

# Evidence submission on Hate Crime and Public Order (Scotland) Bill

## Summary

Amina the Muslim Women's Resource Centre (MWRC) welcomes the opportunity to submit evidence to the Justice Committee on the Hate Crime and Public Order Bill.

- Amina welcomes the Bill as introduced, informed by Lord Bracadale's recommendations.
- Under-reporting of hate crime as indicated by Police Scotland is a significant challenge in recording the right numbers. Evidence on the ground also indicates the gender 'hostility' when a hate offence is committed. The current recording and reporting mechanisms do not capture this data. Amina calls for the Bill to introduce measures that can record and report on disaggregated data.
- Amina is working towards a more inclusive and just society and it believes that the Bill should consider an intersectional framework within its approach.

## INTRODUCTION

Amina MWRC is the national hub for getting access to, and consulting with, Muslim, black and minority ethnic (BME) women across Scotland. A BME women-led organisation, we offer a range of tailored support services with the aim of creating an inclusive environment, building resilience, and tackling inequalities. Our key areas of work include a national helpline, employability guidance, peer group support, campaigning, and highlighting the contributions of BME women. We actively campaign on social concerns: challenging Islamophobia, tackling racism, sexism and violence against women to promote women's social participation. Amina has been working with Muslim women and BME women on the impact of Hate Crime and Islamophobia since 2014<sup>1</sup> and has provided recommendations for public institutions<sup>2</sup> and the Cross-Party Working Group on Islamophobia.<sup>3</sup> We are part of the Glasgow Third party Reporting Network as well as the Scottish Action Against Prejudice and Hate Crime working group.

**Amina welcomes the opportunity to provide evidence to the call for evidence as issued by the Justice Committee on the Hate Crime and Public Order (Scotland) Bill (hereafter the Bill).**

## THE EVIDENCE

### 1. Consider impact of underreporting and absence of disaggregated data

Victims of hate crime have shown reluctance in reporting incidents due to a fear of not being taken seriously and, in the cases of *perceived* identities, feeling unseen and unimpacted as the aggravating factor was not part of their real identity<sup>4</sup>. The impact on their mental health and wellbeing through microaggression is nevertheless proven to be significant, especially over time.<sup>5</sup> In the case of perceived identities, race and religious affiliation are often misjudged.

<sup>1</sup> Lord Bracadale Hate Crime Review consultation response 2017 <https://mwrc.org.uk/resources/>

<sup>2</sup> Amina MWRC Helpline Roadshow Report 2017 <https://mwrc.org.uk/resources/>

<sup>3</sup> Amina MWRC submission to CPG on Islamophobia 2020 <https://mwrc.org.uk/resources/>

<sup>4</sup> Dr. Awan and Dr. Zempi 2017 Non Muslim men who suffer Islamophobia: A briefing paper Oct 2017 presented to APPG on Hate Crime

<sup>5</sup> Williams D.R. (2018) Stress and the Mental Health of Populations of Color: Advancing Our Understanding of Race-related Stressors. *Journal of Health and Social Behavior*, 59(4), 466-485.

The current reporting figures in Scotland, which show a 4% rise from last year but remain the second lowest since 2003/04<sup>6</sup>, could be a reflection of this. In their recent report Police Scotland consider under-reporting to be a significant problem in dealing with hate crime<sup>7</sup>. The Crown Office and Procurator Fiscal Service by nature of the institution will not include statistics relating to the of discrimination referenced in Employment Tribunals. Although the legislation for hate crime is under criminal law the impact and motivation spans across disciplines which we cannot successfully aggregate to provide a fuller picture. Victims of hate crime have shown reluctance in reporting incidents due to a fear of not being taken seriously and, in the cases of perceived identities, feeling unseen and unimpacted as the aggravating factor was not part of their real identity. The impact on their mental health and wellbeing through microaggression is nevertheless proven to be significant, especially over time. In the case of perceived identities, race and religious affiliation are often misjudged. Based on our community intelligence on hate crime indicates that gendered 'hostility' can be a determining reason in hate offences. The proposed hate crime bill includes a potential addition of misogyny<sup>8</sup>. Misogyny adds levels of vulnerability to already vulnerable groups and it is necessary to allow for a system that clearly evidences these links to the police data as crimes. **Amina recommends a review of recording and prosecuting systems (including Police Scotland reports) to accommodate measures which can capture nuanced, disaggregated data.**

## 2. Employ an intersectional framework

Intersectionality, a term developed by Kimberlé Crenshaw in 1989, refers to a means of understanding the "interconnectedness of multiple and overlapping systems of discrimination"<sup>9</sup>.

