Committee on the Offences (Aggravation by Prejudice) (Scotland) Bill.

Hate crime is a very significant issue for LGBT people in Scotland, and we have been seeking legislation of this kind for several years. The Equality Network welcomed the establishment in 2003 of the previous Executive's Hate Crime Working Group, of which we were a member alongside other equality groups, the police and the Crown Office. We fully supported the conclusions of that Group, and we welcome that this bill implements the principal recommendation of the Group.

Why the issue is so important for us

In our consultation with LGBT people and groups across Scotland, hate crime has consistently been rated by LGBT people as one of their most important concerns. Many LGBT people have experienced hate crime themselves, or have friends or family who have. Many are aware that offences aggravated by racial or religious prejudice are reported and charged as such, and believe that homophobic and transphobic crime should be dealt with as seriously.

A number of surveys of LGBT people in Scotland have identified how many LGBT people have experienced hate crime. A 1999 study by City

of Edinburgh Community Safety Unit¹ found that 52% of LGBT people surveyed had experienced physical assault at some time, and 35% had experienced physical assault in the previous year. A separate Scottish Executive study, focussing on gay men in Edinburgh, and published in 2000², found that 57% had experienced harassment, and 26% a violent incident, in the previous year.

A 1999 study of lesbians and gay men in Glasgow³, commissioned by the city council, found that 60% had been threatened with physical violence at some time because someone knew or presumed that they were lesbian or gay, 34% reported that they had been punched, kicked or beaten for this reason, and 14% reported that they had been assaulted with a weapon.

A 2002 survey of 924 LGBT people right across Scotland⁴ found that 23% had been subjected to physical assault, and 68% to verbal abuse, because they were LGBT.

These statistics indicate a high level of homophobic and transphobic crime across Scotland. It is clear that homophobic and transphobic prejudice cause higher levels of crime targeted at LGBT people.

In recent years, Scotland's police forces have made significant efforts to encourage victims of homophobic and transphobic crime to report this to the police. ACPOS have issued guidance on the recording of these reports. Recording is not yet fully standardised across the eight forces, but it is reported that in the year 2007-8, Strathclyde Police recorded 216 homophobic crimes, Lothian & Borders 76, and Grampian 53⁵. This is already a significant number, but comparing this number with the results of the surveys of LGBT people above, it is obvious that many crimes still go unreported.

¹ Experiences and perceptions of violence and intimidation of the LGBT communities in Edinburgh, M Plant et al, City of Edinburgh Council Community Safety Unit, 1999

² The experience of violence and harassment of gay men in the city of Edinburgh, C Morrison and A Mackay, Scottish Executive, 2000

³ Poverty and social exclusion of lesbians and gay men in Glasgow, S John and A Patrick, Glasgow City Council, 1999

⁴ First out – report of the findings of the Beyond Barriers survey of LGBT people in Scotland, Beyond Barriers, 2003

⁵ Daily Record, October 20th 2008

The Equality Network has collected personal testimonies from members of our network, which leave no doubt as to the serious nature of some of the offences, including assaults to serious injury or permanent disfigurement, and repeated vandalism of houses, cars and other property, in addition to persistent harassment. The Scottish Government has reported that there were 8 homicides in 2006-7 with a homophobic motivation⁶.

It is well established that hate crime can have a particularly negative impact on the victim, since it involves a targeted attack on their core identity, and hate crime has a negative impact on society as a whole⁷.

The provisions of the bill

The Equality Network strongly supports the bill, and all its detailed provisions. The bill replicates the existing statutory aggravation legislation covering crimes motivated by malice and ill-will on grounds of race and religion, for malice and ill-will on grounds of sexual orientation, transgender identity and disability.

This is as recommended by the Hate Crime Working Group, which also rejected replicating for other kinds of hate crime the specific offences of racially aggravated harassment and stirring up racial hatred⁸. We agree with this.

The main new material in the bill, compared to the existing race and religion statutory aggravations, is the definitions of sexual orientation, transgender identity and disability (sections 1(7) & (8) and 2(7) & (8)). We support the definitions that are used in the bill. The definition of sexual orientation mirrors that already in use in other legislation. In our view, Patrick Harvie and the Scottish Government have developed a comprehensive and appropriate definition of transgender identity.

