



## Consultation on Scottish Hate Crime Legislation February 2019

### About Together (Scottish Alliance for Children's Rights)

Together (Scottish Alliance for Children's Rights) is an alliance that works to improve the awareness, understanding and implementation of the UN Convention on the Rights of the Child (UNCRC) and other international human rights treaties across Scotland. We have over 380 members ranging from large international and national non-governmental organisations (NGOs) through to small volunteer-led after school clubs. Our activities include collating an annual *State of Children's Rights* report to set out the progress made to implement the UNCRC in Scotland. The views expressed in this submission are based on consultation with our members but may not necessarily reflect the specific views of every one of our member organisations.

### Introduction:

Together welcomes the opportunity to comment on the findings of the 2018 Independent Review of Hate Crime Legislation in Scotland led by Lord Bracadale. Hate crime involving children has a profound impact on their physical and emotional wellbeing and is associated with lifelong social, emotional, cognitive and physical problems.<sup>1</sup> The UN Committee on the Rights of the Child is clear that discrimination, violence, harassment and bullying are unacceptable and violate a range of rights.<sup>2</sup> The following provisions of the UN Convention on the Rights of the Child (UNCRC) are particularly relevant to tackling hate crime involving children:

- Right to equality and non-discrimination (Article 2)
- Freedom from exploitation, violence and abuse (Articles 19, 34, 35, 36, 39)
- Freedom from torture or cruel, inhuman or degrading treatment (Article 37)
- Right to private and family life (Article 16)
- Right to life (Article 6)
- Right to health (Article 24)

The UN Committee on the Rights of the Child (the Committee) has developed guidance in the form of General Comments, which assist in the interpretation and implementation of the above rights. General Comment 13 on the prevention of all forms of violence, and General Comment 20 on rights during adolescence are particularly relevant in the context of hate crimes involving children and young people. General Comment 13 is clear that governments have a duty to challenge attitudes which condone (or tolerate) violence, including harassment and online hate based on prejudices

---

<sup>1</sup>A [study](#) by the UN Secretary General found that children who experience violence and hate crimes are more likely to have heart, lung and liver disease, experience intimate partner violence and attempt suicide in later life.

<sup>2</sup> See for example CRC/C/GC/13, para. 27 noting the severe impact on physical and psychological health, see also para. 13 noting that prevention of all forms of violence is essential for promotion and protection of other rights in the Convention

around gender, race, religion, and disability.<sup>3</sup> General Comment 13 and General Comment 20 both contain guidance around children’s rights in the digital and online environment.

The UNCRC applies to all children and young people under the age of 18. Additionally, children who are members of particular social groups benefit from specific provision in treaties related to race, disability and gender-based discrimination.<sup>4</sup>

Numerous recommendations have been made to the UK regarding hate crime. In 2016, the Committee on the Elimination of Racial Discrimination raised concerns over the rise in hate crimes around the time of the EU referendum. It called on the UK to investigate all reported incidents, provide effective remedies to victims, improve data collection and take action on underreporting.<sup>5</sup> The 2017 Universal Periodic Review saw various recommendations that the UK tackle the sharp rise in hate crimes, particularly those involving young people, and ensure greater certainty and legal protection for victims.<sup>6</sup>

### **Part 1: Consolidating and Modernising Hate Crime Legislation**

Question 1: Do you think the statutory aggravation model should continue to be the core method of prosecuting hate crimes in Scotland?

**Tick:** don’t know

**Comments:** Together welcomes Lord Bracadale’s recommendation to consolidate all Scottish hate crime legislation. Consolidation into a single statute will bring the benefits of clarity, transparency and consistency. It will ensure that the law is easier to locate and understand. We are unable to comment on the model which should be used, although we note Lord Bracadale’s view that the core method of statutory aggravations currently used works well in practice.

Question 2: Do you think that the language of the thresholds for the statutory aggravations would be easier to understand if it was changed from ‘evincing malice and ill will’ to ‘demonstrating hostility’?

