



Working group on

# hate

crime

Report



Working group on

# hate

---

crime

Report



---

© Crown copyright 2004

ISBN: 0-7559-4351-1

Scottish Executive  
St Andrew's House  
Edinburgh  
EH1 3DG

Produced for the Scottish Executive by Astron B37519 9/04

Published by the Scottish Executive, September, 2004

Further copies are available from  
Blackwell's Bookshop  
53 South Bridge  
Edinburgh  
EH1 1YS

The text pages of this document are produced from 100% elemental chlorine-free, environmentally-preferred material and are 100% recyclable.



## CONTENTS

<b>Working Group on Hate Crime Members</b>	<b>1</b>
<b>Chapter 1 Introduction</b>	<b>2</b>
<b>Chapter 2 List of recommendations</b>	<b>4</b>
<b>Chapter 3 Background</b>	<b>6</b>
<b>Chapter 4 Consultation</b>	<b>10</b>
<b>Chapter 5 Legislation</b>	<b>20</b>
<b>Chapter 6 Criminal Justice agencies</b>	<b>30</b>
<b>Chapter 7 Areas outside criminal justice system</b>	<b>34</b>
<b>Annex A Bibliography</b>	<b>35</b>
<b>Annex B List of respondents</b>	<b>37</b>

---



## WORKING GROUP ON HATE CRIME MEMBERS

Richard Scott, Head of Criminal Justice Division, Scottish Executive (Chair)

Emma Sinclair, Criminal Justice Division, Scottish Executive (Secretariat)

Alastair Carmichael, Crown Office and Procurator Fiscal Service<sup>1</sup>

Keith Cowan, Outright Scotland

Ian Dickinson, Assistant Chief Constable of Lothian and Borders Police

Michelle Hegarty, Capability Scotland

Tim Hopkins, Equality Network

Ali Jarvis, Stonewall Scotland

Sandra McDougall, Scottish Association for Mental Health

Fiona McOwan, Engender

Euan Page, Disability Rights Commission

Helena Scott, Age Concern Scotland

Nicola Smith, Enable

John Wilkes, Equal Opportunities Commission

### **Acknowledgement from Working Group members:**

Many thanks to those organisations and people who took the time to respond to the Working Group on Hate Crime consultation paper and whose responses have contributed to this final report.

---

<sup>1</sup> Mr Carmichael attended in an advisory capacity.



# 1. INTRODUCTION

- 1.1 This report sets out the recommendations of the Working Group on Hate Crime to the Scottish Ministers. These are based on the detailed work undertaken by the Group and on the responses to a consultation paper issued by the Group in January 2004.
- 1.2 The Working Group on Hate Crime was set up by the Scottish Executive in June 2003 to consider the most appropriate measures needed to combat crime based on hatred towards social groups. This followed on from the provision introduced by the Criminal Justice (Scotland) Act 2003 of a statutory religious hatred aggravation.<sup>2</sup> At the time this provision was being considered, a number of MSPs and others suggested that other groups should be protected in a similar way. The Working Group on Hate Crime was set up to consider this issue.<sup>3</sup> We had the following remit:

**“To look at the current criminal justice system and consider improvements, including legislation, which might be made to deal with crimes based on hatred towards social groups.”**

- 1.3 We met 8 times between June 2003 and August 2004 and received presentations from:
- the Commission for Racial Equality
  - the Scottish Refugee Council
  - the Crown Office and Procurator Fiscal Service (COPFS)
  - the Police
  - the Scottish Executive’s Violence Against Women Unit
  - Victim Information and Advice (VIA) and
  - the Scottish Executive’s Criminal Procedure Division.
- 1.4 We had a number of detailed discussions on the nature of the crimes we were examining. Although the phrase “hate crime” has been used to describe the Working Group and its work, this has been used as a form of shorthand for the type of crime being discussed. We agreed the following definition of hate crime:

**“Crime motivated by malice or ill-will towards a social group.”**

2 Section 74 of the Act states that an offence is aggravated by religious prejudice if immediately before, during or after the offence, the offender evinces 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. Equally, an offence is aggravated by religious prejudice if 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. When this occurs, the court must take the aggravation into account when determining the appropriate sentence and if the sentence is different from that the court would have imposed if the offence had not been aggravated by religious prejudice, the court must state the extent of and reasons for that difference.

3 Hereafter the Working Group will be referred to as “we”.

- 1.5 The expression of “malice and ill-will” is used in other existing legislation against racism and religious hatred, and provides a more suitable and subtle definition of this type of crime than the stronger term “hatred”. Indeed, the use of the phrase “hate crime” was raised by a number of the consultation respondents, who expressed concern about using the term "hate" in any future legislation because of the difficulty in proving hatred.
- 1.6 We also concluded that hate crime is based on the **motivation** of malice or ill-will towards a social group. This means that the question of whether the victim of a hate crime belongs to a particular social group or not is irrelevant, for example, whether a victim of a homophobic attack is actually gay or not. It is the motivation of the offender which is important.
- 1.7 We faced a problem from the start in the absence of official data on the particular hate crimes we were examining. There is no consistent mechanism used by the Police and the Crown Office for counting hate crimes against groups not covered by existing legislation. While the Crown Office did point out that a flagging and tagging system could be set up to monitor such crimes, this would obviously take time. Because of this, we relied on evidence gathered from research and surveys.
- 1.8 There is a webpage on the Scottish Executive website that contains more information about the Working Group on Hate Crime, including the minutes of its meetings. The website address is: [http://www.scotland.gov.uk/about/JD/CJ/00017915/wg\\_papers.aspx](http://www.scotland.gov.uk/about/JD/CJ/00017915/wg_papers.aspx)

## 2.

## LIST OF RECOMMENDATIONS

### LEGISLATION

**Recommendation 1)** The Scottish Executive should introduce a statutory aggravation as soon as possible for crimes motivated by malice or ill-will towards an individual based on their sexual orientation, transgender identity or disability. The legislation should be framed in such a way as to allow this protection to be extended to other groups by statutory instrument over time if appropriate evidence emerges that such other groups are subject to a significant level of hate crime. The legislation should ensure the recording of hate-motivated incidents (by the police), and reports and decisions of proceedings (by Crown Office and Procurator Fiscal Service) and convictions (by Scottish Criminal Records Office).

**Recommendation 2)** Hate-aggravated harassment and alarming and distressing behaviour is a major concern. Consideration should be given to whether a general statutory offence of harassment and alarming or distressing behaviour would be an effective tool to combat such conduct. This would then be applied with a statutory aggravation as described in recommendation 1. If such an offence is not introduced, guidance should be issued to police and prosecutors to ensure the rigorous application of breach of the peace, together with the statutory aggravation, to such offences.

**Recommendation 3)** The Scottish Executive should review the area of criminal law on violence against women and continue to investigate the link between the undermining of women in society and crimes of violence against women with a view to combating both. A statutory aggravation for domestic abuse should also be considered by the Executive.

### CRIMINAL JUSTICE AGENCIES

**Recommendation 4)** After the introduction of a new statutory aggravation, the relevant authorities should include in their training suitable awareness-raising on this legislation for the police, social workers, COPFS, lawyers, solicitors and the Scottish Court Service. Procurators Fiscal should be encouraged not to plea bargain away the aggravation.

**Recommendation 5)** All agencies should ensure that information and advice about their service is easily available and accessible in different formats to cover the different needs of victims, particularly those with learning disabilities.

**Recommendation 6)** Police forces should identify a liaison officer to take a strategic overview of ongoing harassment against particular people and groups in the community.

**Recommendation 7)** The profile of VIA (Victim Information and Advice) should be raised and all victims of hate crime should be automatically offered VIA support.

**Recommendation 8)** The Scottish Executive should consider the feasibility of legislation or other means to ensure that any victim who appears in court and wishes to have their privacy protected from the press and public (such as a member of the LGBT<sup>4</sup> community or someone with a mental health problem) can do so if they wish.

**Recommendation 9)** Once the current trial of victim statements is completed, and depending upon its success, the Scottish Executive should extend the use of such statements to victims of hate crime.

**Recommendation 10)** Sentencers should make greater use of alternative disposals for people convicted of hate crimes. The Scottish Executive should consider research to identify which alternative disposals are successful.

## **AREAS OUTSIDE CRIMINAL JUSTICE SYSTEM**

**Recommendation 11)** The Scottish Executive should consider introducing a citizenship programme for schools which can incorporate work on combating prejudice at a young age.

**Recommendation 12)** The Scottish Executive should implement attitudinal campaigns against prejudice using learning from the One Scotland Many Cultures and “See Me...” campaigns, focusing on the LGBT community and disabled people.

**Recommendation 13)** The Scottish Executive should convene a meeting with the major media organisations in Scotland to highlight the damage of negative media reporting in relation to disabled people and to the LGBT community, and encourage more responsible images and reporting.

**Recommendation 14)** The Scottish Executive should identify hate crime as one of the priorities to be addressed by Community Safety Partnerships. Community Safety Partnerships should ensure that their action plans and consultation mechanisms address the needs and seek the views of communities which have been or may be particularly affected by such crimes.

We also draw the reader’s attention to the additional suggestions set out in paragraphs 6.5, 6.8 and 6.10 of Chapter 6.

