

## **Independent Review of Hate Crime Legislation in Scotland Consultation November 2017**

### **Introduction**

Amina MWRC aims to inspire Muslim women to fulfil their true potential and empower them to participate fully in all aspects of society, without fear of discrimination or inequality.

We are an award winning organisation, recognised by Minority Ethnic (ME) and Muslim communities within Scotland for its pioneering and responsive approach to addressing the issues and needs of Muslim and ME women; as well as a national hub for gaining access to, and consulting with, Muslim and ME women across Scotland.

Amina MWRC offers a range of tailored support services for Muslim and ME women including a national signposting and 'listening ear' helpline service, which alongside our 3 offices in Glasgow, Dundee, Edinburgh acts as a third party reporting site.

Over the last decade we have campaigned and raised awareness on key issues including hate crime, and established a successful school's work project which annually engages directly with over 2000 young people to tackle prejudice and hate crime.

Over the course of this year, more than 250 Muslim women, from diverse ethnicities and ages, participated in a series of Amina MWRC roadshows across Scotland to discuss hate crime, the impact of incidents/crimes and put forward recommendations for varied institutions and groups.

Founded on the principles of community development, our work is underpinned by community empowerment, participation and partnership working. Amina contributes towards creating a "fairer and safer Scotland for all" through engagement work with Muslim and ME women to ensure they contribute to national policies, and work with mainstream agencies, to develop their understanding of barriers preventing ME and Muslim women from accessing services and participating in society.

### **Consultation Response**

Amina welcomes the opportunity to respond to Lord Bracadale's independent review of hate crime legislation in Scotland. Through several focus groups with Muslim women in Glasgow, Edinburgh, Dundee [Focus group in Dundee was pushed back to Saturday 18<sup>th</sup> due to illness, responses will be included next week] due consideration was given to whether existing hate crime law represents the most effective approach for the justice system to deal with criminal conduct motivated by hatred, malice, ill-will, and whether the current protected characteristics should be expanded in order to be considered fully inclusive amongst other pressing questions around the effectiveness of existing legislation.

We spoke to [20 women + Dundee] across the 3 cities in which we have our offices. Across the 10 questions answered we drew out thematic links that the women involved felt are most relevant to the outcome of this review. All questions were read out along with the context provided within the consultation booklet to allow for a full response.

### **1. Do you think the meaning of hate crime needs to be better explained?**

Participants approached the question from various angles. From lexical, legal and support work perspectives, the meaning of hate crime seems to be somewhat elusive and needs to be broken down further to make our services more effective, in both a promotional and support capacity.

There was a general consensus that the line between hate speech or hate incidents and free speech is very fine and depends on the context in which something is said and the intention behind it.

Participants stated that in some cases what they would regard as a hate crime had been committed but the victims were unsure which had an impact on evidence gathering and reliance on perception and memory.

Another described the terminology as problematic.

*“Even discussing the term “prejudice” with people, you must explain it first which can be time consuming and difficult.”*

An argument could be made that without an appropriate level of understanding of associated terminology, “hate crime” means very little to some people; people whose ethnicity or language barrier may make them more likely to be on the receiving end.

Other participants focused more on needing to understand the relevance of having it as a separate crime. Some indicated that clearer guidelines are required to illustrate the limit of what comes under hate crime e.g. whether it’s verbal or physical and others what the benefits are to reporting a hate crime as a victim?

*“I think people do know that they’ve been targeted as a hate crime and what characteristic of theirs was emphasised most. What people may not know is why reporting something as a hate crime is different from reporting it as any other crime. Is it dealt with faster? Is it given priority? Is it dealt with in a different way? Are there people assigned to the task?”*

The impact and prevalence of hate crime has necessitated a move towards legislation and this review. In order to do more than just raise awareness of its impact on the population, it will be necessary to review how we are able to educate and inform people on the law and process. From the groups of women we have consulted it seems that this is not a straightforward task due to the lack of understanding around the meaning of hate crime.

### **2. Do you think we should have hate crime law in Scotland?**

Everyone broadly agreed that it was necessary to have a form of regulation and that it should be under law.

*“Having a law in place does send out a message of 0 tolerance.”*

*“Where people that I know have come forward because they recognise that they have become targets because of their race and they want to protect other people in the same*

*group. So, it's not just about them anymore, reporting it as a hate crime is so that the police know that their group is targeted, so that has been a big motivation for reporting the hate crime at all."*

However, there were different stances on how justice should be enacted under law and also the reasons for why legislation should exist.

The idea behind 0 tolerance is familiar to a lot of people through previous racism campaigns but there was a concern raised that the lack of clarity around the parameters around hate crime means that there is a chance that people could be left with a particularly damaging criminal record and this doesn't go towards improving attitudes in society in general.

