

Citizen Participation and Public Petitions Committee

17th Meeting, 2023 (Session 6), Wednesday
22 November 2023

PE2047: Make malicious false allegations a hate crime

Petitioner	Frances Anne Nixon
Petition summary	Calling on the Scottish Parliament to urge the Scottish Government to consider legislation to ensure that malicious false allegations are considered hate crimes and dealt with as such.
Webpage	https://petitions.parliament.scot/petitions/PE2047

Introduction

1. This is a new petition that was lodged on 19 September 2023.
2. A full summary of this petition and its aims can be found at **Annexe A**.
3. A SPICe briefing has been prepared to inform the Committee's consideration of the petition and can be found at **Annexe B**.
4. Every petition can collect signatures while it remains under consideration. At the time of writing, 86 signatures have been received on this petition.
5. The Committee seeks views from the Scottish Government on all new petitions before they are formally considered. A response has been received from the Scottish Government and is included at **Annexe C** of this paper.
6. A submission has been provided by the petitioner. This is included at **Annexe D**.

Action

The Committee is invited to consider what action it wishes to take on this petition.

Clerk to the Committee

Annexe A

PE2047: Make malicious false allegations a hate crime

Petitioner

Frances Anne Nixon

Date lodged

19 September 2023

Petition summary

Calling on the Scottish Parliament to urge the Scottish Government to consider legislation to ensure that malicious false allegations are considered hate crimes and dealt with as such.

Previous action

I have emailed MSPs Bill Kidd, Pam Duncan-Glancy, Sandesh Gulhane, Patrick Harvie, Pauline McNeill, Anas Sarwar, Paul Sweeney, Annie Wells and nine others.

I previously proposed a similar law for the UK Parliament, but Carol Monaghan MP suggested it was more apt for the Scottish Parliament.

I lodged a [similar petition](#) in 2019, which was considered by the previous Petitions Committee on 12 September 2019.

Background information

As a victim of malicious false allegations, I testify to their life changing, destructive power. Starting small they grew heinous, until finally I was arrested and a trial date set. Without an unexpected witness, I would be serving a sentence.

The ultimate tragedy: there was no rejoicing in my freedom. Years on I, and others, are still dealing with the consequences of malicious false allegations. The accusers were arrested for Perverting the Course of Justice, but as the Procurator Fiscal deemed it “not in the public interest” to go to trial they initially walked free but have since been found guilty. I fought successfully to retrieve my good name and my details were removed from Police Scotland’s database.

I now seek justice for all and respectfully ask Parliament to amend and update its laws, ensuring that it considers the suffering of victims.

Annexe B

SPICe

The Information Centre
An t-Ionad Fiosrachaidh

Briefing for the Citizen Participation and Public Petitions Committee on petition [PE2047](#): Make false allegations a hate crime, lodged by Frances Anne Nixon

Brief overview of issues raised by the petition

The [petition](#) calls for the Scottish Government to consider legislation to ensure that malicious false allegations are considered hate crimes and dealt with as such.

A [similar petition](#) was lodged by the petitioner in 2019, which was considered by the previous Public Petitions Committee on 12 September 2019.

Existing offences and legislation

False accusation

A false accusation of criminal behaviour may itself amount to a crime under the common law. Gordon's Criminal Law notes that it is "a crime falsely to accuse someone else of a crime" (para 55.36).¹ Whilst the Stair Memorial Encyclopaedia states that it is "a crime at common law to make a false accusation of a crime against a person" (para 494).²

Police Scotland is able to charge those who make these false allegations with the crime of [false allegation/accusation](#) (p 372). The definition of this states that "any person who makes a false accusation of crime against a named individual commits a crime at common law."

¹ The Criminal Law of Scotland, 4th ed, vol II, 2017 by J Chalmers and F Leverick.

² The Laws of Scotland, Stair Memorial Encyclopaedia, Criminal Law (Reissue).

False reporting

Making a false report to the police may also amount to a crime under the common law, even if it doesn't involve accusations directed at a particular individual. The Stair Memorial Encyclopaedia notes that:

“The crime of false accusation discussed above involves accusing a named person of a criminal offence. In the twentieth century, a separate crime of making a false report to the police has developed. For such an offence it is not necessary to name the individual being accused, or even to provide a means to identify him. Nor is it necessary to allege that a crime has taken place.” (para 499)

Police Scotland is able to charge those who make these false reports with the crime of [wasting police time](#) (p 372). This charge applies to “any person who maliciously makes a false statement to the police with the intention and effect of causing police investigation”.