The other difference from the existing aggravations is the more detailed requirements for recording the effect of the aggravation (if proven) on the sentence (sections 1(5) and 2(5)). We welcome these requirements,

⁶ Homicide in Scotland, 2006-7, Scottish Government Statistical Bulletin, December 2007, paragraph 6.9

⁷ See, for example, Racist crime and victimisation in Scotland, I Clark and S Moody, Scottish Executive Central Research Unit, 2002, page 5

⁸ Respectively, section 50A, Criminal Law (Consolidation) (Scotland) Act 1995, and sections 18 to 22, Public Order Act 1986

and we note that the Scottish Government have announced their intention to amend the existing race and religion aggravations so that the same recording requirements apply, in the forthcoming Criminal Justice and Licensing (Scotland) Bill.

The value of the bill

We believe that the Offences (Aggravation by Prejudice) (Scotland) Bill will be a very important contribution to combating homophobic, transphobic and disability-related hate crime, for the following reasons.

Effective and consistent treatment of hate crime

The evidence indicates a significant level of crime motivated by prejudice on grounds of race, religion, sexual orientation / transgender identity, and disability. These crimes share common characteristics: they are usually committed in public spaces (including attacks from outside on a person's home), and by strangers or people not well known to the victim.

These crimes are also very often accompanied by expressions of the motivating malice and ill-will, such as racist or homophobic language. The proof requirements of the 'malice and ill-will' statutory aggravations are well suited to dealing with such crime, as is demonstrated by the high conviction rate for charges for racial and religious prejudice aggravated offences. The bill will introduce consistency into the law for the four kinds of hate crime identified above.

Anyone can be a victim of hate crime. A person could be presumed to be LGBT because they are in or outside a gay bar, or could be wrongly thought to be of a particular religion, for example, and attacked for that reason. These crimes are covered by the statutory aggravations, because the aggravation is based on the motivation of the attacker, not on the identity of the victim. The statutory aggravations do not create specially protected classes of victim; rather they are an appropriate response targeting a particular kind of criminal activity.

Appropriate and consistent reporting, prosecution and sentencing

The statutory aggravations act as flags attached to charges. This will enable consistent and appropriate police reporting and prosecution

policies to be applied across the country, as is already the case for race and religious hate crimes.

The clarity of the statutory aggravation in the complaint or indictment will support sheriffs and judges in sentencing hate crime appropriately and consistently. There is no requirement in the bill for this to be automatically a heavier sentence. For example, a community disposal could be made more appropriate by including an appropriate restorative element.

The statutory aggravations will provide an excellent basis for recording and statistical analysis of the handling of homophobic, transphobic and disability-related hate crime. The Crown Office publish annual statistics on the disposal of racial and religious hate crimes – this is not currently possible for the other hate crime categories. The recording requirements for sentencing will support the identification of repeat offenders, research into sentencing, and in the longer term would support an increase in the consistency of sentencing.

Encouraging reporting, and discouraging crime and prejudice

Homophobic and transphobic crime is clearly under-reported at present. People fear that a report will not be taken seriously by the police, or they think “It’s just something that happens to people like me”.

The use of the equivalent sexual orientation statutory aggravation in England and Wales has been widely reported in the LGBT community media, with high profile reports of convictions for homophobic crime, including statements from judges passing sentence, on the homophobic nature of the crime and the effect on the sentence. Similar publicity relating to the introduction and use of the new aggravations in Scotland will assist police in encouraging more people to report these crimes.

The improved experience for victims will also encourage greater reporting. It is important for a victim of crime to know that the crime has been dealt with appropriately and that their experience has been reflected in the outcome.

The use of the aggravations could also, we think, help to some extent to deter hate crime. Increased reporting of crime to police should result in more arrests and prosecutions. More appropriate sentencing, especially community sentencing, could result in less repeat offending. Publicity

about the unacceptability of these hate crimes will also act as a deterrent.

Finally, we believe that the introduction of the new statutory aggravations will send a message to the wider public that prejudice and intolerance are not welcome in Scotland, and will contribute to a more tolerant society.