



SCSN BRIEFING

Hate Crime Strategy for Scotland: A New Direction?

This Briefing provides overview of the recently published [Hate Crime Strategy for Scotland 2023¹](#) by the Scottish Government with a foreword by Police Scotland. The main focus for the strategy is prevention and partnership working. There is a clear push from the Scottish Government to ensure that the Strategy makes a real impact on people's lives. To understand the strategy and why it has been introduced, this Briefing Paper will provide a background to how we have arrived at this point, what is a hate crime, evidence of whether hate crimes have increased recently, and the key principles of the new strategy.

HOW HAVE WE ARRIVED AT THIS POINT

The Public Order Act, 1986 provided provision for offences against race, religion and 'sexual orientation'. The Act specifically covered the offences to 'stir up' hatred against these characteristics. The Act prevented the 'public' element of people performing or inciting against these groups². Whilst this would be the first statutory offences, common law breach of the peace would have been used to ensure offences against what is now known as 'protected characteristics' would be enforceable by the police.

On 22nd April 1993, Stephen Lawrence was murdered in London by a group of white males. The subsequent investigation was flawed by the Metropolitan Police and beset by allegations of institutional racism. Six males were initially arrested with murder, however the charges were eventually dropped due to a lack of evidence. A private prosecution was taken out by the family of Stephen Lawrence and this was successful. Eventually two people were convicted of murder but only after changes to the law, which was commonly known as 'double jeopardy', led to suspects being tried again if found innocent in court for serious crimes.

The first similar legislation that affected Scotland was passed in 1995, Section 50 and 51 of the Criminal Law (Consolidation) (Scotland) Act 1995. It created an offence to pursue racial harassment or a course of conduct against another person, based on any perceived membership of a racial group³.

In July 1997 as a result of the original investigation into the murder of Stephen Lawrence, Jack Straw ordered a public inquiry into the death of Stephen Lawrence, chaired by Sir William Macpherson. In February 1999, The Macpherson Report was published on the conclusion of the Inquiry. Sir

¹ Scottish Government, (March 2023), Hate Crime Strategy for Scotland

² Public Order Act 1986, legislation.gov.uk, [Public Order Act 1986 \(legislation.gov.uk\)](#)

³ Criminal Law (Consolidation) (Scotland) Act 1995, legislation.gov.uk, [Criminal Law \(Consolidation\) \(Scotland\) Act 1995 \(legislation.gov.uk\)](#)

Macpherson made 70 recommendations in total of which, 67 were fully implemented varying from institutions taking racism seriously, to the recording of statistics to be held for racism. The key recommendation in terms of hate crime was that racism became legally defined. The definition should be (Macpherson et al, 1999, p.376⁴),

"A racist incident is any incident which is perceived to be racist by the victim or any other person".

This was a position adopted by all police forces across the UK and the recording of racism statistics commenced and could be seen as a watershed moment for race related hate crimes.

In 1997 Scotland secured devolution and some powers were devolved to Scotland. Whilst this led to some new legislation being created, the next key milestone for hate crime arrived with the Criminal Justice (Scotland) Act 2003. Section 74 of the Act⁵ specifically made it an aggravation of an offence committed against a victim, provided that an offence has been aggravated by religious prejudice if

“at the time of committing the offence or immediately before or after doing so, the offender evinces towards the victim (if any) of the offence malice and ill-will based on the victim’s membership (or presumed membership) of a religious group, or of a social or cultural group with a perceived religious affiliation; or the offence is motivated (wholly or partly) by malice and ill-will towards members of a religious group, or of a social or cultural group with a perceived religious affiliation, based on their membership of that group.”

The main focus for the offence was based on religion. The malice or ill-will created an aggravation for any offence based on the protected characteristics. This was a significant shift in definition, from what somebody believes is racist, to specific malice towards that group and must be shown to be considered a racist crime aggravation.

This evolved to 2009 with the Offences (Aggravation by Prejudice) (Scotland) Act⁶ this was the first time that offences against disability, sexual orientation or transgender identity were legislatively enforceable. This legislation allowed for courts to pass tougher sentences because the individual was targeted because of their identity to one of these groups. Prior to this, offences would be considered under common law crimes where no statutory legislation had been made, for example common law breach of the peace.