**Tick:** Yes

**Comments:** Together welcomes the intention to clarify and simplify the language used in hate crime legislation. The current language - “evincing malice and ill will” - may be difficult for the public, including children and young people, to understand and therefore identify hate crimes accurately. We support Lord Bracadale’s view that it is “important for the legislation to be as clear as possible for those who may be affected by it, whether as victims or potential offenders”. It is essential that new hate crime legislation is underpinned by strong guidance and an awareness and understanding campaign to ensure that children and young people, adults and public officials can recognise hate crimes and respond appropriately.

Question 3: Do you think changing the language of the thresholds for the statutory aggravations from ‘evincing malice and ill will’ to ‘demonstrating hostility’ would change how the thresholds are applied?

**Tick:** don’t know

---

<sup>3</sup> CRC/C/GC/13, para 47, para 60.

<sup>4</sup> CERD: particularly Articles 2 and 4(a); UNCRPD: particularly Articles 5, 6, 7 and 16(5); CEDAW: particularly Article 2.

<sup>5</sup> [CERD Concluding Observations 2016](#): Para 15-16

<sup>6</sup> Universal Periodic Review 2017: see in particular recommendation 134.103 (Maldives); 134.114 (USA); 134.111 (Thailand)

**Comments:** We note Lord Bracadale’s view that changing the wording of these provisions would not affect the underlying tests for their application.

## Part 2: New Statutory Aggravations

### Gender

Question 7: Do you agree with Option A to develop a statutory aggravation for gender hostility?

**Tick:** don’t know

**Comment:** In our previous response, Together supported the extension of hate crime legislation to cover characteristics not already protected, including gender.<sup>7</sup> Together is unable to comment on the form that this extension should take, but would like to provide the following comments:

Earlier reviews of the issue in 2004 and 2008 concluded that hate crime legislation was not the best route to tackle gender-based offending at that time.<sup>8</sup> However, recent evidence from girls and young women highlights a clear and immediate need for action to be taken to tackle gender-based prejudice, harassment and other offences:

- Girlguiding UK’s 2018 Girl’s Attitudes Survey showed that the number of girls and young women feeling unsafe outside is alarmingly high. More than half of those aged 13-21 have felt unsafe walking home alone (63%), have experienced street harassment (52%) or know another girl who has. Nearly half (47%) feel unsafe using public transport.<sup>9</sup> The survey also showed that girls were increasingly experiencing unkind, threatening and negative behaviour from new channels, with online abuse becoming increasingly prevalent.
- Zero Tolerance’s 2015 survey into young people’s attitudes found that sexualised media was significantly impacting on their understanding of healthy relationships. Sexualised media was also seen to be part of a broader pattern of sexism and double standards.<sup>10</sup>
- The Scottish Social Attitudes Survey 2014 noted that women and girls in Scotland face many stereotypical judgements in relation to gender-based violence.<sup>11</sup> Moreover, those who tended to accept these stereotypical beliefs were less likely to view abuse and violence as harmful or wrong.<sup>12</sup>

The UN Committee recognises that adolescent girls are particularly at risk of violations of their rights. During adolescence, the Committee notes that discrimination, inequality and stereotyping against girls often intensifies, which may lead to more serious violations of their rights (including mental harm and the risk of sexual violence).<sup>13</sup> The Committee notes that sexual harassment in schools acts as a barrier to girls’ effective participation in education.<sup>14</sup> Urgent action is therefore necessary to fulfil the Scottish Government’s obligations to prevent and protect against discrimination and

---

<sup>7</sup> Together, [Consultation Response: Independent Review of Hate Crime Legislation in Scotland \(2017\)](#)

<sup>8</sup> Working Group on Hate Crime 2004, Offences (Aggravation by Prejudice) Bill 2008.

<sup>9</sup> [Girlguiding UK, 2018 Girls Attitudes Survey](#).

<sup>10</sup> Zero Tolerance (2015). “‘He’s the stud and she’s the slut’: Young people’s attitudes to pornography, sex and relationships’.

