

To: SOCIAL WORK (OPERATIONS AND SERVICES) SUB COMMITTEE		Subject: CONSULTATION PAPER ON HATE CRIME
From: DIRECTOR OF SOCIAL WORK		
Date: 4 MAY 2004	Ref: JD/GN	

## 1. PURPOSE OF REPORT / INTRODUCTION

- 1.1. The purpose of this report is to seek homologation of a response to the consultation document on "Hate Crime" produced by the Scottish Executive. A copy of the draft response is attached as an appendix to this report.
- 1.2. Responses are requested by 30 April 2004.

## 2. BACKGROUND

- 2.1. The Scottish Executive has issued a consultation paper on "Hate Crime". The consultation paper examines the options for legal measures to address offences which are motivated by prejudice towards specific groups.
- 2.2. The consultation paper has been developed by a working group convened by the Scottish Executive, consisting of bodies and representatives of equality groups and representatives of law enforcement agencies.
- 2.3. The Working Group is seeking comments prior to the submission of a report to the Scottish Executive to consider whether further action is required.
- 2.4. The deadline for submission of comments is 30 April 2004.

## 3. PROPOSALS/CONSIDERATIONS

- 3.1. The Scottish Executive has made a commitment to a just and tolerant Scotland and is determined that discrimination and prejudice will have no part in Scottish Society. The Executive is considering the best way to tackle criminal acts motivated by prejudice. The Public Order Act 1986 and the Crime and Disorder Act 1998 contain sections which set out combat racism Section 74 of the Criminal Justice (Scotland) Act 2003 stipulates that a crime or offence can be aggravated by sectarianism. The Scottish Executive is seeking views on the desirability of extending legislation to include other disadvantaged groups.

3.2 The consultation paper proposes three main legislative options

- a) develop specific legislation
- b) consider making acts of hate crime or prejudice an aggravation of an offence or crime, rather than being a specific crime or offence.
- c) take no action on the basis that the common law is sufficiently strong and flexible to cope with changing circumstances.

3.3 The consultation paper also recommends specified groups to be included should new legislation be introduced. The groups are:

- ethnic minorities
- religious groups
- gay, lesbian, bisexual and transgender individuals
- people with disability.

The consultation invites further suggestions for inclusion in addition to comments on the appropriateness of the above groups.

#### **4. PERSONNEL AND FINANCIAL IMPLICATION FOR COUNCIL POLICY**

4.1 The Paper is a consultative document and as such there are no personnel or financial implications for the Council at this time.

4.2 Should there be future legislation which would have an impact on Council service provision, a further report will be submitted.

#### **5. RECOMMENDATION**

5.1 The Committee is asked to

- (i) note the Consultation Paper and
- (ii) agree to homologate the attached response being forwarded to the Scottish Executive
- (iii) otherwise note the contents



**Jim Dickie**  
**Director of Social Work**

*(A copy of the Consultation Documentation has been placed in the Members' Library)*

Further information can be obtained from Robert Walls, Senior Social Worker, Justice Throughcare  
Tel (01698 332755)

# Consultation Paper on “Hate Crimes”

## Comments

**Q 1 Do you think it is appropriate to use some kind of specific legislation to address hate crime?**

**A 1**

Yes

As the consultation paper points out, the Scottish Executive has made a commitment to a just and tolerant Scotland in which diversity is welcomed and every individual is entitled to be treated with respect. It, therefore, directly follows that discrimination and prejudice are unacceptable acts.

The promotion of equal opportunities is one of the four founding principles of the Scottish Parliament and hate crimes - those committed out of prejudice, malice or ill-will towards a targeted social group - strike at the very heart of that principle. It is vital not only that the problem is tackled at its root but also that the symptoms of that problem are tackled openly and diligently so that targeted groups feel more included.

Legislation has the benefit of being a visible method of tackling the problem, visible to victims, perpetrators and the public in general. To do nothing gives the wrong message to targeted groups and may even serve to increase their vulnerability, as perpetrators may perceive inaction as indifference to their victims.

In addition the use of legislation can highlight an issue and can reinforce society's values.

**Q 2 If you think specific legislation should be used to address hate crime, what form do you think it should take? Why?**

**A 2**

It is noted that the Public Order Act 1986 created a new offence of inciting racial hatred and the Crime and Disorder Act 1998 created an offence of racially aggravated harassment. It is noted that the creation of a new statutory offence requires both the harassment and the aggravation to be proved and corroborated in Court before a conviction can be established, otherwise the accused must be acquitted. This places a serious burden of proof on the Crown and it is feared that many hate crimes might fall by the wayside were such an avenue to be followed

More appropriate would be the process of stipulating that malice or prejudice towards a specific group had aggravated an offence or crime. Section 96 of the Crime and Disorder Act 1998 allows for the provision of racial aggravation of any criminal offence and it is felt that this could be seen as a model for hate crimes. The current aggravation of a crime motivated by, or accompanied by, an expression of malice or ill-will on the grounds of race could be extended to include other groups. Indeed Section 74 of the Criminal Justice (Scotland) Act 2003 contains just such a provision in respect of religious hatred.