---

<sup>4</sup> Lesbian, Gay, Bisexual and Transgender



## 3. BACKGROUND

- 3.1** There are differing views on identifying and distinguishing hate crimes from other crimes. Critics of hate crime legislation argue that it amounts to the punishment of individuals' opinion and it creates a "slippery slope" whereby particular groups are singled out for special treatment under the law. Some people object to the fact that hate crime legislation punishes the motivation as well as the crime, meaning that a person convicted of a hate crime can receive a more severe punishment than someone who has been convicted of the same offence, but without the additional motivation. Others simply dismiss it as an extreme form of political correctness.
- 3.2** While acknowledging and considering these arguments, we do not agree with them. We address them further in Chapter 5. We identified 3 strong reasons why the introduction of hate crime legislation should be considered:
- Research consistently shows that some social groups are proportionately more often victims of harassment and crime and that much of this is motivated by prejudice against those groups.<sup>5</sup>
  - Hate crimes can cause more psychological damage to a victim than crimes that are not motivated by hatred, because the victim's core identity is being attacked. This personalises the crime and can cause the victim a greater amount of distress.<sup>6</sup>

*"There is nothing worse than being slagged and attacked for being what you are."*  
(Anonymous; Response number 026)

- Hate crime is socially divisive. Such crimes need to be particularly condemned in order to avoid a situation in which the relevant group feels victimised as a group, with members in constant fear of attack. Prejudice against groups can lead to a number of consequences, ranging from fear of crime and inability to participate in normal social activities to paranoia and vigilantism.<sup>7</sup>

**5** See:

- "The Experience of Violence and Harassment of Gay Men in the City of Edinburgh" (Scotland Office Central Research Unit, 1998)
- "First Out...Findings of the Beyond Barriers survey of lesbian, gay, bisexual and transgender people in Scotland" (Beyond Barriers, 2003)
- "Queer Bashing" (Stonewall, 1996)
- "Give us a break": exploring harassment of people with mental health problems (National Schizophrenic Fellowship Scotland research, 2001)
- "Scottish Disability Awareness Survey" (Disability Rights Commission, 2002)
- "Living in Fear" (Mencap, 1999)

**6** See:

- "The Hate Debate: Should Hate be punished as a Crime" (edited by Paul Iganski, 2002)
- "Racist Crime and Victimisation" (Ian Clark and Sue Moody, 2002)
- "The Association of Chief Police Officers (ACPO) Guide to Identifying and Combating Hate Crime" (Hate Crime Manual) by ACPO (2000)
- "Consequences for Victims – a comparison of bias- and non-bias motivated assaults" (J McDevitt, J Balboni, L Garcia and J Gu, 2001)

**7** See:

- "The Hate Debate: Should Hate be punished as a Crime" (edited by Paul Iganski, 2002)
- "Dealing with Racist Victimisation: Racially Aggravated Offences in Scotland" (Sue Moody and Ian Clark, 2004)

- 3.3** Hate crime legislation already exists for racial hatred and religious hatred. The Public Order Act 1986 made it a criminal offence throughout Britain to incite racial hatred. In Scotland, the offence of racially aggravated harassment was introduced in the Crime and Disorder Act 1998. The same Act includes a provision for the courts to increase the sentence when any criminal offence is aggravated by racial prejudice. The Criminal Justice (Scotland) Act 2003 includes a similar provision for offences aggravated by religious prejudice.
- 3.4** Hate crime can range from name-calling, to day-to-day harassment, violence and in extreme cases, murder. Victims of hate crime often have a visible or other distinguishing characteristic which acts as a “marker” of their difference and may single them out for abuse, such as “looking gay” or being seen coming out of a gay venue, having a dedicated accessible parking bay, or using a wheelchair. Hate crime represents an antipathy towards particular social groups whereby perpetrators of hate crime believe that they can, and should be able to, get away with their crimes. They may believe the victim deserves to be attacked because they are different, that they are “fair game”, and in some cases, the perpetrator feels he or she is “helping” society. They feel superior by making their victim feel inferior.<sup>8</sup> No matter what the offence, even relatively minor incidents have a detrimental impact on society, creating divisions and tension.

### Vulnerability

- 3.5** It is important to note the distinction between vulnerability on the one hand and malice and ill-will towards a social group on the other. We were very aware that there can be a grey area where these overlap and that it should be an essential element of a hate crime to prove that a crime has been motivated by malice and ill-will towards an individual **because of** a presumed membership of a social group rather than because of their vulnerability. For example, if someone is attacked, but because of their disability is unable to run away, the crime occurred because the individual was vulnerable and this would not constitute a hate crime. The individual has been targeted because of their vulnerability rather than because of their membership of a social group.

### DOMESTIC AND INTERNATIONAL CONTEXT

- 3.6** Other parts of the UK are currently adopting measures to deal with hate crime. The UK Government introduced an aggravation in the Criminal Justice Act 2003, which increases the sentence for crimes motivated by hatred because of a person’s actual or presumed disability or sexual orientation. This legislation covers England and Wales only.
- 3.7** The Secretary of State for Northern Ireland announced proposals for legislation on hate crime motivated by religious hatred, racism or sexual orientation in October 2003. Following a consultation which concluded in April 2004, Northern Ireland laid legislation against hate crime in July 2004. It is expected to come into effect in September 2004. The legislation will incorporate an incitement to hatred offence to cover disability and sexual orientation and an aggravation based on race, religion, disability and sexual orientation.

<sup>8</sup> See:

- “The Hate Debate: Should Hate be punished as a Crime” (edited by Paul Iganski, 2002)

- 3.8** Internationally, the group looked at the situation in the European Union and the United States of America. European Community law covers civil discrimination but not any criminal justice issues. The European Union introduced Article 13 of the Treaty of Amsterdam to tackle the issue of discrimination against individuals on the grounds of specific characteristics (race and ethnic origin, religion and belief, gender, sexual orientation, age and disability).
- 3.9** The United States of America have fairly extensive “hate crime” laws. A publication produced by the US Department of Justice called “A Policymaker’s Guide to Hate Crimes” (see Bibliography at Annex A) provides a chart detailing which states in America have hate crime provisions and covering which groups. We also examined in more detail Californian gender hate crime legislation.

### **OTHER INITIATIVES AND RELEVANT LEGISLATION**

- 3.10** In addition to looking at possible legislation and what support could be given to victims of hate crime, we were keen to examine the existing initiatives and relevant legislation which impact on these victims. There are many existing valuable initiatives but these do not generally target hate crime as such and are mainly generic as shown in the following paragraphs.

#### **Victim Support Scotland**

- 3.11** Victim Support Scotland is funded by the Executive to deliver services to victims of crime and to witnesses. The police pass on to Victim Support Scotland details of all victims who wish to access support. Local victim support services then get in touch with them to offer support. Victim Support Scotland also delivers the Witness Service in the Sheriff Courts and High Court. This provides information and support to all witnesses before, during and after the trial.

#### **Victim Information and Advice (VIA)**

- 3.12** VIA is a service for vulnerable victims that is currently available in every Procurator Fiscal area and will be in every Procurator Fiscal district by the end of 2004. It is a division of the COPFS that provides a “way through” the criminal justice system for victims and bereaved next of kin by providing information about the progress of cases and putting them in touch with other agencies that offer support if they so wish. VIA support is automatically offered to victims from ethnic minority groups and victims of homophobic crimes. Other victims, including disabled victims, are offered support if they are considered to be vulnerable.

#### **The Scottish Strategy for Victims**

- 3.13** The Scottish Strategy for Victims was published by the Scottish Executive in 2001. It sets a challenging new agenda which brings together all interests within the criminal justice system to deliver policies and services to meet the needs of victims and witnesses. Commitments included piloting victim statements; the provision of funding for a court-based volunteer Witness Service; establishing a new service working alongside the Procurator Fiscal Service to provide advice and information to victims and witnesses (Victim Information and Advice – VIA – see above); looking at ways of expanding the statutory definition of “vulnerable person”; and examining how those who need it could be given support or protection. Many of these have already been implemented but the Strategy is a living document and is currently being reviewed with a view to establishing a work programme for the next 4-5 years.

### **Criminal Justice (Scotland) Act 2003**

- 3.14** The Criminal Justice (Scotland) Act 2003 introduced new rights for victims. This included a right for victims of certain types of crime to be able to make a written statement to the court about the impact of the crime on them. Victim statement schemes are being piloted in Edinburgh, Kilmarnock and Ayr and will run until November 2005. In the pilot areas, people who have been victims of a racist incident will have the right to make a victim statement, as well as those who have been victims of crimes of violence, crimes of indecency and domestic housebreaking.
- 3.15** The 2003 Act also introduced provisions to extend the Victim Notification Scheme, under which victims of crime have the right to be informed when their assailant is released from a prison sentence of 4 years or more. The extended scheme will apply to the victims of racist offences and is likely also to include the victims of offences aggravated by religious prejudice.

### **Vulnerable Witnesses (Scotland) Act 2004**

- 3.16** Much of the Act relates to increased protection for children. However, the Act also includes discretionary entitlements to special measures for people with a mental disorder which affects their ability to give evidence, or for those where fear or distress could prevent them from giving their best evidence to the court. These special measures include screens, the witness having a supporter, a live TV link being used for the witness to give evidence and a prior statement given by a vulnerable witness, which can be used as evidence in chief. In certain circumstances, the accused can be prohibited from personally conducting their own defence on the application of the prosecutor if the court so decides. These provisions may enable vulnerable victims of “hate crimes” to benefit from the use of special measures when they give evidence.

### **Antisocial Behaviour etc. (Scotland) Act 2004**

- 3.17** The Antisocial Behaviour etc. (Scotland) Act 2004 received Royal Assent in July 2004 and commencement is planned for many of the measures in the new legislation for October 2004. The legislation forms part of a wider antisocial behaviour strategy that is intended to provide additional protection and support to those whose quality of life is undermined by threatening and intimidating behaviour and behaviour that can ruin the physical, economic and social fabric of communities. The Executive recognises that groups who are subject to hate crime may also be more likely to experience the effects of antisocial behaviour.
- 3.18** The antisocial behaviour legislation will complement work on hate crime as it provides additional tools to protect victims of antisocial conduct, which may involve incidents not sufficiently clear-cut to be prosecuted on a criminal basis.

### **Summary**

- 3.19** We concluded that while these initiatives were helpful in so far as they provide general help for victims of hate crime, other measures are necessary to target hate crime directly.