In October 2015, the Scottish Government announced an Independent Advisory Group on Hate Crime, Prejudice and Community Cohesion. The main purpose of the group was to provide evidenced findings and recommendations which the Scottish Government can take forward in partnership with communities to help eliminate hate crime for good.

In 2016, they released key recommendations including, the Scottish Government should lead discussion on the development of clearer terminology and definitions around hate crime, prejudice and community cohesion; and public education should be undertaken to improve understanding of

⁴ Sir William Macpherson, (February 1999), The Stephen Lawrence Enquiry, [link](#)

⁵ Criminal Justice (Scotland) Act (2003), [legislation.gov.uk, link](#)

⁶ Offences (Aggravation by Prejudice)(Scotland) Act 2009, [legislation.gov.uk, link](#)

the nature and extent of hate crime (p.18⁷). Another key recommendation was to review the effectiveness of third party reporting across Scotland (2016, p.20⁷).

In response to the recommendations of the Independent Advisory Group, in January 2017, Annabelle Ewing, Minister for Community Safety and Legal Affairs, appointed Lord Bracadale to conduct an independent review of hate crime legislation in Scotland, she said,

“Racism, intolerance and prejudice of all kinds are a constant threat to society, and while Scotland is an open and inclusive nation, we are not immune from that threat...”

Lord Bracadale completed his review in 2018 and made 22 recommendations for the Scottish Government⁸. Of note was the recommendation for the use of restorative justice and diversion from prosecution. In addition new recommendations included offences against somebody based on their age and gender.

These recommendations led to the latest legislation within the Hate Crime and Public Order (Scotland) Act 2021. The aim of the latest legislation was to consolidate all other previous legislation and ensure the aggravators applied to all protected characteristics. The protected characteristics of age, disability, religion, sexual orientation, transgender identity and variations in sex characteristics were identified, with both age and sex to be added at a later date⁹.

There was some controversy raised in newspapers about the law particularly focusing on the author JK Rowling and whether she would be prosecuted for her reported views¹⁰. In addition, COPFS also reported that there is no commencement date for the legislation¹¹ and Police Scotland confirmed that the legislation cannot be implemented by them because of training and IT issues until 2024¹².

This brings us to the present date and the Hate Crime Strategic Partnership Group who produced the Hate Crime Strategy published by the Scottish Government on the 24th March 2023.

WHAT IS A HATE CRIME?

As with the previous section, what defines a hate crime has evolved over the past 30 years. Racism was initially described by Lord Macpherson as what the individual, or any other person, believed racism to be. The legislation changed over the years with more of a focus on the “offender” showing malice towards their victim.

Advice on the Police Scotland website describes hate crime as “any crime which is perceived by the victim or any other person as being motivated (wholly or partly) by malice or ill will towards a social

⁷ Report of the independent advisory group on hate crime, prejudice and community cohesion, (September 2016), One Scotland, [link](#)

⁸ Lord Bracadale (2017), Independent Review of Hate Crime Legislation in Scotland Final Report, Scottish Government, [link](#)

⁹ Hate Crime and Public Order Bill, (2021), Scottish Parliament, Hate Crime and Public Order (Scotland) Bill – Bills (proposed laws) – Scottish Parliament

¹⁰ BBC News, (11th June 2020), ‘JK Rowling Responds To Trans Tweets Criticism’, [link](#)

