**Part One – Consolidating and Modernising Hate Crime Legislation**

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

Yes

*Please tell us why:*

We agree that the core method of prosecuting hate crime should be through the statutory aggravation model. This enables consistency of prosecution, practice and public understanding. It is also important that should an individual offend even on an unrelated manner in the future that the aggravation should be taken into account. What is key, we believe, in this is the nature of how the aggravation is to be determined and considered.

*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’?*

Yes

*Please tell us why:*

We wholly agree with Lord Bracadale’s desire to ensure that there is greater public understanding of the thresholds and that there is a need to change language to enable this. We agree that ‘demonstrating hostility’ is better than ‘evinces malice’ but have some concern that the word ‘demonstrating’ may be considered to suggest that there has to be present within the offence actions which were an active, positive or pre-planned expression of the hostility.

*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?*

Unsure

*Please tell us why:*

We would contend until commencement of application of the change that it is difficult to answer this question in either positive or negative terms.

*4. Do you think that variations of sex characteristics (intersex) should be a separate category from transgender identity in Scottish hate crime legislation?*

*Please tell us why:*

No comment.

*5. Do you think that the terms used in Scottish hate crime legislation in relation to transgender identity and intersex should be updated?*

*Please tell us why:*

No comment.

*6. If you think that the terms used in Scottish hate crime legislation in relation to transgender identity and intersex should be updated, what language would you propose?*

*Please tell us why:*

No comment.

**Part Two – New Statutory Aggravations**

*Top of Form*

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

Yes

*Please tell us why:*

A predominantly female workforce in social care in Scotland has sadly evidenced many incidents where behaviour has been aggravated by gender discrimination and hatred. We would approve the development of a statutory aggravation for gender hostility and believe that the cultural and societal changes described by Lord Bracadale since 2004 make this change urgent and necessary. We would further contend that the reasons for doing so are fully detailed by Lord Bracadale not least that it would make it more culturally acceptable to object to misogynistic or sexist behaviour and that it would make it clear to wider society that such behaviours were unacceptable and would not be tolerated regardless of the context, e.g. formal care-giving, in which they took place.

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

Unsure.

*Please tell us why:*

Whilst we fully support the desire to be much more explicit about the nature of gender based and misogynistic offending, we share the uncertainty within the Review as to how this would be carried out in practice and in relation to which particular offences or behaviours. We believe that more work needs to be undertaken in this regard but would not be willing to see this option dismissed.

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

Yes

*Please tell us why:*

We consider that it is very important that a strategy like the Equally Safe Strategy from the Scottish Government and COSLA is both continued and extended. However, we have some concern that the Strategy has not been as inclusive of actors and organisations from the non-public and statutory sectors as it might have been and would hope that any extension addressed these shortcomings. In particular given the dominance of social care as a sectoral employer in Scotland and the issues of gender segregation within society in relation to social care, we would want to see a particular focus in this area.

*10. Do you agree with Option D of taking forward all of 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)?*

*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)?*

Yes

*Please tell us why:*

For the reasons given above we would like to see work on all three Options.

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

Yes

*Please provide details:*

Scottish Care has argued for some considerable time for the creation of a specific offence related to hatred on the grounds of age. Our membership predominantly delivers services to older adults and consistently we have identified instances where negative behaviours have been aggravated because of the prejudice and discrimination of older persons. We are profoundly concerned at the almost unconscious bias and acceptance of stereotypical discrimination against older adults and any action which would serve, in some part, to address such behaviours is to be warmly welcomed.

We are not as convinced as Lord Bracadale that there are relatively few offences perpetuated by such overt and blatant age discrimination as it would be our assertion that such offences are more commonplace but are well-disguised.

We will comment below on the issue of vulnerability as it relates to older age.

*Questions 12-20.*

No comment.

*21. Do you think that the statutory aggravations in Scottish hate crime legislation should apply where people are presumed to have one or more protected characteristic?*

*(Examples of protected characteristics are religion, sexual orientation, age, gender, race, disability, transgender identity and intersex)*

Yes

*Please tell us why:*

The reality of life is that an individual is not a segmented entity and there may be instances where the primary motivation for hateful behaviour and action may be gender, for example, but this may be compounded by hatred based on sexual identity or age etc.

*22. Do you think that the statutory aggravations in Scottish hate crime legislation should apply where people have an association with that particular identity (relating to religion, sexual orientation, age, gender, race, disability, transgender identity and intersex)?*

Yes

*Please tell us why:*

As above. For those who work in social care there is a risk of being the victims of hate incidents because of association on the grounds of the characteristics and we would be in favour of such an extension.

**Bottom of Form**

**Part Three – New Stirring Up of Hatred Offences**

*Top of Form*

*23. Do you agree with Lord Bracadale’s recommendation that stirring up of hatred offences should be introduced in respect of each of the protected characteristics including any new protected characteristics?*

Yes

*24. Do you agree with Lord Bracadale’s recommendation that any new stirring up hatred offences should require that the conduct is ‘threatening or abusive’?*

Yes

*25. Do you think that the existing provisions concerning the stirring up of racial hatred should be revised so they are formulated in the same way as the other proposed stirring up hatred offences?*

No comment.

*26. Do you agree with Lord Bracadale’s recommendation that there should be a protection of freedom of expression provision for offences concerning the stirring up of hatred?*

No comment.

