



Law Society
of Scotland

Briefing for Scottish Government Debate

Independent Review of Hate Crime Legislation in Scotland

Final Report

5 June 2018



Introduction

The Law Society of Scotland is the professional body for over 11,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

Our Criminal Law Committee welcomes the opportunity to consider and respond to the Scottish Government debate on the Independent Review of Hate Crime Legislation in Scotland Final Report (Review Report) which is being held on 7 June 2018. We have the following comments to put forward for consideration.

General Comments

We refer to our detailed response to the Scottish Government consultation in November 2017 which answered a number of questions covering the background and basis of the Review Report¹.

We welcome the publication of this wide-ranging and important Review Report. Lord Bracadale has undertaken a comprehensive review of the important subject of 'hate crime' and has made 22 recommendations. 'Hate crime' can and does affect all us. It is critical that we consider whether Scotland has the right legislative protection in place to tackle hate crime wherever and whenever it happens. This Review Report has taken a crucial step forward which will allow its recommendations to be considered.

The publication of the Review Report has been very timely given the incidence and publicity of crimes and offences motivated through hate. The scope of such offences may be seen in cases such as the murder of the shopkeeper Assad Shah in Glasgow (highlighted in our earlier response). Tanveer Ahmed² was

¹ <https://www.lawscot.org.uk/media/359213/crim-independent-review-of-hate-crime-legislation-in-scotland-consultation-paper.pdf>

² <http://www.scotland-judiciary.org.uk/8/1639/HMA-v-Tanveer-Ahmed>

convicted of a *'barbaric, premeditated and wholly unjustified killing of a much loved man who was a pillar of the local community'*. The motivation for the crime was that³:

'Mr Shah had offended your religious beliefs and had thus hurt your feelings. Although you had never previously met the deceased, you decided that you had a duty to kill him. You saw fit to arm yourself with a lethal weapon; to travel from a different jurisdiction with a view to confronting the deceased about his beliefs; and thereafter to undertake what was in effect an execution when he was unwilling to change his views'

Mark Meechan who was convicted of a Communications Act offence of posting a video that was *'anti-Semitic and racist in nature'*. It showed a dog undertaking a Nazi salute. The Sheriff considered that the video was grossly offensive⁴.

Though these crimes do differ (as the sentences reflect), both have common factors. They arise from forms of hate crime and offensive behaviour. *'Hate crimes'* result from intolerance.

There is and should be no place for such crimes in Scotland. We await hearing exactly how Lord Bracadale's recommendations are to be taken forward as part of this parliamentary debate. We note that the Minister for Community Safety Annabelle Ewing responded to the Review Report that:

'The Scottish Government as a basis for wider consultation with communities and groups across the country on how to bring forward new legislation that is fit for the 21st century'.

We look forward to taking part in that consultation process as it goes forward.

We fully support the development of a specific hate offence. That will involve what Lord Bracadale has described as a baseline criminal offence together with further aggravated categories representing additional protected characteristics to include age and gender. That will ensure, as outlined by the Scottish Government in its Justice in Scotland: Vision and Priorities that:

*'victims of crime are confident that the criminal justice system will act fairly, effectively and will help reduce the risk of further victimisation'*⁵.

We fully endorse Lord Bracadale's observations that there needs to be a clear, consistent and easily understood system. There are enormous benefits to be gained from having a clear set of rules and procedures. It will bring increased clarity alongside a better understanding and application of the law.

³ <http://www.scotland-judiciary.org.uk/8/1639/HMA-v-Tanveer-Ahmed>

⁴ <https://www.telegraph.co.uk/news/2018/03/20/youtube-user-convicted-hate-crime-pet-dogs-nazi-salutes/>

⁵ <http://www.gov.scot/Publications/2017/07/9526/2>

We especially welcome recommendation 20 that refers to consolidation of all Scottish hate offences and crimes. As highlighted in our consultation response, we called for consolidation as there are a number of current crimes and offences that fall into the category of what might broadly be referred to as hate crime. There is currently a cluttered landscape with overlapping legislation and gaps which the Review Report addressed in depth.

The Sexual Offences (Scotland) Act 2009 provides a good example of the advantages which consolidated legislation brings. That provides one statute to refer to when ascertaining if sexual behaviour amounts to a criminal offence. It is in modern legislative terms, gender neutral. It also deploys clear, modern language. Replacing archaic and outdated legal language such as phrases such as '*having evinced ill-will and malice*' as referred to in the consultation will help to ensure it can be understood by the public.

Bringing forward legislation will emphasise what factors are important to consider when establishing whether firstly an offence has occurred and secondly, where the conviction of an offence arises, the judge can and does sentence appropriately. There is a role here for the Scottish Sentencing Council when considering what new guidelines to develop and publish.

It will be important to examine the detail of each recommendation brought forward.

We would seek to highlight the Review Report's recommendations relating to the need to raise public awareness and education. These generally form part of Recommendations 21 and 22.

The debate which the publication of the Review Report brings, allows public attention to focus on the issue of hate crime. We recognise that this is a highly emotive topic which will evoke vastly differing attitudes – some have already expressed a view that the Review Report does not go far enough. It will be important to encourage free and informed discussion and address potential concerns over any curtailment of freedom of speech.

Changing the law however is not the whole answer. More needs to be done to promote an understanding of the issue of hate crime and there is a need for education both for those who offend and the wider public. The benefits of education can be shown with:

Offenders: All manner of court disposals are relevant when considering how to deal with convictions on hate crime. There is a role in educating those who have committed such offences whether as part of their sentence be it custodial or community based, as well as those who may be on the cusp of committing such behaviour, to help ensure a wider understanding why the behaviour is criminal and unacceptable to society. Such behaviour can and does result from years of bigotry where other family members may have been convicted of similar offences. Schemes have been run as at the Polmont⁶ Young Offenders Institution to examine the issues and feelings around religion and sectarianism. That encouraged young men to think

⁶<http://www.heraldsotland.com/news/13113363.Drama%20by%20young%20men%20at%20risk%20of%20offending/>

about the causes and consequences and of hate crimes in history, and the present law. These schemes will be important to utilise along with how the recommendations are being taken forward in legislation.

Public: There is a need to promote and enhance the public understanding of what hate crime means and is. This should include the role of sentencing. That will encourage better responses from those who become involved or are affected by such crimes to report these matters to the police.

Criminal Justice System: Having specific legislation that addresses hate crime directly will assist all involved in the criminal justice system by enhancing their understanding and making such legislation clear and consistent.

We trust this briefing is useful and are happy to provide any more information that may be required.

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