

Legislating for hatred against women: the view from the coalface

MBM Hate Crime Briefing 9

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1. Introduction

The omission of 'sex' as a protected characteristic is a key area of contention in the proposed Hate Crime and Public Order (Scotland) Bill, which is currently making its way through the Scottish Parliament. Giving evidence to the Justice Committee on 27 October, the Cabinet Secretary suggested that organisations "at the coalface" were supportive of the approach advocated by the bodies funded at national level to represent women's interests.

We submitted a Freedom of Information request to the Scottish Government, asking for details on meetings it had held with women's groups to discuss if and how women should be included within the Bill. This briefing analyses [the Scottish Government response](#) to our request.

Based on the information provided, it is clear that there is more of a difference in the positions taken by national and local organisations than discussion in committee has previously suggested.

2. Background

The Hate Crime and Public Order (Scotland) Bill seeks to add new protected characteristics both as statutory aggravations, and under the offence of 'stirring up hatred'. The Stage 1 oral evidence sessions on the Hate Crime and Public Order Bill ended last week.

As noted above, a key point of contention about the draft legislation is the omission of 'sex' as a protected characteristic. This means that crimes motivated by hatred towards women will not be covered by the legislation as currently proposed.

Whilst the bill paves the way for 'sex' to be added at a later date, the decision to do so will be left to a working group convened by the Scottish Government. The group will also consider whether or not there should be a separate, standalone offence of misogynistic harassment. The Cabinet Secretary for Justice announced on 24 November that Dame Helena Kennedy QC would chair the group.

3. Discussion at committee

Giving evidence at the [start of the Stage 1 proceedings](#), Humza Yousaf MSP was questioned about the non-inclusion of 'sex' as a protected characteristic by Annabelle Ewing MSP. Ms Ewing said:

"My question concerns the non-inclusion in the bill as it stands of the characteristic of sex. I understand that, in addition to Lord Bracadale's recommendation that the characteristic of sex be included in the bill, support for that position has been

expressed by, among others, the Convention of Scottish Local Authorities, the Faculty of Advocates, Police Scotland and the organisation For Women Scotland. It would be helpful if you could clarify the rationale for the approach that you have taken thus far on the matter, despite the fact that many others have expressed the clear view that that is not the optimal approach.”

Mr Yousaf replied:

“Engender, Zero Tolerance, Scottish Women’s Aid and Rape Crisis Scotland all oppose the introduction of a gender or sex aggravator... There is a range of reasons—and, as I said, there is a whole report on those—why a number of national organisations do not want a sex or gender aggravator to be introduced. I decided to meet some organisations that represent and work with women at the coalface at a local level. Again, we can provide details of those organisations. We met on a couple of occasions, and it is fair to say that the views of a number of them—not all of them—align with the view of Engender and those other organisations.”

4. Records of meetings

On 27 October, we submitted a freedom of information request to the Scottish Government asking them to list which groups the Minister and Scottish Government officials had met with, providing all notes, minutes and correspondence related to these meetings.

The response to the request should have been issued on 23 November, the day before the Cabinet Secretary was due to give evidence to the Justice Committee for a second time. We were however notified of a delay on 20 November, and received the response on 3 December. It is available [here](#).

The response reveals meetings held by Scottish Government between August 2018 and January 2020 regarding the proposals in the Hate Crime bill. These are summarised in Tables 1 and 2 (meetings where Ministers were present are marked *). The comments of local women’s groups as recorded on the minutes are shown in full in the Annex.

Table 1. Meetings with national women’s organisations

Date	Engender	Scottish Women’s Aid	Rape Crisis Scotland	Zero Tolerance	Scottish Women’s Convention
8 August 2018					Y
30 August 2018	Y	Y		Y	
29 November 2018	Y				
12 March 2019*	Y	Y	Y	Y	
24 October 2019	Y	Y	Y	Y	
19 December 2019*	Y	Y	Y	Y	
22 January 2020*	Y				
TOTAL	6	4	3	4	1

Table 2. Meetings with local women’s groups

Date	ASSIST	Angus VAWP	Stirling GBVP	Wise Women	Glasgow VAWP
8 August 2018	Y				Y
10 July 2019*		Y	Y	Y	
19 December 2019*		Y			
TOTAL	1	2	1	1	1

Notes:

Table 2 group titles in full: ASSIST Community Safety Glasgow**, Angus Violence Against Women Partnership, Stirling Gender Based Violence Partnership, Wise Women, Glasgow Violence Against Women Partnership

** Denotes the group also offers services to men

The Scottish Government's 'Document 1; summarises those present at each meeting, but this is not always consistent with the minutes. Our summary table above is based on the minutes.

Also attending some of these meetings were the City of Edinburgh Council (8 August 2018), Fife Centre for Equalities (10 July and 19 December 2019), SACRO (all three meetings with local women's groups), Dr Kim Barker of Stirling University (10 July and 19 December 2019), the Crown Office (19 December 2019) and Glasgow City Council (19 December 2019).

5. Substantiating the claim

The minutes of the meetings provided via the FOI response reveal that of the five local women's groups who met with the Scottish Government, four argued for including hatred towards women among the statutory aggravators. Only Angus Violence Against Women Partnership opposed this, shifting its position towards support for a standalone offence between the meetings in July and December 2019. Of those groups who actually met the Minister, two out of three supported including an aggravator.