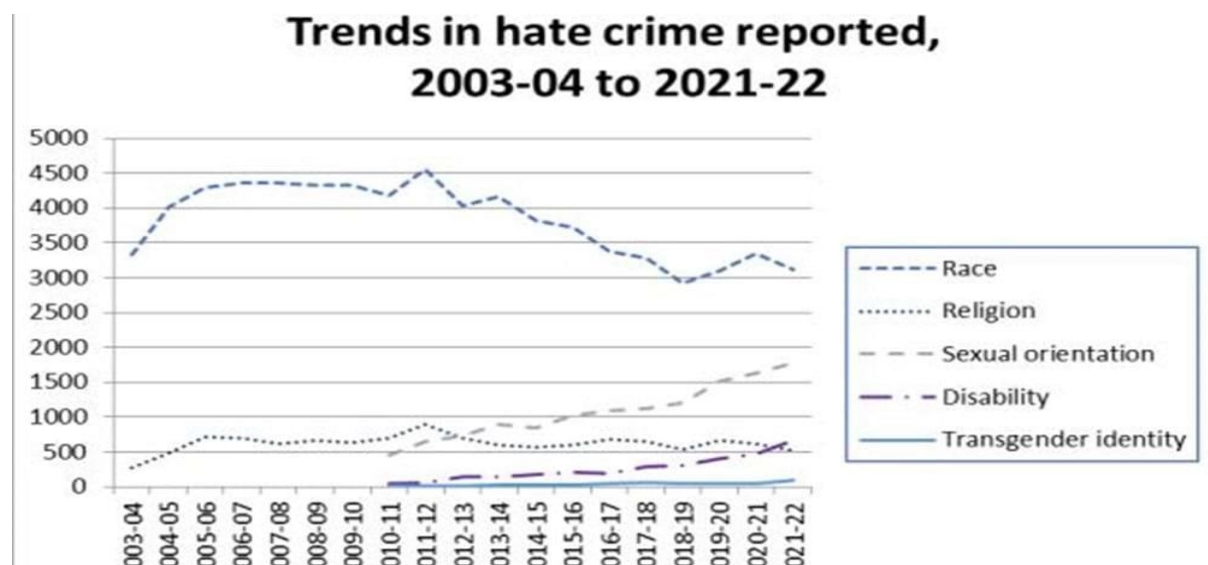
¹¹ Crown Office Procurator Fiscal Service, (14th June 2022), ‘Hate Crime in Scotland 2021-22’ [link](#)

¹² The Scotsman, (7th January 2023), ‘Hate Crime Bill in Scotland delayed until at least 2024 as police concerns scupper enforcement’ [link](#)

group.¹³ An example of this is somebody shouting homophobic abuse at an individual and then assaults the same individual. This will be classed as a hate crime as they are clearly demonstrating ill will towards that social group.

What is important to note with definitions is that with the alterations over the years it has a dramatic impact on recorded crime.

HAS HATE CRIME INCREASED RECENTLY?



On 14 June 2022, the Crown Office and Procurator Fiscal Service published the Hate Crime in Scotland 2021-22 document¹¹. It produced figures on race crime and on crime motivated by prejudices related to religion, disability, sexual orientation and transgender identity. What the figures demonstrate is the increase in certain types of crimes motivated by prejudice. Whilst race related hate crimes are falling, there are notable increases in crime motivated by sexual orientation (which have increased from just over 400 to nearly 1,800 in 10 years) and transgender identity nearly doubled in a year. The Gender Recognition Reform Bill also was not presented at its final reading stage until December 2022, therefore the statistics recorded are likely to increase further in 2022-23.

There are caveats with these figures. Between 2019 and 2020, The HM Inspectorate for Constabulary completed a Thematic Inspection of Hate Crime into Police Scotland¹⁴ and highlighted, “shortcomings in data collection and analysis, making it difficult for Police Scotland to understand the nature and extent of hate crime and the impact on different communities” (p.4).

Another caveat focuses on the underreporting of hate and prejudice related crimes. There are several academic reports that provides clear evidence of this underreporting for a variety of reasons for

¹³ Police Scotland website ‘what is a hate crime’ accessed 6th April 2023, [link](#)

¹⁴ HM Inspectorate of Constabulary (Scotland), June 2021, ‘Thematic Inspection of Hate Crime’, [link](#)

underreporting hate crimes. Tackling Hate¹⁵, an Australian based Training Module, brought together academics globally to identify some of these issues. The main blocks for victims included lack of awareness they are a victim or how to report crimes; normalization of hate crimes by victims; lack of confidence in the 'system' and fear of repetition.

HATE CRIME STRATEGY FOR SCOTLAND

On 24th March 2023, the Scottish Government published the Hate Crime Strategy for Scotland. The vision for the strategy is "for a Scotland where everyone lives free from hatred and prejudice."¹ (p. 23). To meet the vision, the strategy has set 3 key aims (p.24) these are:-

Aim 1: Victims of hate crime are treated with fairness, compassion and in a trauma-informed manner in which their safety and recovery is a priority.

The focus for this aim is to improve the reporting procedures for the victims, to be listened to compassionately with a trauma informed approach. In total there have been 5 commitments made by the Strategy to meet this aim. The Briefing Paper will focus on two commitments for Aim1 in particular. The other commitments include ensuring victims are listened to, and that the authorities respond appropriately, tackle the issues preventing reporting by victims, and ensure staff within Police Scotland, the Fiscal Service and the Courts are trained in line with the Hate Crime and Public Order (Scotland) Act 2021.

