

Hate Crime and Public Order (Scotland) Bill Call for Views

Scottish Commission for People with Learning Disabilities Submission

21st of July 2020

The Scottish Commission for People with Learning Disabilities (SCLD) welcomes the opportunity to respond to this call for views. This response answers Questions 1, 4 and 6 with a focus on:

- The specific recognition of learning disability within the listed characteristics in the Hate Crime and Public Order (Scotland) Bill
- A provision within the Hate Crime and Public Order (Scotland) Bill for a statutory aggravation offence where an individual's '*perceived vulnerability*' is exploited
- Support for a '*stirring up of hatred offence*' which includes organisations.

The inclusion of Learning Disability within protected characteristics in the Hate Crime and Public Order (Scotland) Bill

Question 1. Do you think there is a need for this Bill and, if so, why? Are there alternatives to this legislation that would be effective, such as non-legislative measures, wider reforms to the police or criminal justice procedures? Are there other provisions you would have liked to have seen in the Bill or other improvements that should have been made to the law on hate crime?

SCLD welcomes The Hate Crime and Public Order (Scotland) Bill and believes it is necessary to increase the clarity, consistency, and transparency of hate crime legislation in Scotland while ensuring that people with protected characteristics have greater protections and receive justice when they are a victim of crime.

While SCLD welcomes this bill, we have concerns regarding the omission of learning disability as a specific listed characteristic of disability within the bill. SCLD believes that without separate identification, people with learning disabilities may not recognise this legislation as helpful to them and may not come forward to report crimes. Critically, SCLD is concerned that without learning disability being included as a characteristic within the bill no disaggregated data will be collected and published on learning disability hate crime. This would be in contravention of Articles 31¹ and 33² of the United Nations Convention on the Rights of People with Disabilities (UNCPRD).

Without this undertaking, the scale and impact of hate crime offences against people with learning disabilities cannot be identified. This invisibility within officially published statistics contributes to the disempowerment of people with learning disabilities and impedes the evidencing and implementation of appropriate legislative and policy measures to effect positive

¹[Article 31, UNCPRD \(2006\)](#)

²[Article 33, UNCPRD \(2006\)](#)

change for this population including their right to justice. Furthermore, without the inclusion of people with a learning disabilities we risk further hindering the protection of the human rights of people with learning disabilities, who continue to be an extremely marginalised group and who we know can be victims of the most serious forms of hate crime³

SCLD has previously raised this concern in our consultation response to how official statistics present information on recorded crime and related topics⁴. In this response, we asked that consideration be given as to how victim characteristics within the Interim Vulnerable Persons (IVPD) Database can be recorded systematically and in such a way that allows for this disaggregation in line with Articles 31 and 33 of the UNCPRD.

SCLD believes data disaggregation about hate crime and disability can be implemented in two ways:

- Firstly, by the specific recognition of learning disability as part of the listed disability characteristic within the bill. For example, this could be listed as Disability, including, but not limited to, learning disability and physical impairment
- Secondly, SCLD would welcome the bill placing duties on public bodies, on recording disaggregated disability data on hate crime.

Both recommendations are in line with Article 31 of the UNCPRD. The Scottish Government has committed to implementing the UNCPRD in ‘*A Fairer Scotland for Disabled People – Our Delivery Plan to 2021*’⁵ and since the UK ratified the treaty there is an international obligation for all legislation in the UK to comply with UNCPRD. Article 31 of the UNCPRD recognises that gathering appropriately disaggregated data and statistics, analysing, and applying that knowledge to formulate and implement policy is key to the equal realisation of rights. This is fundamental to the realisation of the rights and the delivery of duties by Government.

SCLD would like to draw the Justice Committee’s attention to the Committee on the Rights of Persons with Disabilities recent statement that the COVID-19 emergency has evidenced that state parties have not effectively implemented the UNCPRD⁶ and cite data disaggregation regarding disability as critical in an inclusive recovery from COVID-19⁷.

Support for a statutory aggravation regarding offences in which individuals ‘perceived vulnerability’ is exploited within the Hate Crime and Public Order (Scotland) Bill

Question 4. Do you think that a new statutory aggravation on age hostility should be added to Scottish hate crime legislation? Would any alternative means be measured effective? For

³[EHRC \(2011\)](#)

⁴[SCLD \(2019\)](#)

⁵[The Scottish Government \(2016\)](#)

⁶[Committee on the Rights of Persons with Disabilities \(July 2020\)](#)

⁷[United Nations \(May 2020\)](#)

example, would there have been merit in introducing a statutory aggravation (out with hate crime legislation) for the exploitation of the vulnerability of the victim?