<sup>11</sup> Scottish Government (2015). ‘Scottish Social Attitudes Survey 2014: Attitudes to violence against women in Scotland’

<sup>12</sup> Scottish Government (2015). ‘Scottish Social Attitudes Survey 2014: Attitudes to violence against women in Scotland’

<sup>13</sup> CRC/C/GC/20, paras 27-28

<sup>14</sup> CRC/C/GC/20, paras 71

violence under Articles 2 and 19 UNCRC respectively, and Article 2 (non-discrimination) of the Convention on Elimination of Discrimination against Women. The inclusion of gender within hate crime legislation is important to combat the normalisation and acceptance of misogynistic behaviour, which in turn contributes to the problem of underreporting. Extending existing legislation to include gender must be accompanied by the development of accessible, child and young person-friendly reporting mechanisms, as required by General Comment 13.<sup>15</sup> Taking these steps would have numerous positive impacts, including increasing the confidence of victims that they will be taken seriously, and increasing the confidence of victims and bystanders to object to such behaviour.

Question 8: Do you agree with Option B to develop a standalone offence for misogynistic harassment?

**Tick:** don't know

**Comment:** See answer to Question 7.

Together supports the extension of hate crime legislation to gender-based offences but is unable to recommend a particular model through which this should be achieved. We note the recommendations from the First Minister's National Advisory Council on Women and Girls to "criminalise serious misogynistic harassment, filling gaps in existing laws."<sup>16</sup>

Question 9: Do you agree with Option C of building on Equally Safe to tackle misogyny (this would be a non-legislative approach)

**Tick:** don't know

**Comment:** See answer to Question 7.

Together supports the extension of hate crime legislation to include gender-based offences but is unable to recommend a particular model through which this should be achieved. Regardless of the model adopted, it is essential that this is underpinned by a broad education and awareness strategy, which educates children and young people about gender-based violence, consent and healthy relationships. This could be developed through the Equally Safe strategy and should be informed by children and young people's views. The UN Committee is clear that the participation of children and young people in the development, monitoring and evaluation of prevention and education strategies is essential to their effectiveness.<sup>17</sup> The Committee is also clear that these strategies should be sustainable, cohesive and coordinated, noting that isolated programmes and activities have limited effects.<sup>18</sup>

Question 10: Do you agree with Option D of taking forward all the identified options? (This would include development of a statutory aggravation based on gender hostility (Option A); development of a standalone offence relating to misogynistic harassment (Option B); and work to build on Equally Safe (Option C)

**Tick:** don't know

**Comment:** See answers to Questions 7-9.

Together supports the extension of hate crime legislation to include gender-based offences but is unable to recommend a particular model through which this should be achieved.

---

<sup>15</sup> CRC/C/GC/13, paras 49.

<sup>16</sup> First Minister's National Advisory Council on Women and Girls, ['2018 First Report and Recommendations'](#), p.19

<sup>17</sup> CRC/C/GC/13, paras 3(e), 29, 63; CRC/C/GC/20, paras 19, 23.

<sup>18</sup> CRC/C/GC/13, paras 39.

## Age

Question 11: Do you think that a new statutory aggravation on age hostility should be added to Scottish hate crime legislation?

**Tick:** Yes

**Comment:** The UN Committee acknowledges the existence of societal and media prejudice towards children (particularly adolescents).<sup>19</sup> Recent research by Dr Susan Elsley highlights the longstanding nature of this prejudice in Scotland and that, whilst attitudes have developed over time, negative views of children still persist.<sup>20</sup>

Despite this “intolerance of childhood”, Together has not been made aware of any offences based solely upon hostility towards the victim’s age.<sup>21</sup> All hate crimes reported to us by members have related to children who have suffered abuse in relation to one of the existing protected characteristics – such as race, religion, sexuality, disability or transgender identity. It is possible that children with these characteristics may find themselves more likely to experience hate crime because the offender sees them as vulnerable, or an ‘easy target’ on account of their youth.