- There are multiple pieces of legislation that deal with racial harassment requiring different pieces of evidence. This results in over half of the court cases resulting in "no action" on racial aggravations being due to insufficient evidence<sup>10</sup>. Clarity on when to apply aggravated charges as opposed to other legislation may offer support to cases lacking two pieces of evidence.
- **Gender-** As previously indicated<sup>11</sup> by Amina, within the context of discrimination at work it was very challenging for women reporting exclusively within the categories of race or religion. Furthermore, an online Amina survey indicated<sup>12</sup>, of the 55 participants asked about discrimination in the workplace only 29% complained or would have reported the incident. When explored in a focus group, one participant stated there is "No point in complaining" and another that is "hard to know the reason why". Retail was highlighted as an industry where participants believed image, colour and religious symbolism are detrimental to securing a job. In today's socio-political climate where Islamophobic rhetoric is clearly manifested, the group felt it was increasingly difficult to overcome the stereotypes and misconceptions of Muslim women portrayed in the

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Wallace S., Nazroo J. & Becares, L. (2016) Cumulative Effect of Racial Discrimination on the Mental Health of Ethnic Minorities in the United Kingdom. *American Journal of Public Health* 106(7), 1294-300

<sup>6</sup> Hate Crime in Scotland 2019/20 Published June 2020 p3

<https://www.copfs.gov.uk/images/Documents/Statistics/Hate%20Crime%20in%20Scotland%202019-20/Hate%20Crime%20in%20Scotland%202019-20.pdf> accessed 15/07/20

<sup>7</sup> Hate Crime: Availability of information recorded by Police Scotland Published 27 Feb 2019

<https://www.gov.scot/publications/developing-information-hate-crime-recorded-police-scotland/pages/5/> Accessed 15/07/2020

<sup>8</sup> Walters, Mark Austin and Tumath, Jessica (2014) Gender 'hostility', rape, and the hate crime paradigm. *Modern Law Review*, 77 (4), pp. 563-596. ISSN 0026-7961

<sup>9</sup> Michelle Lokot & Yeva Avakyan (2020) Intersectionality as a lens to the COVID-19 pandemic: implications for sexual and reproductive health in development and humanitarian contexts, *Sexual and Reproductive Health Matters*, 28:1, DOI: [10.1080/26410397.2020.1764748](https://doi.org/10.1080/26410397.2020.1764748)

<sup>10</sup> See note 6 page 14

<sup>11</sup> Submission to the UK Parliament 2016 – Effects of Race and Ethnicity in Employment <https://mwrc.org.uk/resources/>

<sup>12</sup> Race, Ethnicity and Employment Survey 2015 <https://www.surveymonkey.com/results/SM-GFSXY9FG7/>

mainstream media. Where participants had little experience of overt racism and are faced with a costly and often lengthy tribunal process for a case with little tangible evidence, our participants felt that it was a waste of their time and energy. As a result, they do not pursue complaints or grievances. The gendered focus of Amina's work and the work of Tell Mama<sup>13</sup> highlights the contradiction between the current system of defining hate crime and the intersectional reality of our service user's lived experience.

