



ASSOCIATION OF SCOTTISH POLICE SUPERINTENDENTS

Representing the Operational Leaders of the Police Service of Scotland

20 March 2024

JusticeCommittee@parliament.scot

Ms Audrey Nicoll MSP
Convenor, Justice Committee

Dear Ms Nicoll,

HATE CRIME AND PUBLIC ORDER (SCOTLAND) ACT 2021:

Thank you for your letter of 15th March 2024, regarding the commencement of the Hate Crime and Public Order (Scotland) Act 2021.

The Association of Scottish Police Superintendents (ASPS) were consulted during the development of the legislation and wrote to then convenor of the Justice Committee on 20th July 2020. We raised a number of concerns and considerations at that time, including:

- Support for the consolidation and modernisation of legislation in this sphere but a lack of clarity as to why it was needed at that time. We asked if investment in educational initiatives might yield better preventative outcomes.
- We considered the example of the Offensive Behaviour at Football and Threatening Communications Act 2012, now repealed, as an area where lessons could be learned. The burden of public criticism fell heavily and unfairly on the police and there were inconsistent approaches by the judiciary at trials, both in outcomes and sentences.
- We raised concerns about unequal treatment of protected characteristics under the Act, and the potential for the creation of a hierarchy of victimhood and offences.
- We recommended the Act cover sectarian motivated hate offences.
- We expressed concerns about thresholds and evidence in terms of the new offence of “stirring up hatred”.
- We spoke about the critical importance of the role of the Lord Advocate and prosecution policy to clearly define thresholds for consideration of a prosecution.

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It is worth stating the ASPS recognises the detrimental impact that hate crimes can have in our society. In particular, the impact on marginalised groups can be disproportionately negative and deeply affect people's quality of life. It is in everyone's interest that a modern Scotland is a tolerant and inclusive place.

Notwithstanding that, it is clear however the standard of public discourse on many controversial topics has descended into deeply polarised, entrenched positions. This is particularly prevalent online, where proponents of opposing viewpoints often forego rational discussion and debate in favour of threats and name-calling.

We have a concern that individuals who could be described as the "activist fringe" of particular viewpoints (who exist across the political spectrum and are associated with many topics of debate) will seek to "weaponise" the new legislation and associated police investigation. While the legislation contains safeguards from prosecution associated with the free expression of speech (even speech that some may find offensive), in order to identify whether these apply, it is likely police officers will have to investigate the circumstances of any report.

Individuals who come into contact with the police in these circumstances (where their views expressed have been offensive to some but are nonetheless non-criminal) may feel aggrieved by this process and lose trust in the police. Further, the initial complaint may have been made in good faith, by someone who is genuinely offended but fails to understand the threshold for the criminal offence, having had high expectations of the new legislation. When they are told that the police will be taking no further action, they may feel aggrieved by this process and lose trust in the police. If they are a member of a minority or marginalised group, they may choose to interpret this lack of action as evidence of institutional bias in policing.

This process, of investigation to establish a crime, speaks to the concern expressed in the letter from Murray Blackburn McKenzie. It is not that a crime would be recorded on the basis of the perception of the victim (as this would require evidence to establish the offence), but that a non-crime hate incident would be recorded. Without visible leadership, clear operational guidance and an appropriate policy environment, there is a risk that police officers become subject of complaints for engaging with members of the public and potentially gathering details for actions they know to be non-criminal.

Managing the expectations of the public in respect of these offences is critical, particularly with the current levels of reporting and, at times, misinformation regarding the new act. Reports of police "targeting" artists such as comedians or theatre actors, post-implementation of the act, couldn't be further from the truth. It is highly likely that police action on this new legislation will be driven almost exclusively by reports from members of the public. Like everyone else, police officers observe the nature of current public debate and have no desire to unnecessarily embroil the Service in controversy. Thankfully, levels of hate crime remain low in Scotland and rarely do they involve a threat to life. Prioritisation of police resources will always favour those incidents that do threaten the immediate safety of the public, whether the circumstances amount to a hate crime or not.

The extent to which society will tolerate or expect the police being drawn into adjudicating ill-tempered, abusive spats online is a matter for wider debate. There is certainly enough anger and hateful bile online to occupy every police officer in

Scotland. ASPS view is that Police Scotland, currently with the lowest number of police officers in over a decade, must focus on those crimes and offences that cause the most harm and represent the highest risk to public safety. Should this new legislation result in a sustained increase in reported incidents, this will only be made harder, especially if those reports are spurious or misunderstand the extent of the legislation. As with all new legislation, the cumulative impact of public behaviour, police action, prosecutorial decisions, Lord Advocate's guidance, appeals and case law will dictate its success, evolution and the level of public support it receives.

Yours sincerely,

Rob Hay
Chief Superintendent
President