

Scottish Government submission of 17 October 2023

PE2047/A: Make malicious false allegations a hate crime

The petitioner calls for the Scottish Government to consider legislation to ensure malicious false allegations are considered as a hate crime. The subject of the petition is similar to PE01728 considered by the Public Petitions Committee in 2019.

I would advise the Scottish Government considers that falsely accusing someone of having committed a crime can have a serious impact on the victim of that allegation. It is important that people who knowingly make false allegations can be held to account. It is also important to recognise the negative impact that false allegations can have on the criminal justice system in terms of wasted time and resources.

It can be noted behaviour amounting to making false allegations can be dealt with under existing and long-standing common law, such as attempting to pervert the course of justice, wasting police time, and perjury.

In terms of whether falsely accusing someone of a crime should be treated as a hate crime, it is useful to set out the formal definition of a hate crime. In his [Independent Review of Hate Crime Legislation in Scotland](#) published in 2018, Lord Bracadale provided the following definition of a hate crime which the Scottish Government considers is appropriate:

“Offences “which adhere to the principle that crimes motivated by hatred or prejudice towards particular features of the victim’s identity should be treated differently from ‘ordinary’ crimes.”” (para 2.10)

Within the context of this definition of hate crime, the Scottish Government does not consider that malicious false allegations should in themselves be treated as a hate crime. As noted above, there are relevant offences that can be used to prosecute malicious false allegations. In the view of the Scottish Government, it is not clear on what basis a false allegation made against someone should be treated

as a hate crime when other offences, such as, for example, assault or threatening or abusive behaviour, committed in the same circumstances and with the same motivation, would not be.

Where the making of the false allegation is motivated relating to the characteristics provided for in hate crime legislation (e.g. religion, race etc.), it is important to note existing hate crime legislation can be used to add a statutory aggravation to general offences being prosecuted.

The determination as to what behaviour amounts to a crime in law and whether a statutory aggravation can be applied to a relevant offence is always a matter for the independent police, prosecutors and courts, having regard to the individual facts and circumstances of each case.

I hope this reply is helpful to the Committee's consideration of PE2047.

Justice Directorate