- Additionally, a recent example of verbal abuse reported to a staff member at Amina was from a White Scottish older man towards a white Scottish, hijab wearing younger woman and exemplifies the issue with adding only one form of aggravation. The perpetrator shouted, "Traitor!" at the woman on the street with no provocation. Unless this would have progressed towards stalking or further verbal abuse, it is unclear what the prominent aggravating factor would be between misogyny, race or religion.
- **Religion-** In their 2018 report on gendered anti-Muslim hatred, Tell Mama illustrated the specific and intersectional plight affecting Muslim women today as those who are bearing the brunt of over 58% of reported hate crimes to the organisation.
- Furthermore, the Bill rejects the necessity of including sectarianism as "a sectarian aggravation would overlap with both race and religious aggravations, with the latter aggravations already capturing sectarian offending."<sup>14</sup> However, the example of graffiti written on the wall of St. Aloysius school which read "The potato famine is over, go home"<sup>15</sup> or in the more recent graffiti on a church in Dundee where sexually explicit imagery and the word "faggot" was written on the steps<sup>16</sup>, the crimes were dealt with as vandalism or, at most, racism in the case of the school. Religious context was missed in both cases, which resulted in the Dundee incident not even being recorded as a hate crime and evidence being removed before Amina MWRC and Perth and Kinross Association of Voluntary Services followed up with Police Scotland.
- **Race** -The Bill recognises the importance of language as a defining feature of abuse, but the connotations of that language can often conflate racial and religious characteristics making it necessary for the law to recognise this in order for it to be future proof. For example: the use of Paki meaning Asian or even Black is a fundamentally racist term.<sup>17</sup> However, if this is now being applied to hijab wearing women without necessarily having seen any physical features "Look at that Paki Miley Cyrus", religious clothing has been racialised into perceived ethnicity. As faith, Islam in this case but not exclusively, can be rendered synonymous with race reporting evidence will miss the reality of the aggravation in both the courts and wider society.
- In the Independent Review of Hate Crime Legislation in Scotland it was mentioned that some respondents thought "the law did not operate effectively with regard to cases involving malice and ill-will based on more than one characteristic"<sup>18</sup>. This was echoed in a report by the All-Party Parliamentary Group (2019)<sup>19</sup> as well as recent studies published in 2019 on intersectionality within the LGBTQ+<sup>20</sup> community and communities of disability<sup>21</sup>. Similar examples include the abuse of persons with

<sup>13</sup> Tell MAMA Interim Report 2018: Gendered Anti-Muslim Hatred and Islamophobia <https://tellmamauk.org/category/reports/>

<sup>14</sup> Hate Crime and Public Order in Scotland Bill 2020, p9

<sup>15</sup> <https://www.bbc.co.uk/news/uk-scotland-glasgow-west-37154132>

<sup>16</sup> Case Study by Amina MWRC and Perth and Kinross Association for Voluntary Services (PKAVS), 2020

<sup>17</sup> Mohan Ambikaipaker, Political blackness in multiracial Britain 2018

<sup>18</sup> Platts, A and Griesbach, D (2018) Independent Review of Hate Crime Legislation in Scotland: Analysis of Consultation Responses Clause 4.60 p34

<sup>19</sup> How do we build community cohesion when hate crime is on the rise? All Party Parliamentary Group (APPG) on Hate Crime 2019 p15 <http://www.appghatecrime.org/wp-content/uploads>

<sup>20</sup> PICKLES, J (2019). LGBT hate crime : promoting a queer agenda for hate crime scholarship. Journal of Hate Studies, 15 (1), 39-61

<sup>21</sup> Healy, J, Thinking outside the box: intersectionality as a hate crime research framework 2019 British Journal of Criminology Vol 19 ISSN 1759-0043 [www.britisccrim.org](http://www.britisccrim.org)

disabilities with additional characteristics<sup>22</sup> as well as persons along the spectrum of sexuality and gender-based identity.<sup>23</sup>

Scottish Government has already pledged to incorporate an intersectional approach to its Response to the National Advisory Council on Women and Girls<sup>24</sup> and, where COVID has been referred to as a “great equaliser”<sup>25</sup> for example, research using an intersectional lens is exposing the disproportionate impact on some members of society to effectively plan for recovery.<sup>26</sup> Intersectional approaches have been used applied in International Human Rights Law that has helped shape new lens of how cases involving multiple vulnerabilities are interpreted<sup>27</sup> This approach is not cumulative but rather allows for individuals to be recognised as simultaneously oppressed and privileged<sup>28</sup>, as opposed to automatically favoured or disfavoured based on whether they are viewed as an oppressed group. **Amina calls for employing an intersectional approach within the Bill, which will ‘future proof’ it and combat the wider social justice issues.**