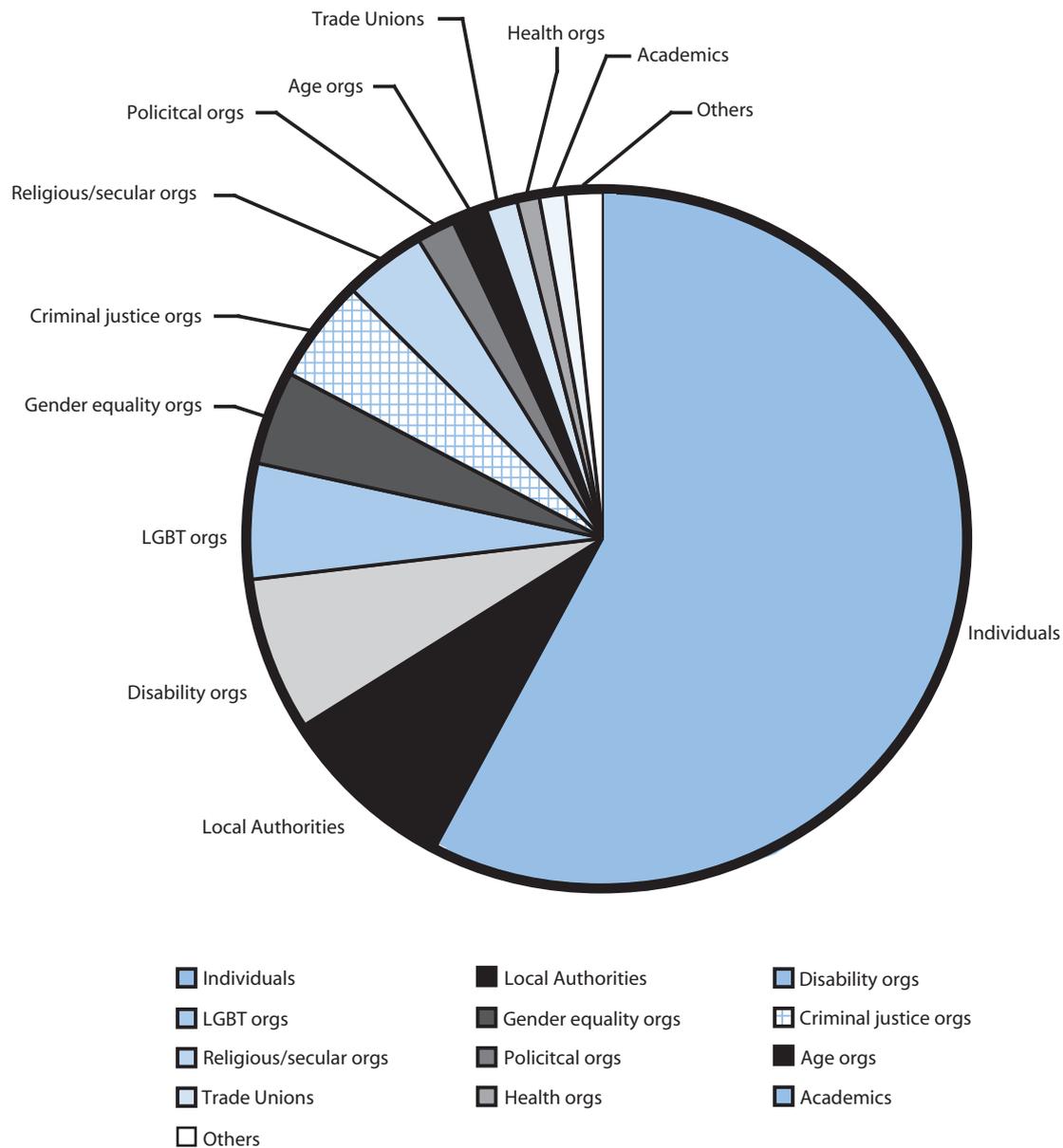


## 4. CONSULTATION

- 4.1** We published a consultation paper on 27 January 2004 which looked at what measures could be taken to help tackle hate crime in the criminal justice system. It focused on whether legislation was needed, and if so what sort, while also asking whether the services of the police, Crown Office and Scottish Court Service could be improved.
- 4.2** One thousand copies of the consultation paper were printed. Initially, 593 were distributed according to a mailing list which comprised criminal justice agencies, voluntary organisations and local authorities. As the paper was publicised, the remaining 407 paper copies were sent out to those who requested them. In addition to the main consultation paper, we also produced an “EasyRead” version of the paper for people with learning disabilities. Both the main consultation paper and the “EasyRead” version of the paper were also made available on the Scottish Executive website; see [http://www.scotland.gov.uk/about/JD/CJ/00017915/wghate\\_consult.aspx](http://www.scotland.gov.uk/about/JD/CJ/00017915/wghate_consult.aspx)
- 4.3** The consultation paper was widely publicised by the organisations represented on the Group. The paper was also used as the focus for discussion at local events organised by various organisations, including the Scottish Civic Forum and the Scottish Police and LGBT Community Liaison Forum. The Executive also had 3 requests for alternative language versions of the paper (Urdu and Cantonese) and provided a summary of the paper in the translated form.
- 4.4** A total of 175 written responses were received, of which 102 were responses to the main consultation and 73 were responses to the EasyRead version. The number of written responses by type of respondent was as follows:

Type of respondent	Number of responses	% of Total
Individuals	101	57.7%
Local Authorities	14	8%
Disability organisations	13	7.4%
LGBT organisations	9	5.1%
Gender equality organisations	8	4.6%
Criminal justice organisations	8	4.6%
Religious/secular organisations	7	4%
Political organisations	3	1.7%
Age organisations	3	1.7%
Trade Unions	2	1.1%
Health organisations	2	1.1%
Academics	2	1.1%
Participation organisations	1	0.6%
Human Rights organisations	1	0.6%
Multicultural organisations	1	0.6%
<b>TOTAL</b>	<b>175</b>	<b>100%</b>

**4.5** The large number of individual responses is mainly accounted for by the use of the “EasyRead” version of the paper, as all of the respondents to this paper were individuals.



**4.6** A list of respondents’ names is at Annex B.<sup>9</sup>

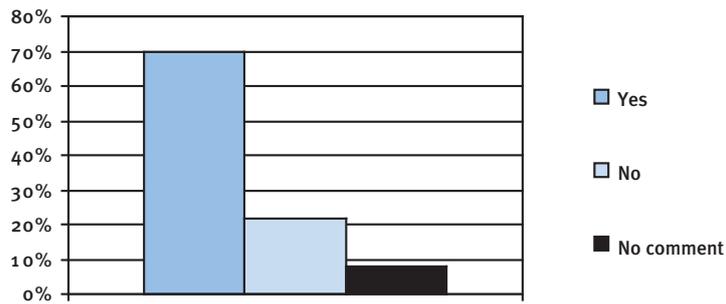
<sup>9</sup> Copies of the publicly available responses are available in full in the Scottish Executive library at K Spur, Saughton House, Broomhouse Drive, Edinburgh, EH11 3XD. Copies of responses can be viewed by visiting the library or can also be provided by post. Charges for photocopies are made on a cost-recovery basis and are required in advance. To make an appointment to view responses at the library or request copies by post and enquire about charges, contact the Library on 0131 244 4552.

## SUMMARY OF FINDINGS FROM RESPONSES TO MAIN CONSULTATION PAPER ON HATE CRIME

4.7 We received 102 responses to this paper.

### 4.8

Q1 – Do you think it is appropriate to use some kind of specific legislation to address hate crime?

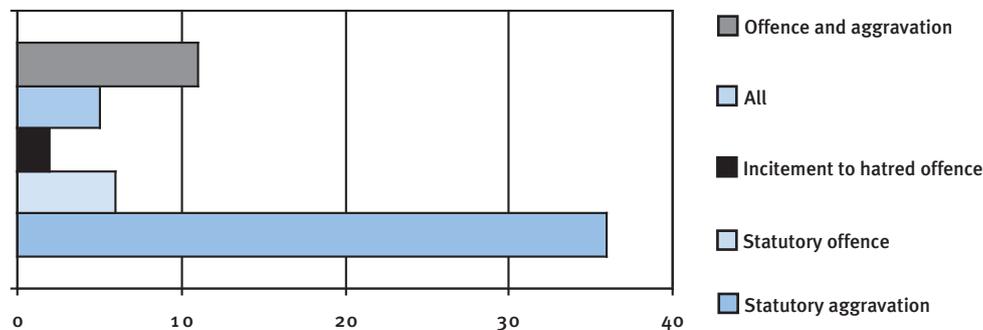


- 70% of respondents thought legislation should be introduced
- 22% of respondents did not think legislation should be introduced
- 8% of respondents did not make any comment

4.9

Q2 – If you think specific legislation should be used to address hate crime, what form do you think it should take?<sup>10</sup>

- 36 respondents thought a statutory aggravation should be introduced
- 11 thought a statutory aggravation and offence should be introduced
- 6 thought a statutory offence should be introduced
- 5 thought a statutory aggravation, offence and incitement to hatred offence should all be introduced
- 2 thought an incitement to hatred offence should be introduced

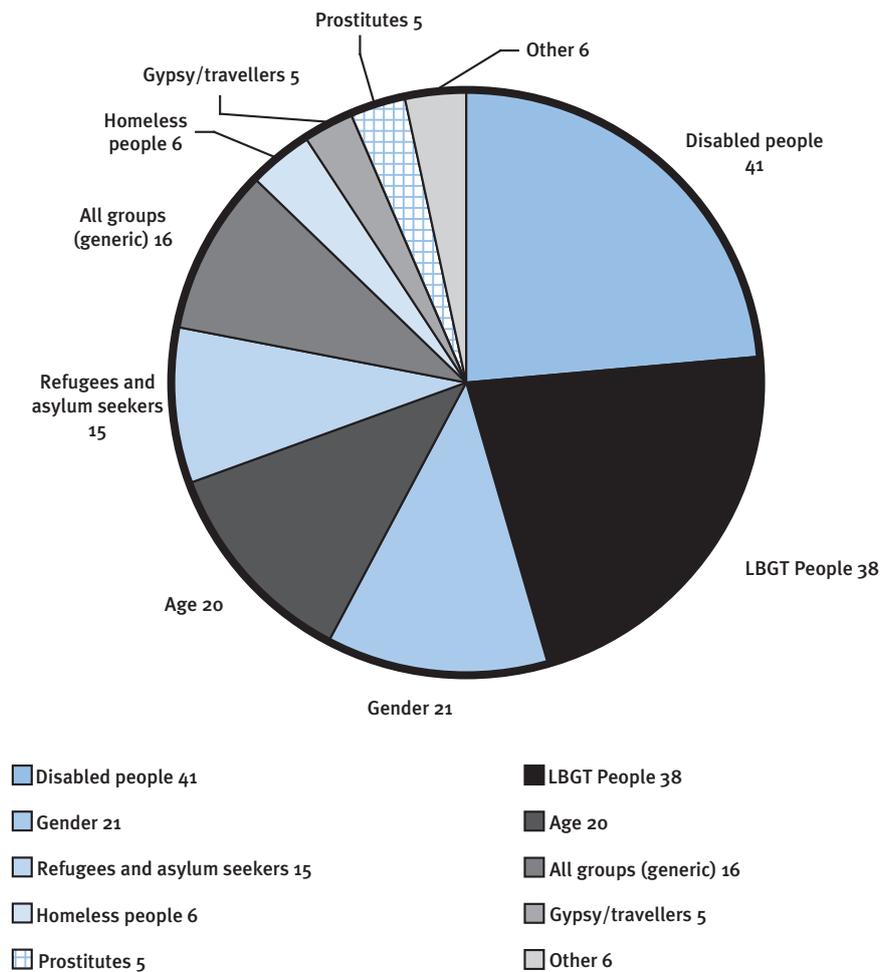


<sup>10</sup> Respondents were given the following examples as possible hate crime legislative options:

- The Public Order Act 1986 made it a criminal offence throughout Britain to **incite racial hatred**. The offence covers the use in public of words or behaviour, the display, publication or distribution of written material, the public performance of plays, and the public distribution, showing, playing or broadcast of video or audio recordings, if the material concerned is intended to, or is likely to, stir up racial hatred. It is also illegal to possess such material with a view to making it public.
- Section 50A of the Criminal Law (Consolidation) (Scotland) Act 1995, introduced by the Crime and Disorder Act 1998 created a specific **statutory offence** of racially-aggravated harassment. Under section 50A, it is a criminal offence to pursue a racially aggravated course of conduct which amounts to harassment of a person or to act in a racially aggravated manner which causes, or is intended to cause, a person alarm or distress.
- There are existing provisions on racial (Section 96 of the Crime and Disorder Act 1998) and religious hatred **aggravation** (Section 74 of the Criminal Justice (Scotland) Act 2003). If any criminal offence is motivated by, or accompanied by an expression of, malice and ill-will on the grounds of race or religious hatred, then the offence can attract a more severe penalty.

## 4.10

Q3 – Are there specific groups (including the ones mentioned in the paper<sup>11</sup> or other ones) that you think ought to receive special protection through legislation against hate crime? If so, which ones?



(Numbers show how many times the groups were mentioned by respondents.)

<sup>11</sup> The social groups mentioned in the paper were the LGBT community, disabled people, groups defined by age and gender, refugees and asylum seekers, the homeless community, prostitutes and members of certain political groups or holding certain political opinions.

#### 4.11

Q3 – Do you think different groups ought to be covered by different types of legislation?

- Only 1 respondent thought different legislation should be provided for different groups but did not suggest in what way.

#### 4.12

Q4 – Do you think any of the following bodies (Police, Crown Office and Procurator Fiscal Service and Scottish Court Service) could improve their service to particular social groups to help tackle hate crime?

**4.13** Most respondents recognised that all these bodies were improving their service to groups who face discrimination, particularly the police, but did suggest more that could be done. The suggestions included:

- More training for the police, Crown Office and Procurator Fiscal Service, Scottish Court Service, sheriffs, solicitors and children’s panel members
- Information and advice should be available in alternative formats
- Long-term support should be offered to victims from the outset
- All agencies should have a common approach to tackling hate crime
- Ongoing dialogue between the criminal justice bodies and relevant hate crime stakeholders to ensure regular communication on how to combat hate crime (e.g. COPFS advisory group on race)
- Creative ways of prosecuting e.g. voice identification by the victim
- Freephone number for reporting hate crime

### Police

**4.14** Some respondents expressed concerns that victims of hate attacks felt that the police did not take crimes seriously or that the law was not enforced as it stands. Suggestions to combat this included:

- Police should have a liaison officer who could deal with ongoing harassment against, for example, disabled people
- Police should be more proactive in engaging with communities; community police should increase their contact with day services and residential services
- Police forces should identify and be aware of particular social groups in their area and adapt the way they operate accordingly. Strathclyde Police operate a vulnerable persons database, which is considered to be good practice

## Crown Office and Procurator Fiscal Service (COPFS)

- Some respondents felt the Procurator Fiscal should push for longer and tougher sentences in hate crime cases<sup>12</sup>
- VIA's profile should be increased and should be available to all groups<sup>13</sup>
- Procurators Fiscal should not plea bargain away a "hate crime" aggravation

## Scottish Court Service

**4.15** Some respondents felt that courts and their procedures were highly intimidating. Suggestions for tackling this included:

- More separation of vulnerable witnesses from accused persons and their associates
- Court dates fixed well in advance and adhered to
- Familiarise victims with court processes in advance
- Scottish Court Service should include support to victims of hate crime in its action plan

## Other

- Disposals should include restorative justice i.e. perpetrators should be obliged to face their victims and confront the consequences of their crime (subject to the willingness of the victim)
- Victim statements should be extended to all minority/vulnerable groups<sup>14</sup>

## 4.16

Q5 – Could any of the measures set out in Chapter 4 of the consultation paper (including ASBOs, community wardens, Victim Support Scotland) be improved to help address hate crime? Are there other areas outside the criminal justice system that you feel ought to be improved in order to combat hate crime? If so, which areas and how would you suggest this is done?

<sup>12</sup> Sentencing is, of course, entirely a matter for the court. It is not the role of the Procurator Fiscal to suggest a sentence although they can draw the court's attention to any mandatory sentence. Where the accused pleads guilty the Procurator Fiscal will ensure that all facts relevant to sentence are before the court. In cases which have gone to trial there may be evidence relevant to sentence which was not elicited during the course of the trial. Such evidence would be drawn to the attention of the court prior to sentencing.

<sup>13</sup> VIA – Victim Information and Advice – is an information service for victims of particular crimes and is part of the COPFS (see above). One of the stated categories of person to whom the VIA treatment will be offered is anybody who falls within the category of "vulnerable".

<sup>14</sup> The Victim Statement Scheme is at present only a pilot scheme. The pilot scheme operates with victims statements being offered to people depending on the type of offence involved rather than the type of victim.

**4.17** Suggestions were as follows:

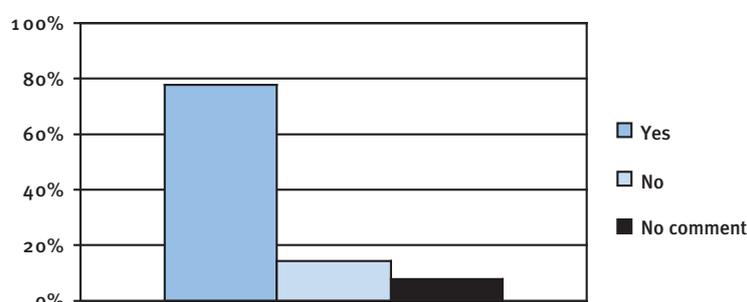
- Education on respecting individuals, particularly for school children in the context of good citizenship. Education was also mentioned in a wider sense in relation to awareness-raising for the public, which relates more to the second point below. Some respondents felt that all segregation in education should be removed
- Attitudinal campaigns like One Scotland Many Cultures and “See Me...” for discrimination against different social groups. The media portrayal of minority groups was also mentioned in relation to accurate reporting and the inclusion of minority groups in television programmes such as soaps. A Scottish Executive TV campaign against hate crime (similar to drink driving adverts at Christmas) was also suggested
- Community based local approaches to tackling anti-social behaviour and hate crime
- More Community Wardens
- Anti-Social Behaviour Orders should be used more.
- Aberdeen operates a Senior Citizens Assistance Network, which is a telephone based one stop shop, which would provide an opportunity of reporting hate crime
- Increased support to agencies like Victim Support
- Community Safety Partnership approaches
- Training for social workers; criminal justice social work services should have offenders assessed and supervised by specialist workers

**SUMMARY OF FINDINGS FROM RESPONSES TO EASYREAD CONSULTATION PAPER ON HATE CRIME**

**4.18** We received 73 responses to this paper.

**4.19**

Q1 – Have you ever been attacked, intimidated, harassed or robbed?



- 78% answered yes to this question
- 14% answered no
- 8% did not give any comment
- Many of the experiences related to ongoing, non-violent harassment although there were some examples of more serious crimes such as violence and rape

#### 4.20

Q2 – Do you think this happened because you have learning disabilities?<sup>15</sup>

- Of those who had been a victim, 75% thought they had been targeted because they had learning disabilities

#### 4.21

Q3 – Did you call the Police? Did the Police come to see you? Did you get help from the Police?

- Of those who had been a victim, just over half (60%) had sought help from the police
- Of those who commented in this section, responses varied, from the police being very helpful, for example, talking to the parents of the perpetrators and putting a trace on the house phone, to the police not providing any help at all
- Some respondents reported that they were made to feel that they were to blame or that the police did not believe them

#### 4.22

Q4 – Did you get help from the Procurator Fiscal Service?

- 4 people said they had received help from the Crown Office and Procurator Fiscal Service
- For two individuals, the cases were marked no proceedings. One individual said that the court process could be a waste of time for people with learning disabilities

#### 4.23

Q5 – Did you have to go to Court?

- 3 people said they went to court
- One case was still waiting to go to court, while another respondent said she was unable to go to court because of her epilepsy

---

<sup>15</sup> The results of this question should be interpreted carefully. The question was not broken down into whether the respondents were targeted because the perpetrators had malice or ill-will towards people's learning disabilities or whether the perpetrator took advantage of them because they were vulnerable.

#### 4.24

Q6 – Did you get help from Victim Support?

- 6 people said they received help from Victim Support
- A few respondents said it had helped to talk about the incident. Another said she had found it difficult to find an appropriate support group. For one respondent, the police said they would ask Victim Support to get in touch but the victim did not hear anything more

#### 4.25

Q7 – Did anyone else help you?

- Just over half of victims had been helped by other people
- This mainly included friends and family, staff from residential homes and support workers

#### 4.26

Q8 – Do you think people with learning disabilities often get harassed or intimidated?

- 93% of respondents said that people with learning disabilities were often harassed or intimidated
- Comments included:
  - that young people were the main perpetrators
  - that people with learning disabilities need advocates and help to go to the police
  - the police don't always know how to explain things to people with learning disabilities.