Despite not having received any reports of offences based solely upon hostility towards a child or young person’s age, we believe that it is possible that such offences could occur, particularly given the persistent societal and media prejudice towards children and young people. The UN Committee recognises that “adolescence itself can be a source of discrimination. During this period adolescents may be treated as dangerous or hostile, incarcerated, exploited or exposed to violence *as a direct consequence of their status*.”<sup>22</sup> This enduring context may mean that children and young people currently accept conduct against them as the ‘norm’ rather than questioning it. Accordingly, we welcome Lord Bracadale’s recommendation for a statutory aggravation based on age, and welcome his statement that this would include children and young people, as well as the elderly.

## Part 4: New Stirring Up of Hatred Offences

### Online Hate

Question 27: Do you agree with Lord Bracadale’s recommendation that no specific legislative change is necessary with respect to online conduct?

**Tick:** Yes

**Comment:** Together accepts Lord Bracadale’s conclusion that no specific legislative change is required in relation to online conduct, as this falls within the scope of existing legislation. However, Together would like to provide the following comments for consideration by the Scottish Government:

The UN Committee recognises the benefits and opportunities available to young people online. General Comment 20 notes that children and young people can use the internet to explore their identity, learn, participate, express opinions, play, and socialise.<sup>23</sup> However, the Committee also

---

<sup>19</sup> See CRC/C/GC/20, paras 12 and 15; [UNCRC Concluding Observation 2016](#): Para 23 (‘Intolerance of Childhood’); see also discussion in Together, [State of Children’s Rights Report 2016](#), p. 33.

<sup>20</sup> Dr Susan Elsley (2017), [‘Review of Societal Attitudes of Children for the Scottish Child Abuse Inquiry’](#), p.16

<sup>21</sup> This must of course be distinguished from offences where the age of the victim is fundamental to the offence – e.g. sexual offences involving young people.

<sup>22</sup> CRC/C/GC/20, para 21

<sup>23</sup> CRC/C/GC/20, para 47; see also CRC/C/GC/17 para 45.

recognises the risks that young people can be exposed to – including abuse and harassment – which constitute ‘violence’ within the meaning of Article 19 UNCRC.<sup>24</sup> The Committee is clear, however, that online risks should not restrict adolescents’ access to the digital environment. Rather, these risks should be addressed through strengthened legislation,<sup>25</sup> internet safety training for children, teachers and families,<sup>26</sup> raising awareness among children and young people of the severe effects that online bullying can have, and involving social media outlets in efforts to combat online hate.<sup>27</sup> Accordingly, Together believes there is a need for clear guidance underpinning any new hate crime legislation. In line with General Comments 13 and 20, children and young people should be involved in the development of this.<sup>28</sup> The guidance should include:

**1. Clear guidance around online abuse involving children (as perpetrators and victims):**

General Comment 13 is clear that states should issue supporting guidance on how to respond to online hate involving children.<sup>29</sup> This guidance must ensure that adults working with children and young people are given clear instructions on how to deal with cases of online abuse. The guidance should make clear that online conduct shall be taken as seriously as equivalent face-to-face conduct. At the same time, however, it must be sensitive to the rights of both child perpetrators and child victims. In cases where the perpetrator is a child, guidance must be sensitive to the need to avoid criminalising children who display harmful behaviour. It should recognise that children’s cognitive ability develops over time and that many children may not fully understand the impact of their actions on others, or indeed themselves. Children are also strongly influenced by their family environment and may “parrot” what they have heard around them without understanding the implications of what they are saying or doing. In line with General Comment 13, Together is keen to see responses that emphasise restorative justice, diversion from judicial proceedings, preventative and educational interventions.<sup>30</sup> These mechanisms should tackle the social factors that influence hate crime and address the root causes, in line with UNCRC Articles 37 and 40 and the UN Guidelines for the Prevention of Juvenile Delinquency.

