



Independent Review of Hate Crime Legislation in Scotland

[About the STUC](#)

The STUC is Scotland's trade union centre. Its purpose is to co-ordinate, develop and articulate the views and policies of the trade union movement in Scotland; reflecting the aspirations of trade unionists as workers and citizens.

The STUC represents over 560,000 working people and their families throughout Scotland. It speaks for trade union members in and out of work, in the community and in the workplace. Our affiliated organisations have interests in all sectors of the economy and our representative structures are constructed to take account of the specific views of women members, young members, Black members, LGBT+ members, and members with a disability, as well as retired and unemployed workers

Independent Review of Hate Crime Legislation in Scotland STUC Consultation Response

Across the STUC's equality structures trade union members have raised concerns about hate crime and highlighted examples of how hate crime has affected them in their lives and at work. It is clear from these discussions and debates that hate crime is a workplace issue.

In order to inform this response, the STUC has conducted a modest online survey on people's experiences of hate crime in the workplace.¹

Definition

Nearly 25% of those we surveyed said they had personally experienced a hate crime at work. A further 10% said they were 'not sure' if they had experienced a hate crime. This suggests that people are not clear on what currently constitutes a hate crime.

The STUC believes there should be a definition of hate crime which highlights that the perpetrator's hostility towards the victim is motivated by a particular feature of the victim, and that a victim centred approach to interpretation of hate crime should be used.

Through our survey and previous work on discrimination, prejudice, and hate crime, it is clear that trade unionists are keen to see other characteristics of a person's identity included in the definition of hate crime, particularly refugee status and gender.

In particular, the inclusion of 'gender' would fit well with the Abusive Behaviour and Sexual Harm (Scotland) Act 2016 and recent campaigns highlighting domestic abuse.

The STUC would welcome a focus on how hate crime legislation addresses systemic oppression and existing and evolving power dynamics in society related to protected characteristics.

Codification

Through the responses we received from our survey, the key issue seems to be lack of education, awareness and clarity over hate crime. As such, we believe that it would be beneficial to define and codify hate

¹ <https://www.surveymonkey.co.uk/r/STUChatecrime>

crime in to a single piece of legislation. The terminology used to define hate crime should be as clear as possible in order that people can easily understand the letter and spirit of the law. As hate crime can often be perpetrated in workplaces, the legislation must be easy to interpret by those dealing with any complaints or grievances about incidents which could be classed as hate crimes in order that this can be appropriately investigated.

An indictment of hate crime can be in conjunction with another crime, for example assault or incitement of public disorder. As such, the STUC believes that it would be clearer and make legislation more accessible for users if a current crime, for example assault, was classed as aggravated if there was also a hate crime element, and/or if a person was charged with a hate crime which demonstrated hostility towards more than one particular feature of the victim.

Freedom of speech

The STUC believes that hate crime legislation should extend to stirring up hatred against a group of people. The STUC has been at the forefront of anti-racism work in Scotland for a number of years, including the Justice for Chhokar campaign and organising the annual St Andrew's day demonstration for over 25 years in response to far-right attempts to claim St Andrew's Day as a vehicle for promotion of race hate.

The Article 10 Convention right to freedom of expression is already limited by duties and responsibilities. The freedom of speech goes in tandem with responsibility for this freedom. Such restrictions on this freedom already include those which are necessary in a democratic society, for the prevention of disorder or crime, for the protection of health or morals, and for the protection of the rights of others. The Human Rights Act is always read in conjunction with other laws and vice versa. The STUC believes that for any person or group who stir up hatred against another person, as defined by legislation, then that person or group cannot demonstrate that they have abided by their responsibilities and duties when exercising their right to freedom of speech and therefore the freedom is restricted.

Online

Whilst the current legislative framework is likely to be sufficient from a judicial perspective to prosecute online perpetrators of hate crime, the

problem is that online abuse and harassment is not taken as seriously as if it were perpetrated in person. Any guidance, messaging, and campaigning work around new hate crime legislation should make it absolutely clear that hate crime is still a crime if it happens online, and that action will still be taken.

Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012

The STUC believes that repealing the 2012 Act would not leave a gap in current Scottish criminal law. “Sectarian singing and speech, the waving of banners and making gestures of a sectarian nature” is far too wide a definition to legislate against. “Sectarianism” ranges from religious sectarianism, to sectarianism between political factions, to sectarianism between local towns. A person from Town A can be sectarian, i.e. bigoted, towards a person from Town B, without doing so in a way which is discriminatory in terms of the Equality Act 2010, nor falls within the current or proposed definitions of hate crime, nor breaches any other law. To legislate against ‘sectarianism’ in such a broad sense, and without restricting it to, for example, conduct which would be classified as a religious hate crime, is a restriction on freedom of speech.

Furthermore, the STUC believes that it is divisive to legislate against behaviour at football matches only. Any person who commits a hate crime or any other crime should be subject to the relevant law, whether they are attending a football match or not. In particular, the STUC believes that any person who normally resides in Scotland but who commits a crime abroad, whether they are at a football match or not, should be prosecuted by the appropriate criminal law.

The STUC notes with some concern the very wide and open questions relating to the 2012 Act as part of the consultation on hate crime.

Reporting and Enforcement

The STUC believes that third party reporting centres are a very useful way to encourage people to report hate crimes in a non-threatening environment. Our survey found that over 70% of people would feel comfortable reporting a hate crime to police if it happened outside of work. However, that figure fell to 55% if the hate crime happened within work.

As such there is a clear need for better reporting mechanisms within work. Although trade unions are not third party reporting centres, it is important to highlight to people that trade union representatives are very useful resources in terms of getting advice and support on hate crime.

The STUC suggests that reporting will also increase when more enforcement action is taken. 35% of our survey respondents said that no action was taken following an incident of hate crime at their work. A further 35% said they were 'not sure' what the outcome was. Without enforcement action being taken, and being seen to be taken, people will not feel confident that reporting hate crime will be taken seriously. Furthermore, respondents said that the police were involved in less than 2% of cases. If hate crime is to be taken seriously, then it needs to be treated like any other crime.

Whilst many workplaces do have equality and diversity policies and anti-bullying and harassment policies, not all of these cover hate crimes specifically. Furthermore, it seems that not every workplace provides training for staff and managers on these policies i.e. how to use them, what behaviour they are targeting, and what are the criminal/internal sanctions for the behaviour. Without training, these policies are difficult to implement.

As such, the STUC fully believes that people require education and understanding around the issues in order for culture to change, rather than simply criminalising people. Examples of peer to peer training on 'unconscious bias' coupled with a 'no bystander' policy would, we submit, see a positive shift in attitudes which legislation alone would not be able to tackle.

Conclusion

The STUC welcomes this consultation and the increased focus on ensuring Scotland is an inclusive place for all. The STUC would welcome workable legislation on hate crime which is easy to interpret and is enforceable. Trade unions across Scotland will continue to highlight examples of hate crime, train trade union representatives to provide guidance and support on this issue, and encourage the implementation of workplace training and policies on hate crime.