

PARLIAMENTARY BRIEFING: ANALYSIS OF THE FINAL REPORT BY THE INDEPENDENT REVIEW OF HATE CRIME LEGISLATION IN SCOTLAND

The question of how to tackle misogynistic online abuse, sexual harassment in public spaces, and incitement to misogyny is one being raised worldwide. Women and girls face epidemic levels of misogynistic hate in schools, in the workplace, on city streets, and online. In response to the recommendations in the final report by Lord Bracadale's Independent Review, we continue to call for a standalone misogynistic hate crime in Scotland as a way of disrupting this epidemic.

1. THE PROBLEM: WOMEN AND HARASSMENT IN SCOTLAND

Harassment permeates almost every aspect of women's lives, constraining our freedoms and changing the way that we think about ourselves and relate to the world:

- In the UK, 52% of women have experienced sexual harassment, with one quarter experiencing unwanted touching, and one fifth unwanted sexual advances.¹
- 29% of girls aged 16 to 18 experienced unwanted sexual touching at school.² A fifth of girls experience unwanted touching or unwanted sexual attention at school.³
- More than one in ten girls (11%) experiences street harassment before the age of ten.⁴
- Three quarters (71%) of British women have done something to guard themselves against the threat of harassment. This figure rises to nearly 9 in 10 (88%) for younger British women aged 18-24.⁵
- An international survey commissioned by Amnesty International in 2017 found that nearly a quarter (23%) of women aged between 18 and 55 in Denmark, Italy, New Zealand, Poland, Spain, Sweden, the UK and USA has experienced online abuse and harassment. Of these, 41% felt that their physical safety was threatened.⁶

Women cannot live a good life while harassment rooted in sexism and misogyny is allowed to impact our daily reality.

¹ TUC. (2016). *Still just a bit of banter? Sexual harassment in the workplace in 2016*.

² End Violence Against Women Coalition. (2010). *2010 poll on sexual harassment in schools*.

³ Action Aid. (2016). *Nearly three in four women were harassed in past month*.

⁴ *Ibid.*

⁵ *Ibid.*

⁶ Amnesty International. (2017). *Amnesty reveals alarming impact of online abuse against women*.

2. RISKS OF PURSUING THE INDEPENDENT REVIEW RECOMMENDATIONS

2.1. *Hate crime definition misses key feature*

The definition of hate crime in Lord Bracadale's recommendations misses a key feature found in other definitions: it perpetuates existing hierarchies.⁷ Hate crime communicates, using sexist and sexualised language, unwanted touching, defamation and disruption to women's professional lives and girls' education, and sexually objectifying concepts and materials. It sends the message that women and girls do not have equal access and rights to safety, public space, and physical autonomy.

To effectively respond to the epidemic levels of misogynistic hate in Scotland, it is imperative that we begin with a definition of hate crime that captures the gender dimension. **Absent the understanding and acknowledgment that hate crime, like other forms of violence against women, is both a cause and consequence of women's inequality, we believe that any initiative is destined to fail.** It is therefore essential that Scotland's definition of hate crime capture this dynamic.

2.2. *Gender aggravation: A tried and failed model*

The final report by the Independent Review calls for a new statutory aggravation based on gender hostility:

Recommendation 9

There should be a new statutory aggravation based on gender hostility.

Where an offence is committed, and it is proved that the offence was motivated by hostility based on gender, or the offender demonstrates hostility towards the victim based on gender during, or immediately before or after, the commission of the offence, it will be recorded as aggravated by gender hostility. The court would be required to state that fact on conviction and take it into account when sentencing.

The international experience of adding gender to a list of groups protected by hate crime legislation has not been encouraging. A handful of states have replicated the proposed approach in Lord Bracadale's report⁸, but in none of these jurisdictions is there evidence of a significant number of prosecutions. In other words, it is questionable that a replication in Scotland of an existing model of hate crime legislation will be effective.

In New Jersey, gender has been part of the state's bias crime statute for over 10 years. However, the impact has been negligible. Criminal justice actors (e.g., investigators, prosecutors) are not certain how the law applies in practice and are therefore reluctant to apply it.⁹ Further, between 1999 and 2008, only four gender-based incidents were recorded,

⁷ Perry, B. (2001). *In the Name of hate: Understanding Hate Crimes*.

⁸ Chalmers, J. & Leverick, F. (2017). *A comparative analysis of hate crime legislation: A report to the Hate Crime Legislation Review*.

⁹ Hodge, J. (2011) *Gendered Hate: Exploring Gender In Hate Crime Law*. Northeastern University Press: Boston

compared to 3,521 race-bias incidents, 2,589 religious-bias incidents, 579 motivated by sexual orientation bias, and 25 disability-bias incidents.¹⁰

International evidence suggests that the approach proposed in Lord Bracadale’s report may result in hate crime remaining under-investigated and under-prosecuted, meaning it would act as a negatively symbolic law. It would signal that misogyny is less harmful and less proscribed than other forms of hate crime.

2.3. One hate crime law risks making gender invisible

We do not support the recommendation to include all provisions relating to hate crime and hate speech into one piece of legislation. Our position is based on the experience of witnessing, first-hand, the negative outcome of the decision to replace the predecessor public duties on race equality, disability equality, and gender equality with a single public sector equality duty (PSED). The merger of these duties in one overarching duty has resulted in a reduced focus on the specific needs of specific protected groups.¹¹

A coalition of equalities organisations in Scotland, of which we were part, noted that the response from public authorities to PSED has been to essentially “treat protected characteristics in an undifferentiated way, glossing over or ignoring the specific disadvantage and discrimination faced by specific groups of people”.¹² While PSED had the laudable aim of consistency, it has had the unintended consequence of undermining the very purpose of the law. **Our concern with the recommendation in Lord Bracadale’s report is that amalgamating hate crime law into one piece of legislation will result in a lack of focus on the specific groups the law intended to protect.**

3. OUR RECOMMENDATION: A STANDALONE HATE CRIME OF MISOGYNY

It is vital that hate crime legislation be shaped to maximise its effectiveness and its capacity to act for individual women and girls. **To achieve this aim, we recommend developing a piece of legislation to tackle misogynistic hate crime.** There are a number of features that we would propose for a law criminalising misogynistic hate crime, which include a gendered definition of hate crime as well as locating misogynistic hate crime and harassment within the understanding of violence against women in *Equally Safe*.

Scotland has rightly been lauded for the boldness and ambition of its violence against women strategy, *Equally Safe*, and received international commendation for the Domestic Abuse Act, the framing of which drew on the expertise of an international community of gender and law advocates. The same innovation must be applied to tackling misogynistic hate crime.

¹⁰ *Ibid.*

¹¹ Engender. (2017). *The socio-economic duty: a consultation – Equality Sector Response*.

¹² *Ibid.*

FOR FURTHER INFORMATION

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ABOUT ENGENDER

Engender has a vision for a Scotland in which women and men have equal opportunities in life, equal access to resources and power, and are equally safe and secure from harm. We are a feminist organisation that has worked in Scotland for 20 years to advance equality between women and men.