The advantage of such a course of action is that the aggravation is stated as part of the Complaint or Indictment and must be proved separately but corroboration is not required to establish the aggravation and if the aggravation is not established, the substantive complaint can still be upheld on its own. Again if the aggravation is proved, the Court must take it into account on sentencing and outline that part of the sentence which relates to the aggravation. This serves to highlight to the perpetrator the importance placed on the aggravation by the Court and reinforces society's disapproval, and also serves to support the victim, in particular, and those groups targeted by hate crimes in general, and to reinforce to them the desire fully to include them in society.

It is also felt that the use of legislation in this way can be flexible to the changing needs of society and need not be restrictive in ways that the creation of a specific statutory offence might be. Moreover, while there is a view that the common law is flexible enough to deal with hate crimes without further legislation, the suggested course of action is pro-active and designed to demonstrate to victims that their concerns are being listened to and acted upon.

**Q.3 Are there specific groups (including the ones mentioned in the paper or other ones) that you think ought to receive special protection through legislation against hate crime? If so, which ones?  
Do you think different groups ought to be covered by different types of legislation?**

**A 3**

There would appear to be 3 groups which are particularly targeted by hate crimes. These are ethnic minorities, religious groups and Lesbian, Gay, Bisexual and Transgender people. Attempts appear to have been made to deal with discrimination against the first 2 groups and it would therefore be appropriate to include the third group as victims of hate crime. The consultation paper discusses the inclusion of the disabled as a 4<sup>th</sup> group and this would also appear appropriate. The inclusion of other groups is also canvassed.

Perhaps the highest profile group at present is that of refugees and asylum seekers and their inclusion as an affected group seems appropriate.

**Q4 Do you think any of the following bodies could improve their service to particular social groups to help tackle hate crime? If so, how?**

**Police:**

**Crown Office and Procurator Fiscal Service:**

**Scottish Courts Service:**

**A 4**

**Police**

The Police have provision to allocate a Family Liaison Officer/Victim Liaison Officer when an incident is particularly sensitive. This initiative could be extended to include incidents of hate crime and be organised in such a way that specially trained officers are available within each Police Force division. Anti-discriminatory training could also be extended to challenge prejudice and enhance personal awareness of hate crimes' issues.

The Police could also be involved in partnerships with Local Authorities and support agencies for targeted groups.

**Crown Office/Procurator Fiscal Service (COPFS)**

With regard to the Crown Office and Procurator Fiscal Service, the Victim Information and Advice system is a positive initiative. The process of giving information to victims on the progress of a case, the Court process and the implications of the Court sentence is a positive contribution to the assistance of victims throughout Court proceedings, but there is a need for a more pro-active approach in forging links between victims and support agencies, like Victim Support. An element of counselling could be introduced into the service and staff recruited with specialist skills to undertake this type of work.

The Crown Office and Procurator Fiscal Service does have race resource teams in each Procurator Fiscal area and perhaps their work could be extended to establish Diversity Teams to include other types of hate crime and to provide liaison with Victim Information and Advice sections. Again the Crown Office and Procurator Fiscal Service's Race Equality Action Plan could be extended to cover other groups and to act as a link between the Crown Office and Procurator Fiscal Service and various interest groups to address the

issues and concerns raised by hate crimes. It is proposed that this Unit would be part of a network of local Units.

### **Scottish Court Service**

Within the Scottish Court Service, the Witness Support Scheme has been extended nation-wide and the Scheme has a key role in counselling and supporting vulnerable witnesses, including victims. This Scheme should have close links with the Crown Office and Procurator Fiscal Service Diversity Units to provide a co-ordinated service to vulnerable witnesses/victims and this would benefit greatly the victims of hate crime.

The Scottish Court Service has taken measures to protect vulnerable witnesses, particularly children, by making available the facility to give evidence from behind screens or via a live TV link. It is rarely the practice for requests for such facilities to be made for adult vulnerable witnesses.

It is understood that there are few requests made for a live TV link up for any vulnerable victims, child or adult. It is proposed that the Crown Office and Procurator Fiscal Service and the Scottish Court Service should give serious consideration to extending this facility to all vulnerable witnesses, making such requests in respect of victims of hate crimes as a matter of course, rather than as an exception to the normal procedure. This would be advantageous to vulnerable witnesses, as the facility need not be in the Court building, so that they do not have fear of being seen by the perpetrator when they attend Court to give evidence.

**Q.5 Could any of the measures set out in Chapter 4 be improved to help address hate crime? Are there 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?**

**A 5**

The work of Victim Support is acknowledged. The Service has a role to play in assisting victims to make Victim Impact statements and it would appear appropriate that victims of hate crime be allowed to access this facility which is currently being piloted. Assistance with Victim Impact statements is viewed as particularly important in hate crime cases and Victim Support is seen as having a key role in this area.

The preventive work undertaken by the Scottish Executive in campaigns such as “See Me” and in anti-racism campaigns is acknowledged and highlights the need to concentrated on anti-stigma issues. Similar campaigns for the groups targeted by hate crimes seem appropriate.

The Scottish Executive’s National Strategy to combat Domestic Abuse has led to the establishment of multi-agency domestic abuse partnerships within Local Authority areas. Similar partnerships could be established with agencies working with groups affected by hate crime and these could be linked to community partnerships with the aim of combating prejudice.

Education must be seen as a priority in combating prejudice and perhaps space could be made in the school curriculum, in modern studies classes, for example, for specific inputs to highlight the impact of hate crimes and to promote respect for all individuals irrespective of their social grouping. In addition, schools could develop their anti-bullying strategies to ensure that members of targeted groups are not victimised in their educational settings.