Perjury

If false allegations of criminal behaviour lead to a trial, at which the person making the allegations gives evidence, there is also the possibility of a charge of perjury. Gordon's Criminal Law states that:

“Perjury is committed by wilfully giving false evidence on oath or affirmation in any judicial proceedings. Perjury was at one time dealt with in a number of now repealed Scots statutes, and it can today be prosecuted under particular provisions of the Criminal Law (Consolidation) (Scotland) Act 1995, but in practice it is always dealt with at common law.” (para 55.02)

[Section 44 of the Criminal Law \(Consolidation\) \(Scotland\) Act 1995](#) deals with the offence of perjury. If convicted of perjury the person can be imprisoned for a term of up to five years, receive a fine, or both.

Hate crime

In [Lord Bracadale's final report of the Independent Review of Hate Crime Legislation in Scotland](#), he used the following working definition of a hate crime:

“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)

Under the above definition, a false accusation of criminal behaviour could amount to a hate crime, but only if motivated as indicated.

Currently, hate crime is governed by a several Acts in Scotland and covers offences motivated by prejudice relating to race, religion, disability, sexual orientation and transgender identity.

The [Hate Crime and Public Order \(Scotland\) Act 2021](#) brought together all hate crime legislation under a single Act. It is not currently in force. When it is implemented, it will cover the protected characteristics of:

- age
- disability
- race, colour, nationality, or ethnic and national origins
- religion, or perceived religious affiliation
- sexual orientation
- transgender identity
- variations in sex characteristics.

The Act also includes the power to add the characteristic of sex to this list.

Therefore, a false accusation of criminal behaviour could amount to a hate crime but only, as is outlined above, if it is motivated by prejudice in terms of one of these protected characteristics.

Defamation

Depending on the facts, a false accusation of criminal behaviour could also amount to defamation. The law in this area is found in the Defamation and Malicious Publication (Scotland) Act 2021.

To be defamatory, a statement must be made public and cause (or be likely to cause) serious harm to someone’s reputation – that is “if it tends to lower the person’s reputation in the estimation of ordinary persons”. There are various defences to an allegation of defamation, including that the statement is true.

Defamation is a civil, rather than criminal matter. It would therefore be up to the individual affected to raise court action to challenge the statement in question. The usual result of successful court action would be a requirement to pay compensation. The court may also make orders to restrict further publication of the statement.

Outcome of previous petition

The previous petition ([PE01728](#)) was considered by the Public Petitions Committee on 12 September 2019. The Scottish Government, in their response to the petition, stated that they were of the view that “existing criminal law provides proper coverage to tackle false allegations and we have no plans at this time to extend the definition of hate crime in the manner proposed by the petitioner at this time”. The petitioner indicated that they wished to withdraw their petition on 18 December 2019.

Kirsty Deacon and Abigail Bremner **Senior Researchers**

06 October 2023

The purpose of this briefing is to provide a brief overview of issues raised by the petition. SPICe research specialists are not able to discuss the content of petition briefings with petitioners or other members of the public. However, if you have any comments on any petition briefing you can email us at spice@parliament.scot

Every effort is made to ensure that the information contained in petition briefings is correct at the time of publication. Readers should be aware however that these briefings are not necessarily updated or otherwise amended to reflect subsequent changes.

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Annexe C

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

Annexe D

Petitioner submission of 12 November 2023

PE2047/B: Make malicious false allegations a hate crime

Below is my response to points made by the [Scottish Government in their submission](#).

1. *“- for the Scottish Government to consider legislation to ensure malicious false allegations are considered as a hate crime.”*

Experience has demonstrated that present hate crime legislation, protecting Scotland’s diversity, can be abused transforming malicious false allegations into serious criminal offences. Misuse of this legislation is a great disservice to those for whom it was set to protect. Something is amiss when legislation can be employed as a weapon against any person or organisation. It may demonstrate a weakness in that legislation. I believe that the legislation must be more inclusive, balanced, updated, made difficult to misuse or abuse. Appropriate penalties should be in place to discourage anyone from doing so.