A key point identified within Aim 1 is, "we will review third-party reporting arrangements, with a view to making reporting easier"¹ (p.28). This same point was identified during the Thematic Inspection of Hate Crime 2021 with Recommendation 6 "Police Scotland should accelerate its work with partners to improve the Third Party Reporting arrangements, providing people with the option to report hate crime without speaking directly to the police."¹ (p. 8).

Third Party reporting was recommended by Lord Macpherson in his 1999 enquiry. Recommendation 16 stated, "That all possible steps should be taken by Police Services at local level in consultation with local Government and other agencies, and local communities to encourage the reporting of racist incidents and crimes. This should include: - the ability to report at locations other than police stations; and - the ability to report 24 hours a day"⁴ (p.376). With under reporting of hate crimes for a variety of reasons, the new Hate Crime Strategy, reviewing this process is encouraging for victims.

The other commitment within this Aim worthy of focus is, "we will work to ensure person-centred and trauma-informed support for victims of hate crime, in line with the delivery of the Vision for Justice in Scotland."¹ (p. 29). This means that the victim will be treated as a person first and ensure they are supported throughout the justice process. A fundamental element of this - which is extremely encouraging - is that the strategy, "will support organisations to identify what their staff need to know to respond to victims and witnesses in a trauma-informed way and will inform development of consistent training in trauma-informed practice."¹ (p. 29).

¹⁵ Navarro, C. 'Hate Crime Reporting Barriers: Why Are Victims Reluctant To Report', Tackling Hate, [link](#)

Aim 2: The nature, characteristics, and extent of hate crime in Scotland are more fully understood and effectively inform appropriate interventions and policy development

There are only two commitments from the strategy to meet this Aim. The first commitment is to improve the data currently obtained for hate crimes, especially crimes recorded on police IT systems. The second commitment however, ensures that engagement with people with lived experience of hate crimes are taken into account. This also provides an opportunity to work with organisations, “that support communities affected by hate crime to understand the issues, so as not to overburden individuals with requests to continually share their experiences¹” (p.32). The feedback received from the victims will ensure that the Strategy remains an organic, living document incorporating learning shared between organisations.

Aim 3: Communities are empowered, inclusive and safe and the underlying causes of hate crime are challenged

“Challenging prejudice and hate crime is not the responsibility of the communities that are targeted – it is for wider society.¹” (p.34). This aim has 7 commitments which focus on community cohesion, prevention and education. People with lived experience disclosed how important they believed education was, and how important it is to tackling prejudice and hate ¹ (p.36), so the strategy sees organisations such as Respect Me and YouthLink Scotland as essential to delivering on these commitments for education within schools.

It is not only educational messages that are under review by the Strategy. It is also understanding why hate crime happens and the friction between some parts of the community and public sector, especially the police. This is another encouraging part of the strategy, as some of those most at risk also will be listened to so they can share their lived experiences, and organisations can learn from these experiences.

The Community cohesion is covered under Commitment 11. There is particular focus on this commitment for Local Authorities with the Lead Organisation for this commitment being COSLA. “Communities affected by hate crime told us it is important that local services are joined up and be able to effectively respond to instances of hate crime.¹” (p.38). The emphasis for this is partnership working, reviewing practices and the creation of a toolkit to ensure best practice examples of tackling hate crime can be shared across Scotland. The Strategy highlights in particular the work of the Community Planning Partnerships as key to deliver towards this commitment.

The final 3 commitments towards Aim 3 focus on awareness raising for the wider public with a commitment to promoting those with lived experience, and a commitment to ensure people feel safe travelling on public transport. However, there is also a pledge to understand hate crime if it occurs in other public spaces.

The final commitment aims at tackling hate crime and the challenges of online hate crime. Investigating hate crime online is time consuming for the authorities and this commitment focuses on “developing preventative and educational approaches to tackling hate crime¹” (p.40). The focus for this is with school children keeping them safe online and reporting hate crime.