## 5. LEGISLATION

### Summary of consultation responses

- 70% of respondents were in favour of legislation (see chart at paragraph 4.8)
- 60% were in favour of a statutory aggravation (see chart at paragraph 4.9)
- There were three clear levels of response to which types of prejudice should be covered by legislation. The LGBT community and disabled people were the two most mentioned groups. Gender and age had around half that support while refugees and asylum seekers and the inclusion of all groups (generic legislation) made up the third level (see chart at paragraph 4.10)

### REASONS FOR LEGISLATING

- 5.1** While evidence suggests that some social groups are proportionately more often victims of harassment and crime, there is evidence that these groups are less likely to report the crime committed against them.<sup>16</sup> This is partly because hate crimes can be intensely distressing for their victims and historical experience or fear has led many to believe that there is no point in reporting them.<sup>17</sup> Respondents to the consultation paper felt that **legislation is an important mechanism for highlighting the issue of hate crimes both to the victims and to the criminal justice bodies, to encourage reporting and focus minds on this issue.**
- 5.2** It is of course the case that hate crimes are already covered under Scots law. In one sense, no matter what the motivation is, sentencers can already take any aggravating factor, including a motive of malice and ill-will towards a social group, into account when determining the sentence under common law. However, it is impossible to monitor the extent to which this is currently happening, as common law aggravations are not recorded either in terms of statistics or on the offender's criminal record. We consider that the introduction of new legislation on hate crime would not prevent sentencers from continuing to take into account other aggravating factors, such as vulnerability, under the common law. Whilst not the primary objective, we also felt that the creation of clear new legislation would have an impact on the negative social attitudes and prejudices that are often at the heart of hate-motivated crime.

<sup>16</sup> See:

- "Give us a break": exploring harassment of people with mental health problems" (National Schizophrenia Fellowship Scotland, 2001)
- "Hate Crime Against Disabled People in Scotland: A Survey Report" (Disability Rights Commission and Capability Scotland, 2004)
- "The Experience of Violence and Harassment of Gay Men in the City of Edinburgh" (Colin Morrison and Andrew Mackay, the TASC Agency, 1999)
- "Queer bashing" (Stonewall, 1996)
- "First Out...Findings of the Beyond Barriers survey of lesbian, gay, bisexual and transgender people in Scotland" (Beyond Barriers, 2003)

<sup>17</sup> See:

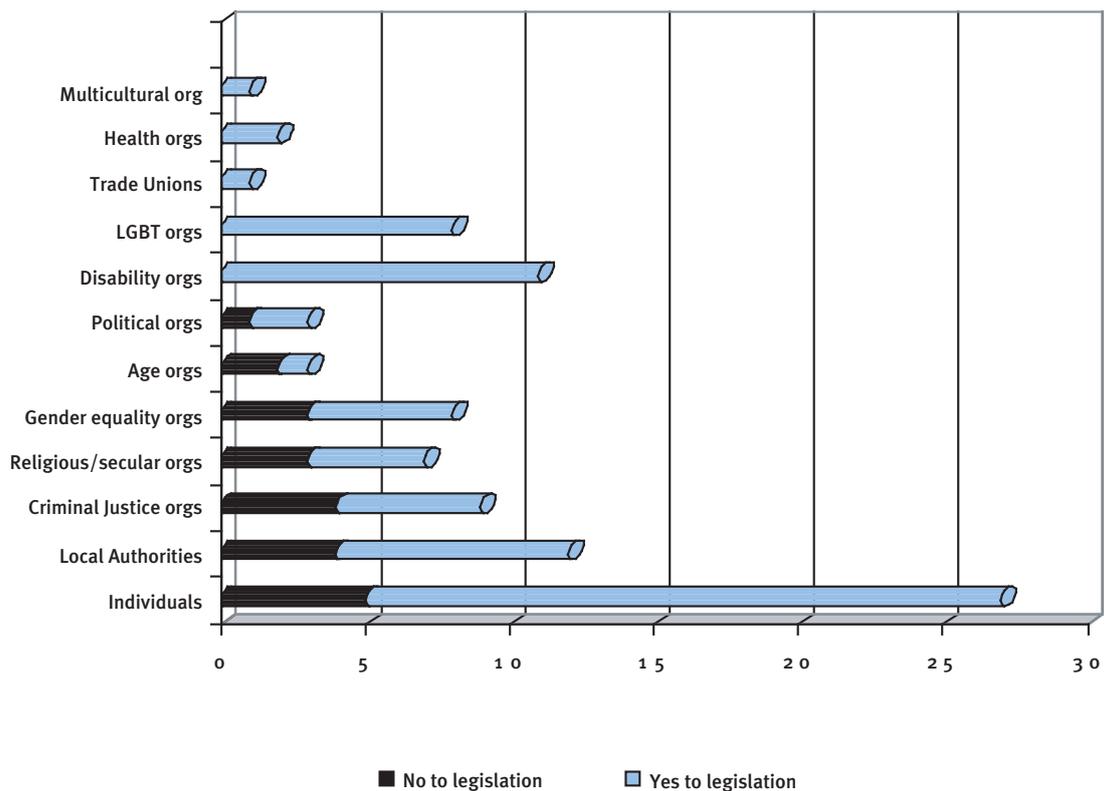
- "First Out...Findings of the Beyond Barriers survey of lesbian, gay, bisexual and transgender people in Scotland" (Beyond Barriers, 2003)
- "An Acceptable Prejudice? Homophobic Violence and Harassment in Northern Ireland" (Institute for Conflict Research, 2003)

**5.3 We believe it is vital that the recording and monitoring of hate crimes is improved.** We heard evidence that the best way to remedy the situation whereby data on hate crimes is not recorded, would be to introduce legislation. Improved recording and monitoring mechanisms would allow trends to be monitored in different areas of Scotland, allowing targeted programmes to combat this type of behaviour to be set up. It would also allow the court to identify previous offenders (repeat offending is a common feature of hate crime) and to sentence more appropriately.

**5.4 It is important to send out a strong signal through legislation that the type of behaviour exhibited through hate crime is unacceptable.** The ultimate solution to hate crime is to address the attitudes in society that lead to it. We believe that the existence of legislation that recognises the damage caused by hate crime, to the victim and to society as a whole, combined with other measures to reduce prejudice and discrimination (see Chapter 7), are the way forward.

**ARGUMENTS AGAINST LEGISLATION**

**5.5** As noted above, the majority of respondents to the consultation favoured introducing legislation. We considered carefully the arguments made by those who opposed the introduction of legislation. Responses for and against legislation can be divided by the type of respondent as follows:



- 5.6** The relatively small sample sizes involved in these responses means that it is important not to read too much into the figures. However, in general, the organisations more opposed to legislation appear to be the organisations involved in the administration of criminal justice and religious organisations. Only three age organisations responded to the consultation but two of the three were against legislation.
- 5.7** Some of the criminal justice organisations which were opposed to legislation focused on two arguments: the fact that the existing common law was adequate and preferable to legislation, and, related to this, that there would be practical problems involved in any new legislation. These organisations felt that the common law was able to deal with hate crimes appropriately because of its flexibility. In terms of any new legislation, there were concerns regarding the ability to distinguish between prejudice and vulnerability, a “hierarchy” of victims being created and problems in defining social groups. However, these views were not consistently held amongst organisations representing the same parts of the criminal justice system. Extracts from the responses from the Scottish Police Federation and Association of Chief Police Officers Scotland (ACPOS) are set out for comparison below:

*“From an operational point of view, there is a strong feeling from our members that it will be more difficult to present a case to the court based on any statutory provisions rather than a common law charge where the facts speak for themselves and the court can take account of any motivation for the crime which becomes apparent in the presentation of the evidence.”*

(Scottish Police Federation; Reference number 088)

*“Although existing statutory legislation and Scottish Common Law may address the issue of hate crime, new legislation may provide a more effective means of identifying, recording and monitoring such crimes as well as reassuring communities.”*

(ACPOS; Reference number 162)

- 5.8** Two of the three age organisations which responded to the consultation and were not in favour of legislation gave their reasons as being that they felt the existing law was adequate, that new legislation would be discriminatory, it would make the system more complicated and there would be difficulty in getting sufficient evidence to back up the complaint.
- 5.9** We do not find the argument that the law is working adequately at present convincing. Amongst the community groups which responded from the LGBT and disability communities there were none who reported the satisfactory use of the common law to deal with hate-aggravated crimes against their communities. Although under-reporting of hate crime may be caused by a number of factors, we feel that the research relating to under-reporting (see paragraph 5.1) reflects that the law is not working adequately. In addition, even if the law was working adequately, we are currently unable to assess it objectively because of the lack of recording and monitoring mechanisms. We also note that the same argument was made at the time of introduction of the legislation relating to hate crime aggravated by racial prejudice, and that both research and anecdotal evidence suggest that the legislation has improved the handling of these offences.

- 5.10** We acknowledge that some crimes against members of disadvantaged groups is opportunistic crime, motivated by perceived vulnerability rather than by malice and ill-will. However, we feel that a similar issue arises when police and prosecutors are confronted with an alleged racist crime and they have to consider whether there is sufficient proof that, for example, an attack on a black person was motivated by racism or whether it was motivated by some other reason (see paragraph 3.5). We believe that the form of existing legislation on crime aggravated by racial or religious prejudice, which requires proof of motivation of malice and ill-will related to prejudice, sufficiently distinguishes hate crime from other kinds of crime.
- 5.11** Nor do we agree with the argument that hate crime legislation creates a “hierarchy” of victims. There is clear evidence that certain groups are disproportionately targeted for crime motivated by malice and ill-will (see paragraph 3.2). It is that disproportionate targeting which creates a “hierarchy”. We are therefore comfortable with the concept of legislation which addresses specified types of hate crime so long as the scope of the legislation is clearly evidence based. In a society which aspires to equal opportunities and freedoms for all, it is necessary to make provision to combat specific forms of discrimination and prejudice. With regard to the practicalities of drafting legislation to cover effectively the kinds of hate crime we identify, we note that the existing legislation on offences aggravated by racial or religious prejudice does not appear to have encountered significant difficulties in this regard.
- 5.12** For the religious organisations which were not in favour of legislation, the main concern was the threat to freedom of speech and their ability to express their particular religious perspective on homosexuality.

*“It is important to stress that Christians completely oppose criminal acts against anyone regardless of “sexual orientation”. Nevertheless, we are concerned an aggravated offence will be used to threaten and intimidate those who hold traditional views on sexuality.”*

(The Christian Institute; Reference number 104)

- 5.13** We feel that the different types of legislation would have different levels of impact on freedom of speech. This is discussed in more detail below.

## **TYPE OF LEGISLATION**

- 5.14** The group considered three types of legislation which would have an impact on offences and sentencing: a statutory aggravation, a statutory hate crime offence and an incitement to hatred offence.