2. *“falsely accusing someone of a crime can have a serious impact on the victim ... negative impact on the criminal justice system - ”*

Malicious false allegations devastate the lives of victims with long-lasting consequences. They have a corrosive effect on society, undermine our justice system and our respect for it. The expenditure from the public purse in court time and in Police Scotland investigations is incalculable. False allegations use up scarce resources, can hinder investigation of other cases, and stop prepared cases reaching court within a reasonable time frame. There are no winners in the malicious false allegation arena.

3. *“false allegations can be dealt with under existing and ... common law”*

It is clear to me that malicious false allegations cannot be dealt with under existing laws. They do not hold the gravitas, scope, or power to do so. My case stands testimony to this. It saw the involvement, over many years, of numerous police officers’ valuable time and investigative effort. All at a massive cost to the public purse.

4. *“... whether falsely accusing someone of a crime should be treated as a hate crime, ... definition of a hate crime... - crimes motivated by hatred or prejudice”*

It was the constrictive definition of a hate crime that led me to petition Parliament. To ensure equality and justice for all, the formal definition of hate crime must be widened, updated, secured, and clarified. Hate of any person is hate. Prejudice towards any particular feature of a victim's identity is prejudice. At the end of the day, malicious false allegations based on any kind of bias ensures that a victim's life is irretrievably changed. False allegations can be motivated by many things including personal dislike, hatred, a grudge, personal gain, revenge, by misogyny. A victim's identity is defined by who they are or choose to be. All citizens deserve to have their identities recognised and fully protected in law.

5. *“Within this definition..., the Scottish Government does not consider that malicious false allegations should in themselves be treated as a hate crime.”*

With respect I believe that definition must be expanded. Characteristics of victims can be used against them, including their sex, age, religion, marital status, race, sexual orientation, lifestyle. Anything seen as a “weakness” or vulnerability can be used.

Those who serve and administer the law appear to have “their hands tied” by a limited legislation. Our criminal justice system can neither protect victims with relevant legislation, nor prosecute offenders under the present hate crime legislation. If false allegations are motivated by any of the things stated and lead to life changing criminal charges, then they should be treated as hate crimes. Such crimes deserve to be recognised in updated legislation. If we are all equal under the law, then we must all be treated with equality.

I consider present legislation not fit for purpose and respectfully suggest that it becomes more well balanced for the sake of justice. Police Scotland and our courts need the power to deal with false allegations in a fitting manner.

6. *“...existing hate crime legislation can be used to add a statutory aggravation to general offences being prosecuted.”*

The key word is “existing.” In my experience existing legislation offers no protection to witnesses or victims. Indeed, it was the existing legislation

that was used against me. It turned false allegations of crimes into serious false allegations demanding a prison sentence if found guilty. The existing legislation was exploited, and my characteristics became “weaknesses” and were exploited.

I seek updated legislation to ensure that in future those making malicious false allegations are held to account. If found guilty the sentence should be in accord with updated hate crime legislation that protects victims and can deal with this type of crime.

7. *“... what amounts to a crime is always a matter for the independent police, prosecutors and courts”*

That crime is a personal viewpoint is an interesting and disturbing concept. This flexible interpretation of the law may be where the problem lies. Those who administer our laws, and police by our consent, are human. To assign such judgments to them without strong legislative guidelines is a demanding ask, leaving it open to their interpretation of the law and how they see events at a particular time.

In conclusion, victims of false allegations are often voices crying in the wilderness. Well, I, as victim, am shouting loud and clear from that place. False allegations under present hate crime law are weapons of mass destruction. Being bombarded with false accusations is a situation I wish on no one. Finding yourself in a jail cell because of them is a life changing experience I want no-one else to endure. If present hate crime legislation were updated, rules expanded, made clearer, those within the justice system and the public would be better served. Witnesses would feel confident in stepping forward. It would give voice and justice to victims. With the backing of stronger legislation many innocent lives would be spared years of misery, the public purse would be fuller, and the courts could deal with other pressing cases.

Hate crime legislation should offer protection to all citizens.

Please consider making malicious false allegations a hate crime.