## RECOMMENDATIONS

### **1. Include a general recommendation in the hate crime bill that encourages an intersectional interpretation of an individual’s identity in the judgement of a case.**

To build case law that reflects the unique situations of individuals it is important to encourage evidence gathering around, and recognition of the additional vulnerabilities of clients. Scottish Government’s Equally Safe strategy has already highlighted international frameworks for violence against women and girls (VAWG) that encourages emphasis on an intersectional approach. Scotland has been recognised for its gendered analysis on VAWG and an analysis by intersectionality should be cultivated across all sectors to achieve similar impact, including the Annual plan for Police Scotland.

### **2. Change the filing of a hate crime aggravation to be able to include multiple characteristics as one aggravation.**

Singling out one protected characteristic for prosecution and sentencing despite multiple aggravations may not necessarily reflect the proportionate impact of the crime. While the current legislation allows for the victim’s perspective it restricts the victim’s experience to one aspect of their identity. Lack of intersectional effect of the crime implies that offences across multiple protected characteristics are being considered as one aggravation. Thus, the sentencing does not reflect the impact of aggregated factors.

### **3. Review the recording of hate incidents as an aid to prosecution.**

Before the addition of misogyny as an additional hate crime characteristic it is necessary to review the role of previous incidents in recognising the escalation of the crime. Notably in

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<sup>22</sup> Brief on Violence Against Women and Girls with Disabilities 2019 [www.vawgresourcesguide.org](http://www.vawgresourcesguide.org)

<sup>23</sup> Equally Safe Scotland’s strategy for preventing and eradicating violence against women and girls 2018 p19  
<https://www.gov.scot/binaries/content/documents/govscot/publications/strategy-plan/2018/04/equally-safe-scotlands-strategy-prevent-eradicate-violence-against-women-girls/documents/00534791-pdf/00534791-pdf/govscot%3Adocument/00534791.pdf> accessed 15/07/2020

<sup>24</sup> The Scottish Government’s response to the First Minister’s National Advisory Council on Women and Girls who published their report and recommendations in 2018 Published 26 June 2019

<sup>25</sup> Evelyn, K. ‘It’s a racial justice issue’: Black Americans are dying in greater numbers from Covid-19. The Guardian. 2020 April 8. Available from: <https://www.theguardian.com/world/2020/apr/08/its-a-racial-justice-issue-black-americans-are-dying-in-greater-numbers-from-covid-19> [Google Scholar]

<sup>26</sup> Close the Gap Disproportionate disruption: The impact of COVID-19 on women’s labour market equality May 2020

Close the Gap and Engender Women, Caring Responsibilities and Furloughing During COVID-19 24 April 2020

<sup>27</sup> Truscan, I and Bourke-Martignoni, J (2016) International Human Rights Law and Intersectional Discrimination, The Equal Rights Review, Vol. 16

<sup>28</sup> See note 19, p15

cases of sexual assault and rape, allegations infrequently result in convictions<sup>29</sup>. This also has repercussions for all characteristics in that escalating crimes can be caught more efficiently and trust in policing is likely to rise as a result.

#### **4. Gather evidence across courts and tribunals to better understand motivating discriminatory behaviour**

Hate Crime is under the jurisdiction of criminal law but there are many areas where discrimination cannot be policed. This can lead to an increase in behaviours in areas such as online, in the workplace or in the area of commercial sexual exploitation. Creating an intersectional approach to community cohesion necessitates the involvement of other institutions and organisations that can challenge discrimination.

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Submitted on 24<sup>th</sup> July 2020

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<sup>29</sup> [https://www.rapecrisisscotland.org.uk/help-facts/#faq\\_5](https://www.rapecrisisscotland.org.uk/help-facts/#faq_5) accessed 15/07/2020