



Independent Review of Hate Crime Legislation in Scotland: Consultation Response

Summary: The UK is party to several international conventions which place positive duties upon states to combat discrimination. Enacting domestic legislation to combat hate crime is one way by which states may discharge some of these duties. To hold Government to account in fulfilling the obligations enshrined in these treaties, various recommendations have been made by the UN committees which oversee them. A number of these have related specifically to hate crimes and are discussed below. It is important that any changes to domestic hate crime legislation take these international recommendations into account. Furthermore, it is essential when considering hate crime and children, that the issue is considered both from the perspective of children as victims and from the perspective children as perpetrators.

Introduction:

Hate crime against children can have a profound impact on their physical and emotional wellbeing. Exposure to hate crime can cause immediate physical and mental damage and is associated with lifelong social, emotional, cognitive and physical problems.¹ The UN Committee on the Rights of the Child has noted that violence, harassment and bullying are unacceptable in any context and violate a range of rights. The following provisions of the UN Convention on the Rights of the Child (UNCRC) are relevant to tackling hate crime against children:

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

Numerous recommendations have been made to the UK regarding hate crime. In 2016, the Committee on the Elimination of Racial Discrimination (CERD) 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.² 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.³

¹A [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.

² [CERD Concluding Observations 2016](#): Para 15-16

³ Universal Periodic Review 2017: see in particular recommendation 134.103 (Maldives); 134.114 (USA); 134.111 (Thailand)

Question: Should we have specific hate crime legislation?

Yes. The UK is party to various international treaties which place obligations on State Parties to combat discrimination. For example, the UNCRC provides that State Parties must ensure that the rights set forth in the Convention are protected without discrimination of any kind and, further, that states must ensure that children are protected from discrimination (i.e. take positive steps).⁴ Children who are members of particular social groups additionally benefit from specific prohibitions on discrimination contained in treaties related to race⁵, disability⁶ and gender-based⁷ discrimination. Domestic hate crime legislation is a necessary way of discharging a state's obligations under these treaties.

Question: Do you consider any change to existing criminal law is required to ensure that there is clarity about when bullying behaviour based on prejudice becomes a hate crime? If so, what would you suggest.

Together is not able to provide comment on the need for specific reforms on the delineation between prejudice-based bullying and hate crime. However, we would like to provide the following comments to assist in the consideration of this issue:

The UNCRC provides that all children have the right to education which is free from violence, harassment and bullying.⁸ This includes protection from any form of discrimination. Schools should provide a supportive learning environment where all students feel safe and can reach their full potential. A school which allows bullying or other violent and exclusionary practices to occur unchallenged is not meeting the requirements of the UNCRC.⁹ Accordingly, Together believes in the strong role which the education system has to play in fostering a culture of non-discrimination and combatting both prejudice-based bullying and hate crimes towards children.¹⁰

In 2017, the Committee on the Rights of Persons with Disabilities raised concerns regarding the increase in disability-based bullying and hate crimes against children and was concerned by the lack of monitoring mechanisms especially regarding bullying at school.¹¹ The Committee recommended that the UK strengthen measures to prevent bullying, hate speech and hate crimes against children with disabilities¹² and further called on the UK to "define comprehensively the offence of disability hate crime, and ensure appropriate prosecutions and convictions".¹³

However, any attempts to clarify the distinction between prejudice-based bullying and hate crime must be sensitive to the need to avoid criminalising children who display such harmful behaviour. This issue relates strongly to the issue of the minimum age of criminal responsibility and involves consideration of both the rights of the child displaying the harmful behaviour and the rights of the

⁴ UNCRC: Article 2 (non-discrimination)

⁵ CERD: particularly Articles 2 and 4(a)

⁶ UNCRPD: particularly Articles 5, 6, 7 and 16(5)

⁷ CEDAW: particularly Article 2

⁸ UNCRC: Article 24. See also [UNCRC General Comment No. 1](#): The Aims of Education, Para 19.

⁹ See [UNCRC General Comment No. 1](#): The Aims of Education, Para 19.

¹⁰ For discussion see Together, [State of Children's Rights Report 2016](#), pp.74-75.

¹¹ [CRPD Concluding Observations 2017](#): para 20(c) and (e).

¹² [CRPD Concluding Observations 2017](#): para 20(c) and 21(e).

¹³ [CRPD Concluding Observations 2017](#): para 39(b).

child victim.¹⁴ It must be recognised 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 terms of addressing children and young people who are perpetrators of hate crimes, Together is keen to see responses that emphasise restorative justice, diversion from judicial proceedings and preventative interventions. 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 fully 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.

Question: Should the concept of a standalone charge be extended to other groups? If so, which groups?

Whilst acknowledging the existence of societal and media prejudice towards children (particularly adolescents)¹⁵, Together has not been made aware of offences involving malice or ill-will based solely upon the victim’s youth.¹⁶ All issues regarding hate crime reported to us by members have related to children who possess another characteristic – such as characteristics of race, religion, sexuality, disability or transgender identity. That is not to suggest that no crimes are committed against children due to age-based prejudice, but merely to contend that no such incidents have been brought to our attention.