### **Statutory aggravation**

- 5.15** There are existing provisions on racial (Section 96 of the Crime and Disorder Act 1998) and religious hatred **aggravation** (Section 74 of the Criminal Justice (Scotland) Act 2003). If any criminal offence is motivated by, or accompanied by an expression of, malice and ill-will on the grounds of racial or religious hatred, then that factor must be taken into account by the judge when sentence is being considered. In 2003-04, there were 196 convictions in Scotland for racially aggravated offences under Section 96. Between its introduction in June 2003 and June 2004 there have been 140 convictions involving religiously aggravated offences under Section 74.

**5.16** We noted that extending the statutory aggravation legislation beyond race and religion to cover other types of hate crime was supported by the majority of respondents to the consultation. In addition, five of the 21 respondents who did not support new legislation nevertheless said that if any were introduced, it should be a statutory aggravation. As noted above, similar statutory aggravation legislation in England, Wales and Northern Ireland has this year been extended to cover sexual orientation and disability. Extending the statutory aggravation would have the benefits noted in paragraphs 5.1 to 5.4 above, while not detracting from the existing flexibility of the common law to deal with other kinds of aggravating factor. Extending the legislation on the same terms as the existing statutory aggravations which deal with racial or religious hate crime would retain maximum consistency in the handling of identified hate crime. We do not consider that a statutory aggravation would impact on freedom of speech – it does not criminalise any behaviour that is not already criminal.

### Statutory hate crime offence

**5.17** The Crime and Disorder Act 1998 created a specific **statutory offence** of racially-aggravated harassment, by inserting a new section 50A into the Criminal Law (Consolidation) (Scotland) Act 1995. Under section 50A, it is a criminal offence to pursue a racially aggravated course of conduct which amounts to harassment of a person, or to act in a racially aggravated manner which causes, or is intended to cause, a person alarm or distress. In 2003-04 there were 848 convictions in Scotland for racially-aggravated harassment.

**5.18** We noted that the Cross-Party Working Group on Religious Hatred<sup>18</sup> did not recommend extending the offence of racially-aggravated harassment to cover harassment motivated by religious prejudice. Nevertheless the number of convictions for s. 50A racially-aggravated harassment offences (see above) would suggest that this legislation is useful in dealing with racist crime.

**5.19** A concern that has been raised about this legislation is that to obtain a conviction it is necessary to prove both the harassment (or alarming or distressing behaviour) and the racist motive. In contrast, if a person is charged with an offence racially-aggravated under the general statutory aggravation law described in paragraphs 5.15 and 5.16 above, and the racist motive is not proven, the accused can still be convicted of the non-aggravated offence. Despite this concern, however, the high conviction rate for proceedings for s. 50A racially-aggravated harassment offences suggests that in practice the need to prove both elements of the offence has not caused major difficulties in obtaining convictions.

**5.20** We also noted that there are more charges each year for s. 50A racially-aggravated harassment than for other offences combined with a statutory racial aggravation. Moreover, research into hate crime indicates that “lower-level” behaviour such as hate-based abuse and harassment are more common than serious assaults. This suggests that there is a real need to address this kind of behaviour for other groups in addition to racial groups.

---

<sup>18</sup> “Report of Cross-Party Working Group on Religious Hatred” (Scottish Executive, 2002)

- 5.21** Some consultation responses indicated concern at the introduction of offences which are only criminal when motivated by hate, and suggested that harassment should be an offence regardless of motivation, although an offence that, like any other, could be aggravated by a statutory hate motivation. We also heard evidence that any offence currently prosecuted as racially-aggravated harassment could almost certainly be alternatively charged as a breach of the peace.<sup>19</sup> This suggests that a stand-alone offence of hate-aggravated harassment would not be needed if breach of the peace were applied rigorously to such offences and combined with a statutory hate aggravation.
- 5.22** However we were also concerned about the need to send a clear message, to victims, to perpetrators, to the criminal justice agencies and to the public generally, that this kind of offence is not acceptable and will be addressed. We felt that if breach of the peace were relied upon, together with a new statutory aggravation, to deal with these “lower-level” hate crimes, then there would need to be clear guidance from the Lord Advocate to the police to ensure that the law was applied consistently and rigorously. We were shown a card, carried by police officers, describing the scope and application of the s. 50A racially-aggravated harassment offence and would want to see such accessible information for police officers extended to cover the use of hate-aggravated breach of the peace charges for harassment and alarming or distressing behaviour.
- 5.23** Some members of the Working Group felt that the way forward should be to create a new general statutory offence of harassment or alarming or distressing behaviour.<sup>20</sup> This offence could then be used along with a statutory hate aggravation to address behaviour which for the racially-aggravated case is covered by the s. 50A racially-aggravated harassment offence. With the introduction of a new offence, a strong message would be sent about the seriousness with which such behaviour is viewed. Other members of the Working Group considered that such a statutory offence would be unnecessary, as it would in effect be a statutory version of the existing crime of breach of the peace.
- 5.24** Currently under Scots law (unlike English law), there is no specific criminal offence of harassment. However, the Protection from Harassment Act 1997 contains provision for a non-harassment order to prevent further harassment from taking place through civil proceedings. A breach of the order is a criminal offence, punishable by up to 5 years’ imprisonment.
- 5.25** The Scottish Executive issued a consultation paper in March 2000 to examine the law as it relates to stalking and harassment. The consultation ended in June 2000 and the way forward was announced to Parliament in January 2001. The consultation exercise did not produce a single, agreed set of recommendations or solutions, but key issues arose from it including the need for new research. The Scottish Executive commissioned extensive research on stalking and harassment, the results of which suggested that there was no need for a new offence.<sup>21</sup> However, we noted that the main focus of this study was on stalking rather than the kind of harassment experienced as hate crime.

<sup>19</sup> The definition of breach of the peace is very broad and varies from case to case. In general, however, it can be described as conduct by a person, which is calculated to, or may be likely to, cause disturbance, alarm, annoyance or upset on the part of others.

<sup>20</sup> The distinction between the two being that harassment is a course of conduct, while alarming/distressing behaviour is a one-off event.

<sup>21</sup> See “Stalking and Harassment in Scotland” (Sue Morris, Simon Anderson and Lorraine Murray, 2002)

- 5.26** In conclusion we are concerned at the number of victims of hate crime who suffer from hate-aggravated harassment or alarming or distressing conduct. We would therefore like to see further consideration given to the introduction of a general statutory offence covering these kinds of behaviour, which could be applied with a statutory hate aggravation to address these hate crimes. Alternatively, and as a minimum, we recommend the robust application of breach of the peace, together with a statutory hate aggravation, to address this problem. Guidance will be needed to the police to ensure consistent and rigorous application of the law.
- 5.27** In addition, Local Authorities should be encouraged to use Antisocial Behaviour Orders (ASBOs) to address hate-aggravated harassment which falls short of a criminal act.

### Incitement to hatred

- 5.28** The Public Order Act 1986 made it a criminal offence throughout Britain to **incite racial hatred**.<sup>22</sup> The offence covers the use in public of words or behaviour, the display, publication or distribution of written material, the public performance of plays, and the public distribution, showing, playing or broadcast of video or audio recordings, if the material concerned is intended to, or is likely to, stir up racial hatred. It is also illegal to possess such material with a view to making it public. In 2003-04 there was one conviction in Scotland for the offence of incitement to racial hatred.
- 5.29** We feel that the incitement to hatred offence risks penalising freedom of speech too much for it to be extended beyond racial hatred. We recognised the concerns of some religious organisations who felt they should legitimately be able to express their own views on homosexuality, without being convicted of an offence. We therefore do not recommend the extension of an incitement to hatred offence.

### TYPES OF PREJUDICE COVERED

- 5.30** In considering which types of prejudice should be covered by legislation, there is clear evidence that the **LGBT community and disabled people** are targeted as victims of hate crimes (see paragraph 3.2). As we have noted earlier, a hate crime is characterised by the motive of the perpetrator in relation to the identity or presumed identity of the victim. We consider that in keeping with the formulation in the existing legislation, which appears to work well, new legislation should cover offences aggravated by malice and ill-will against a person's membership or presumed membership of a group defined by reference to their sexual orientation, transgender identity, or disability.<sup>23</sup> Like the existing legislation, membership of a group should be defined as including association with members of that group. The inclusion of both sexual orientation and transgender identity is required because evidence shows that transgender people are victims of hate crime as much as lesbian, gay and bisexual people and that the underlying prejudices are closely linked.<sup>24</sup> The ACPOS definition of "homophobic incident" includes incidents targeting transgender as well as LGB people but the current legal definition of sexual orientation would exclude such incidents.

<sup>22</sup> The Home Secretary, David Blunkett, has recently announced his intention to introduce legislative provision for an incitement to religious hatred offence.

<sup>23</sup> We suggest that the legislation should define disability as physical or mental disability or impairment. "Sexual orientation" appears in several existing statutes, including the Vulnerable Witnesses (Scotland) Act 2004, and we do not think it needs further definition. If a definition were required, there is a satisfactory one in regulation 2(1) of the Employment Equality (Sexual Orientation) Regulations 2003. "Transgender identity" means those characteristics of a person's identity, appearance or behaviour which are usually associated with the gender opposite to the person's legal gender, and includes, if it is the case, that the person's legal gender has become the acquired gender under the Gender Recognition Act 2004.