*"The place of the added sentence is relevant but attitudes need to be changed in other ways to avoid hate incidents"*

The need for also changing attitudes from an institutional level was also expressed through this example:

*"Is it just going to be kept to the courts or is the idea of anti-hate crime actually going to be implemented in different institutions? For example, if an incident concerning domestic abuse or trauma like bereavement is noted in a school, the staff are all notified and the child will be treated with extra sensitivity. Is that procedure of regulating the impact of trauma on a child be done with regards to hate crimes? The lack of institutionalisation of hate crime means that, at the moment, it's still at the police's discretion whether a hate crime is present, to identify it and to deal with it, or not. Women we have spoken to have raised this issue, saying that if I say that a particular action is a hate crime and it's not okay it means nothing, whereas if the police say so and a conviction is made then it does; again, the power lies with the police.*

*However, if we can give some kind of authority to institutions to openly declare that an action is motivated by prejudice towards another person, like they can say "I have reason to believe this child is being sexually abused" it changes the level at which hate crime is dealt with and makes it more about ownership and how we understand everyday manners and culture."*

The examples shown show the complexity of the issue that we are faced with when combating hate crime. The need for a hard line and law enforcement and also then altering the medium of how we deal with instances of abuse to fit within institutional settings.

### **3. Are you clear about what the test of a hate crime is?**

As has been expressed before, participants' general consensus was "No" in answer to the question posed.

A few people referred to protected characteristics as a pertinent element of any interaction that could be considered as hate crime. Those who had commented on this aspect of law were already familiar with what protected characteristics are.

There was also an understanding that *"some form of abuse"* must have occurred although there was a need for clarification around what that abuse could be and how it would need to be explained with evidence.

### **4. Should there be a specific harassment offence for groups other than race?**

All groups gave this question some consideration and there was no clear cut answer. The prevalent response was encapsulated by “It’s hard to draw the line”. There was a general acknowledgement as to why racism had it’s own legislation as explained in the consultation booklet as “it was most common” and covers most other minorities. However, there was confusion as to how separate harassment offences for specific characteristics could work in the context of intersectionality.

*“It would be really difficult to do because people’s ignorance could mean that their statements could be racist terminology like “paki” but they’re linking it with ideas of being Muslim and they could be preying on someone who maybe has slurred speech because they’re disabled so what exactly would you prioritise above the other?”*

*“If some is religious orthodox Jew and targeted then that is a religiously aggravated attack. That’s not race though.”*

There were also responses concerning the specific harassment offences for women in particular.

“Is it possible to justify protecting women because it’s a common occurrence” or does that further gender division? An alternative was proposed where *“the way legislation is worded towards gender identity its quite clear... about how its presented, what one may expect.”*, in order to be able to go some way towards being able to establish an anti-gender motive.

Participants were aware of the need for protection of different groups of people and there was discussion relevant to those needs and how to address them. Nevertheless, it was a controversial question with no clear answer but more questions as to whether we would further confuse the process and create obstacles within the justice system.

## **5. Should there be offences that cover stirring up of hatred against groups other than race and religion?**

Perspectives on the question focused on the concept of defining “stirring up hatred” and on questioning the distinction between race/religion and the other characteristics.

On questioning the distinction we had opinions such as, *“There should be legislation against incitement to hatred in general”* but also the need to consider other visible or easily identifiable forms of the protected characteristics, such as physical disability:

*“Race or religion are groups that look a certain way so that doesn’t really include disability, it doesn’t include someone that looks physically disabled.”*

Also, that the less visible manifestations of disability are also causes for hate speech but remain unrecognised,

*“I guess mental health is one of the invisible ones but I definitely think even mental health, someone who is bi-polar or something... that they [perpetrators] are quite vocal about”*

In terms of targeting people who stir up hate speech, there was a discussion in one focus group around the concept of free speech vs hate speech -a recurring theme- but also how there is a line that we can draw.

*“whenever there’s anything about the Israeli/Palestinian conflict, loads of people give their opinions and that’s fine but then you get people on one side – Katie Hopkins just came to my head – saying something like “we need to stamp out the Palestinians like cockroaches” and*

*then you have people on the other side that are saying things like “Gas the Jews” so on either side you have clear hate speech (not constructive in any way and the wrong platform to express frustrations) which should be banned.”*

The different discussions create a dynamic conversation around the current effectiveness of how we curtail hate speech which can be addressed in a variety of ways which points to the need for a better analysis of what we are trying to achieve overall.

## **6. Does the current law deal effectively with online hate?**

All groups mentioned online platforms when discussing hate crimes. It seems to be widely recognised as a major new form of interaction and therefore a platform for hate speech to be enacted and abuse to take place.

The types of discussions around this question highlighted the disconnect between social norms that dis-incentivises abusive behaviour in person and the social norms online.