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

Unsure

*Please tell us why:*

We are for the moment persuaded by Lord Bracadale’s argumentation in relation to extended hate legislation being sufficient to cover on-line hate crime. However, such is the pace and rate of change of the use of technology within society, for both good and ill, that we believe that this should be kept under continual review. In particular, as an organisation working within the realm of age discrimination, we have been concerned that some of the vile on-line behaviours relating to gender and race are being extended to nurturing and furthering negative attitudes relating to age. There is a particularly insidious element in such instances where the ‘victim’ is often absent from the media utilised to perpetuate the hatred.

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**Part Four - Exploitation and Vulnerability**

Top of Form

*28. Do you think a statutory aggravation (outwith hate crime legislation) should be introduced that could be applied when a perpetrator exploits the vulnerability of the victim?*

Unsure

*Please tell us why:*

We fully recognise the intention of identifying and dealing with hate incidents which may not be primarily or at all motivated by the hatred of a distinct group but may be opportunistic in nature or may seek to utilise the real or perceived ‘weakened’ psychological or physical characteristics of an individual to compound the hateful action. We do, however, have concerns with elements of the proposals in this section which describe such behaviour as the perpetrator targeting a victim in order to exploit a *vulnerability* in another.

We acknowledge that Lord Bracadale is fully aware of the very real complexity and challenges around the use of the concept of vulnerability and the nature of vulnerability including its relativity and fluctuating nature. However, as an organisation whose members work predominantly in older people’s care and support, we have a very real concern about the consolidation of the use of the terms ‘vulnerable’ and ‘vulnerability’ as detailed in the discussion and share the concern that explicitly identifying a distinct offence may be counter-productive on a number of levels. We believe that this is not merely an objection based on semantics or linguistics.

Adult protection and support legislation in Scotland, implemented in 2007, was developed after a long period of consultation and a significant part of this related to the concept of vulnerability. At that time and subsequently, there was a developing concern both in the application of the Act and in the forming and influencing of public opinion and attitudes that the use of the concept of vulnerability should be diminished. There was a recognition that there were individuals who used their access by means of their occupation (e.g. as a care worker) to seek to harm another or commit a crime against the person they cared for. Regardless of this recognition it was felt important that we did not too readily equate or link the action of the perpetrator with the characteristic of the individual. One of the reasons for such caution was that it risked the perpetuation of negative attitudes to older age or to anyone who required support to live their life to the fullest. Scottish Care would support the former general trend to be cautious about the use of the concept of ‘vulnerability.’

Our reasons for doing so are numerous but include the sense that there is a risk that describing an individual as ‘vulnerable’ practicably means that many may not see themselves as belonging to that group or category and that this may limit self-reporting. Further we would contend that there is nothing inherently negative within an individual’s vulnerability and indeed it is part of the human condition to be ‘vulnerable’ or in need of support at different stages of one’s life and experience, e.g. after illness, as a result of bereavement, etc. So, the use of vulnerability both risks a misuse of a psychological or physical status which is natural and also the limiting and overt categorisation of an individual.

When one applies notions of vulnerability to older persons there is a further risk which relates to stereotypical attitudes and beliefs about older age. Whilst for many older persons physical changes and deterioration may make them more vulnerable to harm, it would be erroneous, we believe, to perpetuate the myth that older age equates to vulnerability or frailty.

We do recognise that there is a desire to address the fact that some offenders choose to harm others because they have a sense of power or control over another or because they believe that the victim is an easier target. We would suggest that instead of using the term ‘vulnerable’ that this scenario is described in other ways, e.g. ‘harm against an individual who requires support or care’ or ‘an individual unable or less able to defend themselves or recognise that they are being harmed’, etc.

Bottom of Form

*29. If you think a statutory aggravation (outwith hate crime legislation) should be introduced that could be applied when a perpetrator exploits the vulnerability of the victim, please provide details of the circumstances that you think such an aggravation should cover?*

See above.

*Bottom of Form*

*Top of Form*

*30. Do you think that Section 50A of the Criminal Law (Consolidation) (Scotland) Act 1995 about racially aggravated harassment should be repealed?*

No comment.

*31. What do you think the impact of repealing section 50A of the Criminal Law (Consolidations) (Scotland) Act 1995 about racially aggravated harassment could be?*

No comment.

*32. Do you think that courts should continue to be required to state in open court the extent to which the statutory aggravation altered the length of sentence?*

*(This would mean that Lord Bracadale’s recommendation on sentencing would not be taken forward.)*

No

*33. Do you agree that no legislative change is needed in relation to the support given to victims of hate crime offences?*

Yes

*Please provide details:*

This is especially the case for harm perpetuated against individuals who require additional support.

*34. Do you agree that no legislative change is needed in relation to the provision of restorative justice and diversion from prosecution within hate crime legislation in Scotland?*

No comment.

*35. What else do you think the Scottish Government could include in its proposals to update Scottish hate crime legislation?*

Top of Form

No comment.

**Respondent details**

*What is your name?*

Becca Gatherum

*What is your email address?*

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*Are you responding as an individual or an organisation?*

Organisation

*What is your organisation?*

Scottish Care

*The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:*

Publish response with name

*We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?*

Yes

24th February 2019