<sup>24</sup> See: "First Out...Findings of the Beyond Barriers survey of lesbian, gay, bisexual and transgender people in Scotland" (Beyond Barriers, 2003)

- 5.31** Like the existing statutory aggravation provisions, the legislation should cover offences motivated by malice and ill-will against a group regardless of whether the victim was in fact a member of that group; for example it would cover a homophobic attack on a heterosexual person wrongly assumed to be gay.
- 5.32** **Age and gender** are more complicated areas. While the most obvious example of a person's **age** affecting their susceptibility to crime is someone who is older, more vulnerable and less physically capable of defending themselves, the Scottish Crime Survey 2000 reported that men between the ages of 16 and 24 years old were the age group most likely to be the victim of violent crime. The fact that most of this crime is perpetrated by other young people (for the most part, men) suggests that behaviour and lifestyle, rather than prejudice against people because of their age per se, contributes to the high levels of crime against younger people.
- 5.33** Two of the three age organisations which responded to the consultation were opposed to legislation covering age. For our part, we feel that there needs to be more consideration of the extent of crime motivated by malice and ill-will against people of particular ages because of their age, in consultation with organisations working in the age field, before extending hate crime legislation to cover age.
- 5.34** In respect of **gender**, it is clear that there are a number of different facets to gender-based crimes. The issue of crimes against women was of particular concern to the Group, because of the number of organisations who responded to the consultation on this issue and based on evidence of the gender-divide in criminal offences.<sup>25</sup> As a Group, we recognise that abuse of women by men is a major problem and is related to wider gender inequality. Several submissions to our consultation from women's organisations argued that when women are abused because they are women, then that implies gender-based malice and ill-will on the part of the abuser.
- 5.35** A question was raised as to whether domestic abuse should be considered in respect of legislation around hate crimes. The statistics show that most violence against women is committed by men they live with or know.<sup>26</sup> A representative from the Scottish Executive's Violence Against Women Unit gave evidence to the Group on domestic abuse. The Unit's view is that domestic violence is abuse of power within a relationship, whereby (mainly) the man seeks to exert his power over his female partner<sup>27</sup> but does not generally abuse other women. Therefore, the Unit does not view domestic violence as a hate crime. A number of the Group disagreed with this view, as did those respondents working in this field. They saw domestic violence as part of a spectrum of gender-based violence committed against women, and thus a gender hate crime because the woman is targeted because of her gender. At the same time, we noted that hate crime against other groups has a certain random nature to it, that individuals are targeted because of their real or perceived membership of a particular social group, rather than because of any prior relationship between perpetrator and victim.

<sup>25</sup> The Scottish Crime Survey 2000 shows that men are more likely to be the victim of a violent crime than women (5% of male respondents had been victims compared with 2% of female respondents). However, in most incidents (85%) the assailant or assailants were male. This implies that gender is less likely to be the motive behind crimes committed against men.

<sup>26</sup> Women predominantly report experiencing violence in a domestic setting (64%) or by an acquaintance (22%): Domestic Violence – Findings from the 2000 Scottish Crime Survey, Scottish Executive, CRU, 2002. The Scottish Crime Survey 2000 reports that only 10% of violent crimes against women are committed by strangers.

<sup>27</sup> In cases where the gender of victim and perpetrator was recorded, the victim was female in 90% and the perpetrator male in 91% of incidents of domestic abuse: Domestic Abuse recorded by the Police in Scotland 2002, Scottish Executive November 2003.

- 5.36** Among the consultation submissions, Scottish Women’s Aid proposed that consideration should be given to the introduction of a specific statutory aggravation of domestic abuse. In other words, where an offence is committed in the context of domestic life or a domestic relationship that should be treated as an aggravation. We feel that this suggestion is worthy of further consideration by the Scottish Executive.
- 5.37** More generally, we recognise that violence against women is related to the attitudes and behaviours in our society which undermine women’s position and their equality to men, ranging from the media’s sexualisation of girls and young women through to pornography, prostitution and the trafficking of people. Nevertheless, despite lengthy consideration, the Group did not reach agreement that a statutory aggravation on grounds of gender could be used effectively to tackle these complex, inter-related and diverse issues. In particular it was felt that there would be practical difficulties in gathering evidence in individual cases of malice and ill-will on gender grounds.
- 5.38** Nevertheless we believe that the position should be kept under review. We noted the growing trend in US hate crime legislation to include gender, while also observing that gender hate crimes in California only constitute a small minority of hate crimes committed,<sup>28</sup> and that some US academics remain unconvinced that hate crime legislation in general is necessary.<sup>29</sup> More generally we would encourage the Scottish Executive to undertake further work in this area to tackle the undermining of women in our society and to investigate how this is related to violence against women.
- 5.39** We also looked at other groups who may be the victim of hate crimes, including refugees and asylum seekers, the homeless community, gypsy/travellers and prostitutes. We were particularly concerned by reports of attacks on refugees and asylum seekers because of the stigma associated with their status. In terms of legislation, if an attack refers to the victim’s race then the offence is covered by existing race legislation. However, that legislation does not currently refer specifically to refugees and asylum seekers.
- 5.40** We are concerned that the various other groups mentioned may also suffer from hate crime but we did not feel sufficiently knowledgeable to make any firm recommendation relating to such groups. We do, however, recommend that legislation should be framed in such a way so as to allow any other group to be added to the legislation by statutory instrument if sufficient evidence emerges to show they are victims of hate crime.

**Recommendation 1: The Scottish Executive should introduce a statutory aggravation as soon as possible for crimes motivated by malice or ill-will towards an individual based on their sexual orientation, transgender identity or disability. The legislation should be framed in such a way as to allow this protection to be extended to other groups by statutory instrument over time if appropriate evidence emerges that such other groups are subject to a significant level of hate crime. The legislation should ensure the recording of hate-motivated incidents (by the police), and reports and decisions of proceedings (by COPFS) and convictions (by Scottish Criminal Records Office).**

<sup>28</sup> California is one of the US states that legislates against gender-based hate crimes. Records of hate crime in California in 2001 showed that 0.7% (15) of hate crime events were motivated by the gender of the victim.

<sup>29</sup> See “Hate Crimes: Criminal Law and Identity Politics” (James B. Jacobs and Kimberly Potter, 1998)

**Recommendation 2:** Hate-aggravated harassment and alarming and distressing behaviour is a major concern. Consideration should be given to whether a general statutory offence of harassment and alarming or distressing behaviour would be an effective tool to combat such conduct. This would then be applied with a statutory aggravation as described in recommendation 1. If such an offence is not introduced, guidance should be issued to police and prosecutors to ensure the rigorous application of breach of the peace, together with the statutory aggravation, to such offences.

**Recommendation 3:** The Scottish Executive should review the area of criminal law on violence against women and continue to investigate the link between the undermining of women in society and crimes of violence against women with a view to combating both. A statutory aggravation for domestic abuse should also be considered by the Executive.



## 6. CRIMINAL JUSTICE AGENCIES

### Summary of consultation responses

Most respondents recognised that all criminal justice bodies, and particularly the police, were improving their service to groups who face discrimination, but many suggested that more could be done. Some respondents expressed a view that victims felt hate crimes were not taken seriously or that the law was not enforced as it stands. Respondents also felt that courts and their procedures were highly intimidating.

- 6.1 In general, we feel that the combination of new legislation on hate crime and the commitment the criminal justice agencies have already shown in improving their service towards groups who face discrimination should help the criminal justice agencies to deal more effectively with hate crime. However, the Group and consultation responses identified a number of areas which could be further improved.
- 6.2 It is important that the relevant criminal justice agencies have a sound knowledge and understanding of any new legislation in order to ensure that it is implemented effectively. Consideration should be given to ways of promoting the new legislation, for example through an aide memoire card similar to that carried by police containing information about race legislation.

**Recommendation 4: After the introduction of a new statutory aggravation, the relevant authorities should include in their training suitable awareness-raising on this legislation for the police, social workers, COPFS, lawyers, solicitors and the Scottish Court Service. Procurators Fiscal should be encouraged not to plea bargain away the aggravation.**

- 6.3 The Capability Scotland/Disability Rights Commission research showed that only 41% of those experiencing hate crime reported it to the police. The reasons for not reporting the incident to the police reflected concerns about the police's attitude and the extent of police powers. In addition, responses to the "EasyRead" paper showed that while over 60% of victims had reported the incident to the police, only a small minority seemed to get any further in the criminal justice system. This could be explained in a number of ways. The nature of the incident, such as name-calling, may not have required any further action and may have been resolved with the police talking to the perpetrators or where children were involved, to their parents. Or, there may not have been sufficient evidence to support a prosecution. However, in a small but worrying number of cases, the victims stated having contacted the police and either receiving an unhelpful response or no response whatsoever:

*"I have continually called the police when there has been damage to my house. Sometimes the police come out, other times they say they will and they don't. Last week I was told they would come out. I sat up all night but no-one came out. I did not like their response, sometimes because of the way they talked to me, they made me feel I was to blame."*  
(Individual; Reference number o8o)

- 6.4 Other respondents to the EasyRead version of the consultation paper indicated that they could not understand the police or were not able to make themselves understood. Sufficient resources should be in place to ensure that people with learning disabilities are able to access and report crimes to the police. We also feel that it is important to ensure that the Appropriate Adults scheme is used where appropriate to facilitate communication.<sup>30</sup>

**Recommendation 5: All agencies should ensure that information and advice about their service is easily available and accessible in different formats to cover the different needs of victims, particularly those with learning disabilities.**

- 6.5 **We encourage the Police and Crown Office to continue to look for innovative ways of prosecuting when it is not possible to use the standard means of identification. For example, in a crime against a visually impaired person, voice identification could be used.**
- 6.6 We understand that it is currently good practice for Police Forces to consider the nomination of local Police Liaison Officers with certain groups, for example, Lothian & Borders Police and Fife Constabulary have liaison officers for the LGBT community. We believe this should be done by every police force in Scotland. The liaison officer should act as a focus point for the relevant police force's strategy for dealing with hate crime. In addition, we would like to encourage a more proactive approach by beat officers, who are able to identify groups or individuals within their community who are most at risk from hate crime and in particular to monitor ongoing harassment.

**Recommendation 6: Police forces should identify a liaison officer to take a strategic overview of ongoing harassment against particular people and groups in the community.**

- 6.7 We are concerned that victims of hate crimes can be discouraged from reporting or following through hate crime incidents if they face real or perceived discrimination on the part of staff of the criminal justice agencies.
- 6.8 **To help overcome this we would suggest that Scotland-wide, police forces, COPFS and the Scottish Court Service should record the number of complaints made against staff on the grounds of prejudice or discrimination towards individuals.**
- 6.9 We believe that VIA is a useful information point for victims and would encourage an increased profile. At present VIA support is automatically offered to victims from ethnic minority groups and victims of homophobic crimes. Victims of other hate crimes are offered the services if they are considered to be vulnerable. We feel that all victims of hate crime are vulnerable and therefore that they should automatically be offered VIA support.