OVERVIEW

Hate crime has evolved significantly within a generation. The tragic murder of Stephen Lawrence was seen as a watershed moment for the investigation of hate crimes. The flawed investigation by the Metropolitan Police led to the Macpherson (1999)⁴ report and a turning point for hate crime, including a revision of the definition for racism. The problem with the definition provided by Macpherson for racism was that there was no threshold for malice. The test was simply whether those listening to the comments or witnessed the criminal act believed it was a racist incident regardless of malicious intent, prejudicial thoughts or ignorance.

With the passage of time, the current legislation has incorporated a malicious intent test which then leads to a criminal investigation. If the comments written or spoken were maliciously targeting a specific group they would be considered a criminal act. This is the reason why some of the comments by celebrities recently have been assessed as not a crime.

The Hate Crime Strategy focuses on education, prevention, partnership working, and provides victims with a voice to shape how responses should be driven. The key to beating hate crime is education and understanding the impact of hate crimes on victims. This is one of the reasons restorative approaches is important for victims and those who have harmed, to provide a safe space, prevent recidivism and tackle generational prejudices.

There are gaps in the Hate Crime Strategy. Community cohesion is a key commitment, however this will need to be a longer term outcome. There are certain communities that have a higher percentage of a protected status and this will take time for community cohesion and tolerance to work. Best practice examples of bringing these communities together would be a quick fix, however the longer term impact of this is unknown. Similar concerns can be raised with online hate crime. Education is key however this, mainly, is delivered within an educational setting and how this work can be reached by those not in education or the 'harder to reach' groups is unclear.

The Macpherson (1999)⁴ report also created a safe space for victims of hate crime with the option for third party reporting. It is heart-breaking that third party reporting options are necessary because the victim has concerns, and one of these key factors is the mistrust of authorities to handle their complaints. Is it any surprise? William Buffett, the American philanthropist said, "It takes 20 years to build a reputation and five minutes to ruin it. If you think about that you'll do things differently."¹⁶ The recent reports of investigations of police officers across the UK for horrific crimes and their own personal use of social media groups depicting their thoughts of the communities they serve with misogynistic, racist and prejudicial views has damaged the reputation of policing UK wide.

This is further evidenced with the recent conclusions by Baroness Casey in her "Independent review into the standards of behaviour and internal culture of the Metropolitan Police Service (2023)¹⁷". Baroness Casey had 8 points within her conclusion, one of which was "discrimination is tolerated, not dealt with and has become baked into the system"¹⁷ (p.16). Her review discovered widespread

¹⁶ Goodreads quotes, accessed 6th April 2023, [link](#)

¹⁷ Baroness Casey of Blackstock, March 2023, 'An independent review into the standards of behaviour and internal culture of the Metropolitan Police Service Final Review' [link](#)

bullying for those with protected characteristics. If this exists in the most famous police force in the UK, the mistrust with authorities will spread to other police services including Scotland.

That said, the review of third party reporting in Scotland is welcomed and long overdue. It is not only recorded in the Hate Crime Strategy, it was also a key recommendation of the HM Thematic Inspection Investigation of Hate Crime (2021)¹⁴ and a recommendation in 2016 by the Independent Advisory Group on Hate Crime, Prejudice and Community Cohesion⁷. The effectiveness of third party reporting is not known, not only Scotland but globally. Wong et al (2020¹⁸) reported that “it seems to be a major government oversight that to date, in the UK or anywhere else, there has been no consistent way to assess whether or not hate crime reporting centres are fulfilling their primary aim, that of increasing hate crime reporting.”(p.85).

The review of third party reporting is welcome, however it also needs to be encompassing to ensure that the services provided for victims is organic and able to grow and provide the best possible service. This is particularly critical in the current context, following the continued erosion of trust with the police by the communities most impacted by hate crime.

So are there any real changes or is this a rehash of previous policies? The strategy advocates working in partnership with communities, to ensure services can deliver for those most at risk. A delivery plan for the Strategy will provide the short, medium and long term targets for organisations to meet. There appears to be a regurgitation of previous policies and recommendations (see third party reporting), however this does appear to bring them together, to be incorporated into one strategy. The success of the Strategy, if realised will take time, and will unlikely be felt in the near future.

¹⁸ Wong, K., Christmann, K., Rogerson, M., Monk, N. (2019) ‘Reality versus rhetoric: Assessing the efficacy of third-party hate crime reporting centres, International Review of Victimology [link](#)