The above notwithstanding, Together is keen to see hate crime legislation extended to cover other groups not already protected by the current law. In particular, we are keen to see gender-based crimes, crimes based on immigration status and crimes against Gypsy/Traveller communities included within the scope of domestic hate crime legislation.

Together acknowledges the current mixture of stand-alone offences (for racially motivated crimes) and sentencing aggravations (crimes motivated by the victim’s religion or disability). However, we believe that there is value in treating all grounds in the same manner. Such an approach is supported by the principles of equality and non-discrimination.

Question: Does the current law deal effectively with online hate? Please give reasons for your answer.

¹⁴ For detailed discussion see the [Child Rights and Wellbeing Impact Assessment](#) conducted in relation to raising the minimum age of criminal responsibility from 8 to 12.

¹⁵ See [UNCRC Concluding Observation 2016](#): Para 23 (‘Intolerance of Childhood’); see also discussion in Together, [State of Children’s Rights Report 2016](#), p. 33.

¹⁶ 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.

Together is not able to comment on the need for specific legal reforms on tackling online hate. However, we would like to provide the following comments to assist in the consideration of this issue:

The UNCRC provides that all children have the right to participate in leisure activities in a safe environment.¹⁷ This not only includes playing and socialising face-to-face but also encompasses when such activities are conducted online, for example via social networking sites. In our State of Children's Rights Report 2016, we reported that whilst face-to-face bullying is still more common, there has been an increase in the incidence of online abuse against children.¹⁸ Currently around 60% of bullying is conducted face-to-face and 19% online.¹⁹

The UNCRC Committee's 2016 Concluding Observations highlight this issue.²⁰ Following from the Day of General Discussion on digital media and children's rights²¹, the Committee called for training to be provided to children, teachers and families on the safe use of information and communication technologies, raising awareness among children on the severe effects that online bullying can have on their peers and to increase the involvement of social media outlets in efforts to combat online hate.²²

Question: Do you have any views as to how levels of under-reporting might be improved? Please give reasons for your answer.

The problem of underreporting of hate crimes against children

The problem of underreporting is a serious concern for our members, especially those working with Gypsy/Traveller children, children with disabilities and LGBT children. Together has previously written on this issue and noted the difficulties in analysing trends in hate crime figures as a result.²³ Underreporting is a particular issue in relation to children for several reasons, it is only through understanding these factors that the root causes of underreporting can be addressed effectively:

Firstly, children may not always recognise a hate crime for what it is (either as a victim or perpetrator). Many Gypsy/Traveller children have reported that they are so discriminated against that they often do not recognise a hate crime is being committed against them.²⁴ It can also be difficult for children who have been bullied at school to recognise when this has progressed to the level of a hate crime.

Secondly, even if a child does recognise that certain conduct constitutes a hate crime, there may be other problems which frustrate their reporting of it. For example, a child may not know that they have a right to report such conduct. In other cases, there may be practical barriers. For example, the isolation of Gypsy/Traveller children means that even when they do recognise a hate crime, they may not have access to third party reporting. Furthermore, certain groups of children do not always trust

¹⁷ UNCRC: Article 31

¹⁸ Together, [State of Children's Rights Report 2016](#), p. 75

¹⁹ Together, [State of Children's Rights Report 2016](#), p. 75

²⁰ See [UNCRC Concluding Observation 2016](#): Para 49

²¹ See [Day of General Discussion: "Digital media and children's rights"](#), 12 September 2014

²² See [UNCRC Concluding Observation 2016](#): Para 49(b).

²³ Together, [State of Children's Rights Report 2016](#), p. 32

²⁴ See discussion in: [Article 12 in Scotland Report 2015](#), pp.75-88

public services to take their reports seriously. This problem has been reported both in relation to Gypsy/Traveller children as well as LGBT young people.²⁵

Thirdly, there is a risk that those witnessing hate crimes perpetrated by children against other children may dismiss these acts as something else, such as bullying or antisocial behaviour.

Addressing underreporting

The first step to improving reporting rates is to improve education and awareness. This would involve assisting children to identify when conduct constitutes a hate crime. It is also essential that adults and professionals working with children are given related training, particularly on how to differentiate hate crimes from bullying or antisocial behaviour. Whilst our members report that a lot of good work is taking place in schools on this topic, 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 (as victims or perpetrators). Accordingly, there is a need for broader public awareness raising and education.

The second step relates to the reporting procedure. In order to improve reporting rates, it is essential that the reporting mechanism is transparent and accessible, and that victims have trust in the police and justice system.²⁶ In relation to child victims, it is vital that child-friendly reporting practices are available and that all professionals involved in the reporting procedure are sensitive to the needs of child victims.

Juliet Harris, Director
Maria Doyle, Assistant Research Officer
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For further information, please contact Juliet Harris, Director
Together (Scottish Alliance for Children's Rights)
Tel: **0131 337 9015** Email: juliet@togetherscotland.org.uk
Web: www.togetherscotland.org.uk Twitter: [@together_sacr](https://twitter.com/together_sacr)
Level 1 Rosebery House, 9 Haymarket Terrace Edinburgh, EH12 5EZ

²⁵ Together, [State of Children's Rights Report 2016](#), p. 32-33

²⁶ Similar recommendations were made in relation to the underreporting of racial hate crimes by the CERD Committee in their 2016 [Concluding Observations](#): Para 16(c)