*“I don’t think people have the same reservations as they would saying something out loud than they do online. Or that they have the same perception of the thing as a hate crime”*

*“You can’t always control what people say, because they think it is a free space, for people to say what they say. They harass someone thinking there will not be any consequences.”*

There was also a range of examples of hate crime and the current police response leading to discussions around the ways in which we could distinguish free speech from hate crime and, using that definition, improve the speed with which internet hate crime is dealt with:

*“I was a victim of online hate crime/abuse on a page along with a lot of other girls. (Based on her personal life but the page was exclusively on the personal lives of Glasgow Muslim girls) A few of the girls went to the police but they were told that nothing could be done about it, just keep report the abuse to the social media platform. They were throwing up, fainting, having panic attacks. Apparently, tracking the IP address to see who’s really behind it costs a lot of money. They were making fun of a deaf girl, putting up nudes and for something that extreme the police were saying to just keep reporting abuse. The site was eventually shut down... I think they know that if enough people report abuse Instagram will take it down but even if it’s up for 24 hours everyone will have screenshots etc and the abuse can continue to manifest itself in different ways. There needs to be something done to get these types of profiles instantly removed especially if it’s to do with people’s families and reputations.”*

*Talk of a bomb scare post, “My daughter happened to see and told me. So, I said to her that is on line hate we need to report this. We have the evidence. We went to court etc. The process can be daunting but it needs to be reported. Unfortunately, he got community service, wee fine and an appeal. He never got a tougher punishment.”*

*“it’s way more difficult to judge motive through text but in some cases, especially with repetition it should be recognised as harassment and a case should be made to have their records looked at.”*

*“if it can be proven that it will manifest into a physical crime then needs to be dealt with” (in reference to EDL/SDL examples)*

It was primarily the process of sentencing and greater allowance for reasonable doubt over the internet that caused greatest concern as it showed a disconnect between real and virtual society which can only become more difficult to police.

**7. Should there be hate crime laws to cover:**

- Age
- Gender (in specific, women)
- Immigration status
- Welfare Status
- Membership of gypsy/traveller community
- Other groups (pedophiles/drug abusers)

**8. How can we encourage others to report hate crime?**

**9. Are 3<sup>rd</sup> party reporting centres a useful way to encourage people to report hate crimes?**

**Overall, yes. There is a basic belief in the work that organisations like Amina can do as third party reporting centres.**

*“They might be able to help people have a better experience and make them more confident report.*

*We can help people understand what they should be calling about and do community advocacy work”*

However, there was a general recognition that there needs to be more done to explain and promote third party reporting and remove any assumptions we make when marketing the service to the public.

Some of those assumptions include:

- The fact that such a service would exist
- an understanding of what the term “third party” means;
- that people recognise the link between 3<sup>rd</sup> party reporting as a concept and how specific organisations can offer the service;
- that people understand the difference between using a reporting centre versus going to the police

There were points made about how to remedy this situation such as a revival of hate crime campaigns and universal branding for hate crime reporting centres.

**10. Do you think programmes could be useful in dealing with hate crime?**

There was a conflict between the need for deterrent and the need to rehabilitate to change attitudes like the ideas expressing in the question around having hate crime law.

*“If you put people in prison they’ll likely hate you more”*

*“Education is the way to tackle these things”*

*“Although you do want people to have such a light sentence and remove the deterrent factor of criminality?”*

However, most participants concentrated on the value of giving people a second chance to grow. There was discussion amongst all groups of what this could include/look like:

*“Useful if the person can learn a new lesson from the experience rather than just stay the same person”*

*“It’s worth giving someone a chance to address their trauma or their prejudice and do it outside of their normal peer groups, without the pressures of their usual lives.”*

*“it may be worthwhile for them to visit synagogue or mosque and get involved in some work there and learn about each other. May change mind of someone who is discriminatory against them.”*

*“Rehabilitated criminals have a big impact on younger children when giving their stories and presented their change in perspective towards people they were unpleasant to previously.”*

*“A strong advocate for this. It’s powerful to hear from victims about the impact on them and maybe they could be part of the process.”*

The concept of designing the programmes was not confined to activities. There were several questions raised as to how these programmes would be filled and an urge to consider the impact of this process also:

Who goes in to these programmes?

Do people get chosen like in mentoring programmes in schools?

How do we deal with people who don’t want to consent?

What do we teach them and how?

Who would do it?

Ultimately, the principal behind rehabilitation/education programmes was widely appealing but there is more work to be done when considering how these could be formed and made most effective.

## **Conclusion**

Legislation cannot be the only solution, and we stress the importance of educational initiatives, interfaith activities and dialogue in demystifying ‘the other’; and enabling people to value the rich diversity of Scotland’s communities.

However, legislation can send a strong message of what will not be tolerated, as well as of course providing a practical remedy against criminal behaviour.

For further information please contact:

Mahrukh Adnan Shaukat

Campaign and Development Officer, Helpline Team

[mahrukh@mwrc.org.uk](mailto:mahrukh@mwrc.org.uk)

0141 212 8420

[www.mwrc.org.uk](http://www.mwrc.org.uk)