SCLD supports the proposal that a statutory aggravation should exist which focuses on the exploitation of the *'perceived vulnerability'* of a victim because of a protected characteristic. SCLD believes this will help prosecute cases in which a person with a learning disability is exploited because a perpetrator targets them due to a *'perceived vulnerability'*. SCLD supported this position in our initial response to the consultation on amending Scottish Hate Crime Legislation in February 2019⁸.

SCLD believes a statutory aggravation may be able to address and criminalise issues which have been considered as *'mate crime'* against people with a learning disability. *'Mate crime'* are criminal acts committed by people known to the victim who takes advantage of their relationship with a person with a learning disability to exploit them⁹. This can include crimes such as financial and sexual exploitation. We know from our engagement with people with learning disabilities that this is a key feature of many people's lives in Scotland at present.

People with learning disabilities may be at increased risk of these types of exploitation because of the access that other individuals can have in their lives, due to a lack of privacy because of a need for some kind of support and care, the increasing levels of loneliness and isolation people with learning disabilities and their carers are experiencing and due to learned compliance as the result of institutionalisation¹⁰.

The importance of ensuring protection from *'mate crime'* to people with learning disabilities cannot be overemphasised as people with learning disabilities are subject to the most serious long term instances of these crimes which have, in some cases, resulted in a loss of life¹¹.

However, despite the known severity of *'mate crime'* and the detrimental impact it can have on people with learning disabilities, it has been claimed that in the UK there is a reluctance within criminal justice to *"...acknowledge the potential significance of the problem"* (2019, p.2)¹². This is in spite of the experience of people with learning disabilities being at odds with the protection of their human rights, for example, Articles 13¹³, 15 (2)¹⁴ and 16 (5)¹⁵ of the UNCPRD.

In understanding this, SCLD believes Scotland must lead the way in criminalising relationships which exploit the *'perceived vulnerability'* of a victim. We use the term *'perceived vulnerability'* because while SCLD supported a statutory aggravation which criminalises exploitation in our initial consultation, we highlighted a significant concern regarding the use of the language of

⁸SCLD (2019)

⁹Thomas (2011)

¹⁰ENABLE (2009)

¹¹Docherty (2019)

¹²Docherty (2019)

¹³Article 13, UNCPRD (2006)

¹⁴Article 15, UNCPRD (2006)

¹⁵Article 16, UNCPRD (2006)

‘*vulnerability*’. This included labelling individuals including those with learning disabilities as inherently vulnerable. At the time we stated,

“SCLD views this particular use of language as disempowering for people with learning disabilities as vulnerability is not an individual’s characteristic. A person may be vulnerable in certain circumstances but being vulnerable is not an intrinsic part of who they are.”

(SCLD, 2019, p.13)¹⁶

This is a perspective shared by the wider disabled people’s movement who deem the term ‘*vulnerable*’ and ‘*vulnerability*’ as disempowering. Recent critiques of the use of this term amidst the COVID-19 emergency by Baroness Campbell¹⁷ have emerged which support our position. SCLD believes it will be critical that in taking this statutory aggravation forward, people with learning disabilities and disabled people’s organisations are consulted with on how this aggravation is framed and the language used.

As stated, at the time of the initial consultation SCLD suggested that any additional statutory aggravation would need to be based on ‘*perceived vulnerability*’. SCLD believes that using the word ‘*perceived*’ shifts the focus on to the perpetrator, as it is the perpetrator’s perception of the person as ‘*vulnerable*’ that leads them to commit the offence. Other ways to conceptualise and describe this offence would be ‘*targeted victimisation*’ or ‘*exploitative familiarity*’¹⁸. We would, therefore, be concerned if the Bill were to proceed without this use of more inclusive terminology.

People First (Scotland) have raised concerns about exploitation based on the vulnerability of a victim being a separate offence to that of hate crime and that this may carry a lesser charge. While cognizant of this, SCLD believes there is potential for an additional statutory aggravation to address and criminalise instances of ‘*mate crime*’, which may include financial and sexual exploitation.

People with learning disabilities have told SCLD that when exploitative crimes are committed against them, they are often referred into adult support and protection processes. People with learning disabilities have told us that this leaves them feeling that they are to blame, having failed to protect themselves effectively, or that there is somehow an onus on them to protect themselves. The focus should instead be on examining and tackling both the societal issues which enable these types of crimes to happen and the actions of the perpetrator.

SCLD recognises that whether this offence should sit as part of the Hate Crime and Public Order (Scotland) Bill is an outstanding question. It is SCLD’s view that exploitation based on ‘*perceived vulnerability*’ should sit within the existing Hate Crime and Public Order (Scotland) Bill as a new offence, like that of the of ‘*stirring up of hatred*’ offence. SCLD believes ‘*mate crime*’ or

¹⁶[SCLD \(2019\)](#)

¹⁷[Disability News Service \(June 2020\)](#)

¹⁸[Docherty \(2019\)](#)

exploitation based on *'perceived vulnerability'* arises from bias and prejudice in the same way that hate crime does¹⁹.