In terms of children and young people who have been affected by another child or young person’s behaviour, it would be important that they are made aware and understand the way in which the other child’s behaviour will be treated and how measures will be taken to ensure the behaviour is not repeated.

In line with General Comment 13, the guidance must be supported by comprehensive training to ensure that professionals working with children and young people take a rights-based approach to investigating reports of online (and offline) hate.<sup>31</sup>

**2. Education and awareness-raising strategy for children and young people:** Together acknowledges that many children do not recognise a hate crime for what it is (either online or face-to-face). In particular, many Gypsy/Traveller children report that they are so

---

<sup>24</sup> CRC/C/GC/13, para 21(g)

<sup>25</sup> CRC/C/GC/13

<sup>26</sup> CRC/C/GC/20 para 48

<sup>27</sup> See [UNCRC Concluding Observation 2016](#): Para 49(b); see also CRC/C/GC/20 para 48

<sup>28</sup> CRC/C/GC/20 para 48

<sup>29</sup> CRC/C/GC/13, para 44(a)

<sup>30</sup> CRC/C/GC13, para 52.

<sup>31</sup> CRC/C/GC13, para 51

discriminated against in their everyday lives that they do not recognise a hate crime when it is committed against them.<sup>32</sup> It can also be difficult for children who have been subjected to bullying at school to recognise when this has progressed to the level of a hate crime. The UN Committee has emphasised the strong role that the education system has to play in fostering a culture of non-discrimination and combatting both prejudice-based bullying and hate crimes towards children. In General Comment 13, the Committee calls for age-appropriate and accessible information to be delivered to children and young people through the curriculum which addresses online risks and encourages the development of positive peer relationships.<sup>33</sup> Improved education and awareness strategies would help children identify when online or offline bullying behaviour crossed the threshold of becoming a hate crime. The programme should also address problems in underreporting, which particularly affects Gypsy/Traveller and LGBT children.<sup>34</sup> Together would welcome a duty to raise awareness and understanding amongst children and young people on the face of any new hate crime legislation.

3. **Education and awareness-raising strategy for adults:** Whilst our members report that a lot of good work is taking place in schools, there are concerns that this good work may be undone once the child arrives home. Some family environments can reinforce prejudice and prevent children and young people from recognising hate crimes. Together also notes that adults witnessing hate crimes in children may dismiss these as something else, such as bullying or antisocial behaviour. Accordingly, there is a need for broader public awareness raising and education amongst parents and all those working with and for children, including teachers. Together would welcome a duty to raise awareness and understanding amongst all adults on the face of any new hate crime legislation.

## Conclusion

Together welcomes the recommendations to consolidate hate crime legislation in Scotland, to simplify the language used and to extend the protected characteristics to include gender and age. If introduced, these changes would give added clarity and accessibility to the law. However, it is essential that the development of new policy and legislation takes a rights-based approach. This should include the completion of a Child Rights and Wellbeing Impact Assessment. Additionally, it is essential that any new legislation is underpinned by robust guidance which takes a child rights-based approach to hate crimes involving children and young people (both as perpetrators and victims). This guidance should also contain an awareness and education strategy for children and young people, and for adults, including parents, carers, teachers, law enforcement and the judiciary.

For further information, please contact Maria Doyle, Legal Research Officer,

**Together (Scottish Alliance for Children's Rights)**

Tel: **0131 337 9015** Email: [maria@togetherscotland.org.uk](mailto:maria@togetherscotland.org.uk)

Web: [www.togetherscotland.org.uk](http://www.togetherscotland.org.uk) Twitter: [@together\\_sacr](https://twitter.com/together_sacr)

Level 1 Rosebery House, 9 Haymarket Terrace Edinburgh, EH12 5EZ

---

<sup>32</sup> See discussion in: [Article 12 in Scotland Report 2015](#), pp.75-88

<sup>33</sup> CRC/C/GC13, para 44(b)

<sup>34</sup> Together, [State of Children's Rights Report 2016](#), p. 32-33