We have also looked at written submissions to the Scottish Government's consultation from organisations specialising in providing frontline violence against women (VAW) services. We can only find one such organisation which was not present at any of these meetings ([East Renfrewshire VAW Partnership](#)): it preferred an aggravator to a standalone offence.

In total, therefore, the Scottish Government obtained the views of six groups providing VAW services locally, of which five supported including an aggravator which would cover hatred against women.

We realise that the term "coalface organisations", as used by the Minister, is open to interpretation. Of the other non-governmental organisations attending these meetings, City of Edinburgh Council and the Fife Centre for Equalities supported an aggravator rather than a standalone offence, SACRO did not appear to take a strong line on which should be pursued, while Glasgow City Council preferred a standalone offence.

6. Sex or gender?

The FOI response also details Ministerial 'additional information and counter-points' to the groups on the [meeting](#) held on 10 July 2019, which deal with the question of terminology.

The Justice Secretary argued that "an aggravation for 'sex' rather than 'gender' could exclude trans-women i.e. if a trans-woman was attacked because they were perceived to be a biological woman rather than because they were trans". This is however inconsistent with Part 1 of the Bill which states that an offence is aggravated by prejudice where an offender evinces malice and ill-will towards the victim based on their membership or *presumed membership* of the specified protected characteristics.

In the same meeting, the Minister for Older People and Equalities argued that the Equality Act considers 'gender' as well as 'sex', and that many successful discrimination claims brought forward under this legislation were on the basis of 'gender' rather than 'sex', including the recent equal pay claims in Glasgow City Council. However, the protected characteristic in the Equality Act is 'sex', not 'gender': 'gender' is only used in the Act in relation to the collection of data on the 'gender pay gap'. Equal pay claims are brought specifically as a form of sex discrimination. As the [EHRC note](#) on a Glasgow case notes, under the Equality Act 2010 an employee can claim equal pay with a comparator of the opposite sex who is doing like work, work rated as equivalent or work of equal value.

Rather than the content of the Act, the Minister’s comments appear to reflect an argument made by some academics that certain forms of discrimination against women should be conceptualised and described as gender-based rather than as sex discrimination, because they do not relate directly to differences due to biological sex. However, it is well-established that sex discrimination under the Equality Act is a broad term intended to embrace all forms of discrimination women experience as a result of being women. Our [recent Scottish Affairs article](#) considers this point further (at p11).

7. What is it fair to say?

“I decided to meet some organisations that represent and work with women at the coalface at a local level. We met on a couple of occasions, and it is fair to say that the views of a number of them—not all of them—align with the view of Engender and those other organisations.”

It is to the Cabinet Secretary’s credit that he decided to meet local as well as national organisations. However, even allowing for any lack of clarity about which organisations the Cabinet Secretary had in mind in his comments, and that some of these organisations expressed their views at an earlier meeting which he did not attend, or only in writing, **we think it would be fairer to say that the balance of opinion among those “organisations that represent and work with women at the coalface at a local level” who engaged with the Scottish Government was overwhelmingly in favour of the Bill treating hatred against women on a par with hatred based on other characteristics, with or without further exploration of a standalone offence.**

Annex: Comments from local VAW organisations taken from meeting notes

ASSIST (8/8/18)

Considered that a statutory aggravation relating to gender would be better and more workable in practice, than a standalone offence on misogyny. Potential that going from a position where gender is not an aggravation to a whole separate offence would be too significant a step. No justification for picking out gender for a separate offence from the other protected characteristics

Wise Women (10/7/19)

Emphasised that their work was at the frontline of supporting survivors of domestic abuse in contrast to Engender et al whose remit was more strategic. Violence against women needs to be included within hate crime law. Message needs to be sent that such behaviour is not acceptable. Support for the aggravation was based on the belief that it addressed the intent of the offender and the impact on the victim. The aggravation should be for 'sex' rather than 'gender' to reflect the specific needs of biological women.

Glasgow Violence Against Women Partnership (8/8/18)

Important to discuss in the context of 'sex' rather than 'gender' and not conflate the two. The use of 'sex' as the preferred terminology is not about excluding members of the trans community. An aggravation avoids the need for corroborative evidence which would be required in the case of a standalone offence. Importance of consistency. A standalone offence could create an impression of a hierarchy of prejudice whereas an aggravation would avoid this.

Angus Violence Against Women Partnership (10/7/19)

There is a fear of creating a hierarchy if misogyny is included as a standalone offence.

Angus Violence Against Women Partnership (19/12/19)

Concern that a statutory aggravation for gender would be misused. has seen a huge increase in VAWG, there a standalone offence is needed. concern that including gender within hate crime would dilute Equally Safe. concern that some offences would include an aggravation and not others – implying some abuse is not as serious as someone else's

Stirling Gender Based Violence Partnership (10/7/19)

An aggravation sends a strong message that society will not tolerate criminality based on prejudice. Both the aggravation and offence would require accurate definitions for 'gender' and 'misogyny'. Whether it be an aggravation or standalone offence that is chosen it must be properly aligned to the Equally Safe strategy.