If a decision is taken for this offence to sit out with the bill, SCLD asks for timely drafting and consultation following the passing of the Hate Crime and Public Order (Scotland) Bill and with clear links to this bill being stated and a wide-scale consultation process with people with learning disabilities and disabled people.

Support for a stirring up of hatred offence which includes organisations

Question 6 Do you have views on the merits of Part 2 of the Bill and the plans to introduce a new offence of stirring up of hatred?

SCLD welcomes part 2 of the Bill and the plans to introduce a new offence of *'stirring up of hatred'*. SCLD believes the extension of the offence to include disability, will be important in ensuring that people with learning disabilities are safeguarded against hate speech. SCLD is supportive of this offence and welcomes individual culpability where an organisation commits an offence. This would be in line with Article 5 (2) of the UNCRPD.

While SCLD supports the addition of the offence of *'stirring up of hatred'* which can be applied to organisations, we would welcome further understanding being developed on how the offence will impact and be applied to media outlets who espouse or facilitate negative views of disabled people.

Evidence of this type of media discourse in the UK followed on from the financial crisis of 2008, a move to austerity and the insidious political narrative and overtly hostile media dialogue of disabled people as *'scroungers'* and as unproductive non-taxpaying citizens²⁰ which followed. In 2016, the UN Committee on the Rights of Persons with Disabilities made links between hate crime and this kind of media dialogue. They stated that *"...negative and discriminatory stereotypes or prejudice against persons with disabilities in public and the media"* should be addressed through positive media campaigns regarding people with disabilities as right holders to address hate crime²¹.

More recent examples include the way individuals with disabilities have been discussed during the COVID-19 emergency. Early in the pandemic in Scotland both The Health and Social Care Alliance²² and Scottish Care²³ noted the discriminatory discourse emerging from media and public discourse that coronavirus would *'not impact most people'* and would *'only effect the vulnerable'*.

¹⁹[Docherty \(2019\)](#)

²⁰[Burch \(2018\)](#)

²¹[Committee on the Rights of Persons with Disabilities \(October 2017\)](#)

²²[The Health and Social Care Alliance \(2020\)](#)

²³[Scottish Care \(2020\)](#)

This type of discourse creates the idea that people with learning disabilities are expendable and must be guarded against.

Given the acknowledgement of the United Nations Committee on the Rights of Persons with Disabilities on the link between media dialogue and hate crime against disabled people and the ongoing prevalence of discriminatory dialogue, SCLD would welcome accompanying guidance to the bill which clearly outlines the types of behaviour and activity perpetrated by and from media outlets which may constitute '*stirring up of hatred*' offences. We are cognisant that this needs to be balanced against Article 10 of the European Convention of Human Rights²⁴, to allow for freedom of expression but are also aware that freedom of expression is not an absolute right, but one which can be restricted when it incites violence, hatred and discrimination against others²⁵.

Summary

SCLD welcomes the Hate Crime and Public Order (Scotland) Bill and believes it will be important legislation to ensure the protection of people with protected characteristics from hate crime while offering appropriate redress if this occurs in line with all relevant existing human rights conventions. While SCLD is broadly supportive of the bill we believe the following actions are necessary to strengthen the legislation and ensure its compliance with relevant human rights conventions:

- Include learning disability within the listed characteristics in the bill, alongside duties on the police, the criminal justice system, and other public bodies to collect, monitor and publish disaggregated data on disability hate crime
- Provision for the inclusion of an additional offence based on the exploitation of an individual's '*perceived vulnerability*' within the hate crime bill following full consultation with people with learning disabilities and disabled people's organisations
- Supporting guidance to the bill which outlines organisational responsibilities regarding what is considered to be '*stirring up of hatred*', including guidance for media outlets.

For further information SCLD refers the committee to our two previous consultation responses regarding the hate crime and data collection in Scotland listed below:

- [A consultation on how Official Statistics present information on recorded crime and related topics](#)

²⁴[Article 10, Human Rights Act \(1998\)](#)

²⁵[Equality and Human Rights Commission \(2015\)](#)

- [Consultation on amending Scottish Hate Crime Legislation](#)

SCLD thanks the justice committee for the opportunity to submit to this call for views and would welcome the opportunity to provide evidence later if it would be helpful.



Oonagh Brown
Policy and Implementation Officer
Oonagh.b@sclcd.co.uk

Lorne Berkley
Policy and Evidence Manager
Lorne.b@sclcd.co.uk