<sup>30</sup> In June 1998 a Code of Practice was issued by the Scottish Office, intended to promote the development of "appropriate adult" schemes. An appropriate adult is an independent person who is present during a police interview to support and assist a mentally disordered person during the interview (and in some cases afterwards). They are not intended to represent the person in the way that a defence lawyer would do, but to help to make sure that, so far as possible, the person understands the questions the police may ask, and is able to respond. For more information, see: <http://www.scotland.gov.uk/library/documents5/aas-01.htm>

**Recommendation 7: The profile of VIA (Victim Information and Advice) should be raised and all victims of hate crime should automatically be offered VIA support.**

- 6.10** The Vulnerable Witnesses (Scotland) Act 2004 includes discretionary entitlements to special measures for vulnerable witnesses. **The Crown Office, Law Society of Scotland and Faculty of Advocates should support the use of these measures in the appropriate circumstances and Sheriffs and Judges likewise should make full use of these entitlements where appropriate. In addition, the Scottish Court Service should continue to liaise with the Witness Service in order to identify vulnerable hate crime witnesses and provide them with the necessary support.**
- 6.11** Some victims of hate crime may be discouraged from attending court because details of the court case may appear in the press, including the name of the victim. If the victim of a homophobic crime is not public about their sexual orientation, for example, they run the risk of being “outed” inadvertently. In order to encourage LGBT hate crime victims and others, such as people with mental health problems, to attend court when necessary, we recommend that consideration be given to the introduction of procedures whereby the victim’s identity can be protected if they wish.

**Recommendation 8: The Scottish Executive should consider the feasibility of legislation or other means to ensure that any victim who appears in court and wishes to have their privacy protected from the press and public (such as a member of the LGBT community or someone with a mental health problem) can do so if they wish.**

- 6.12** The consultation responses picked up on two other issues, not related to the police, Crown Office or Scottish Court Service, but which we thought were particularly note-worthy.
- 6.13** As discussed above, we believe that hate crimes can cause more psychological damage to a victim than crimes that are not motivated by hatred, because the victim’s core identity is being attacked. We therefore feel that it is important to reflect that impact at any trial and consequently would encourage the use of victim statements for victims of hate crime.

**Recommendation 9: Once the current trial of victim statements is completed, and depending upon its success, the Scottish Executive should extend the use of such statements to victims of hate crime.**

- 6.14** Finally, we feel strongly that the use of a statutory aggravation should not simplistically lead to longer prison sentences. Given the high level of the prison population and the nature of the crime, we feel that a longer sentence would not necessarily reduce the likelihood of re-offending. Alternative disposals such as community service with the social group who were the victims of the crime (although this will need to be approached with care and in consultation with community organisations), anger management or location restrictions (e.g. from gay venues)<sup>31</sup> should be considered in the first instance for someone convicted of a hate crime rather than a longer prison sentence or higher fine. Disposals designed to address behaviour should contribute towards the longer-term goal of eradicating prejudicial views in society.

<sup>31</sup> There is no precedent of this being done in criminal cases (and there may be difficulties involved in implementing a location restriction through the criminal court) but location restrictions are currently applied through civil proceedings, often related to anti-social behaviour orders

**Recommendation 10: Sentencers should make greater use of alternative disposals for people convicted of hate crimes. The Scottish Executive should consider research to identify which alternative disposals are successful.**

## 7. AREAS OUTSIDE CRIMINAL JUSTICE SYSTEM

### Summary of consultation responses

Most consultation responses recognised the good work being done outside the criminal justice system and generally advocated “more of the same” particularly in relation to community wardens, Anti-social behaviour orders and community safety partnerships, all of which have a positive impact in terms of reducing hate crime. From the other responses, we make a number of other recommendations.

- 7.1** We believe that it is important to tackle prejudice at an early age before it becomes too entrenched. We note with concern that a number of the respondents to the “EasyRead” consultation paper and the Capability Scotland/Disability Rights Commission research had suffered from name-calling or harassment perpetrated by young people.

**Recommendation 11:** The Scottish Executive should consider introducing a citizenship programme for schools which can incorporate work on combating prejudice at a young age.

- 7.2** A number of the respondents to the main consultation paper praised the Scottish Executive attitudinal campaigns. We agree and think it would be beneficial to conduct similar campaigns about prejudice against the disabled and LGBT communities.

**Recommendation 12:** The Scottish Executive should implement attitudinal campaigns against prejudice using learning from the One Scotland Many Cultures and “See Me...” campaigns, focusing on the LGBT community and disabled people.

- 7.3** Negative reporting is very effective at entrenching society’s prejudices. It is important that the media leads from the front in combating prejudice.

**Recommendation 13:** The Scottish Executive should convene a meeting with the major media organisations in Scotland to highlight the damage of negative media reporting in relation to disabled people and to the LGBT community, and encourage more responsible images and reporting.

- 7.4** Making hate crime a priority in Community Safety Partnerships should encourage Local Authorities to make a conscious decision regarding preventative measures to tackle hate crime.

**Recommendation 14:** The Scottish Executive should identify hate crime as one of the priorities to be addressed by Community Safety Partnerships. Community Safety Partnerships should ensure that their action plans and consultation mechanisms address the needs and seek the views of communities which have been or may be particularly affected by such crimes.



## ANNEX A: BIBLIOGRAPHY

### General

- “Diversity Strategy” by ACPOS (2004)
- “The Hate Debate: should hate be punished as a crime?”, edited by Paul Iganski (2002)
- “Violence in Scotland: Findings from the 2000 Scottish Crime Survey”, by Scottish Executive Central Research Unit (2002)
- “Stalking and Harassment in Scotland” by Sue Morris, Simon Anderson and Lorraine Murray (2002)
- “The Association of Chief Police Officers (ACPO) Guide to Identifying and Combating Hate Crime” (Hate Crime Manual) by ACPO (2000)
- “A Policymaker’s Guide to Hate Crimes” by the Bureau of Justice Assistance, US Department of Justice (1999)
- “Hate Crimes: Criminal Law and Identity Politics” by James B. Jacobs and Kimberly Potter (1998)

### Disabled People

- “Hate Crime Against Disabled People in Scotland: A Survey Report” by Disability Rights Commission and Capability Scotland (2004)
- “Opening the Gateways” by Values Into Action (VIA) (2002)
- “Scottish Disability Awareness Survey” by Disability Rights Commission (2002)
- “Give us a break”: exploring harassment of people with mental health problems, National Schizophrenia Fellowship (NSF) Scotland research (2001)
- “Living in Fear” by Mencap (1999)

## Gypsy/Travellers

- “Moving On : A Survey of Travellers’ Views” by Delia Lomax, Sharon Lancaster and Patrick Gray, on behalf of the Scottish Executive and Scottish Homes (2000)

## LGBT People

- “First Out...Findings of the Beyond Barriers survey of lesbian, gay, bisexual and transgender people in Scotland” by Beyond Barriers (2003)
- “An Acceptable Prejudice? Homophobic Violence and Harassment in Northern Ireland” by Neil Jarman and Alex Tennant, Institute for Conflict Research (2003)
- “The Experience of Violence and Harassment of Gay Men in the City of Edinburgh” by Colin Morrison and Andrew Mackay, the TASC Agency (1999)
- “Queer Bashing” by Stonewall (1996)

## Racist Offences

- “Dealing with Racist Victimization: Racially aggravated offences in Scotland” by Sue Moody and Ian Clark (2004)
- “Racist Crime and Victimization in Scotland” by Sue Moody and Ian Clark, University of Dundee (2002)
- “Racist Offences – how is the law working?” by Elizabeth Burney and Gerry Rose (2002)

## Women

- “Women, Violence and Social Change” by R. Emerson Dobash and P. Russell Dobash (1992)
- “Violence Against Wives: A Case against the Patriarchy” by R. Emerson Dobash and P. Russell Dobash (1979)



## ANNEX B: LIST OF RESPONDENTS<sup>32</sup>

- Aberdeen City Council
- Aberdeen Community Safety Partnership
- Amina (Muslim Women's Resource Centre)
- Anarchy in the UK
- Argyll & Bute Council
- Association of Chief Police Officers Scotland
- Association of Scottish Police Superintendents
- Baptist Union of Scotland
- Beyond Barriers
- Capability Scotland
- Care for Scotland
- City of Edinburgh Council
- Colin Morrison
- Disability Rights Commission
- Duncan Hothersall
- Dundee City Council
- East Ayrshire Council
- Edinburgh Association of Women Graduates
- Edinburgh Youth Social Inclusion Partnership
- Educational Institute of Scotland
- Elinor Kelly

---

<sup>32</sup> This list only includes the names of the individuals or organisations who were willing for their names to be made public and excludes those who wished to remain anonymous.

- Enable
- Engender
- Equal Opportunities Commission
- Evangelical Alliance Scotland
- Faculty of Advocates
- Fife Council
- Fiona Cooper
- General Assembly of the Church of Scotland
- Glasgow City Council
- Glasgow LGBT Centre
- Glasgow LGBT Community Safety Forum
- Glasgow University LGBT Student's Association
- Glasgow Women's Aid
- Grangemouth Quality Action Group
- Highland Council
- Humanist Society of Scotland
- Keith Mothersson
- Leonard Cheshire Scotland
- LGBT Health Scotland
- LGBT Youth Scotland
- Maurice Frank
- Mushtaq Khan
- National Autistic Society Scotland
- Outright Scotland
- Perth & Kinross Council

- Phace Scotland
- Renfrewshire Council (Housing and property)
- Renfrewshire Council (Social work)
- RNID Scotland
- Royal College of Nursing Scotland
- Royal National Institute for the Blind (RNIB)
- Scottish Association for Mental Health
- Scottish Borders Elder Voice
- Scottish Civic Forum
- Scottish Council of Jewish Communities
- Scottish Council on Deafness
- Scottish Green Party
- Scottish Human Rights Centre
- Scottish Liberal Democrats
- Scottish Police Federation
- Scottish Women's Aid
- Scottish Women's Convention
- Sense Scotland
- South Ayrshire Council
- Stonewall Scotland
- The Christian Institute
- The Sheriffs' Association
- Tom Sinclair
- UK Men's Movement
- UNISON Scotland

- Values Into Action Scotland
- Victim Support Scotland
- Waverley Care
- West Dunbartonshire Council
- West Lothian Council
- West of Scotland Seniors Forum
- Wester Hailes Multicultural Welfare Project

© Crown copyright 2004

This document is also available on the Scottish Executive website:  
[www.scotland.gov.uk](http://www.scotland.gov.uk)

Astron B37519 9/04

Further copies are available from  
Blackwell's Bookshop  
53 South Bridge  
Edinburgh  
EH1 1YS

Telephone orders and enquiries  
0131 622 8283 or 0131 622 8258

Fax orders  
0131 557 8149

Email orders  
[business.edinburgh@blackwell.co.uk](mailto:business.edinburgh@blackwell.co.uk)

