

WPUK response to Law Commission Hate Crime Consultation December 2020

Introduction

About WPUK

Woman's Place UK (WPUK) is a grassroots feminist campaign which aims to uphold women's sex-based rights and protections in the UK. Since September 2017, WPUK has organised 33 events around the UK, including a one-day conference in London this year for which nearly 1,000 people registered. Over 6,000 people have booked tickets for our events.

Summary of WPUK position

WPUK welcomes the opportunity to respond to the Law Commission's consultation on reform of hate crime legislation. While we understand why many campaigners call for misogyny to be included in hate crime legislation, we do not support this position.

We believe that extending hate crime legislation to cover women, sex, or misogyny will do nothing to reduce the high prevalence of misogyny and violence against women in our society. Nor do we believe it would translate into improved access to justice for survivors of VAWG. We believe that the solutions instead are to be found in investment in the VAWG sector, education, and reform of the criminal justice system.

Our position in this response relates closely to our response to the Hate Crime and Public Order (Scotland) Bill consultation¹.

Consultation process

We would like to place on record our concern about the consultation process. We believe the length of the consultation document and the number of questions present a barrier to participation from women with lived experience of the crimes under consideration.

At 533 pages and with 62 questions, responding to the full consultation requires a significant amount of time, energy, and legal expertise. WPUK contends that the length and opaque language used in the consultation means that it is not accessible to small charities and, more importantly, to women and girls affected by the types of crimes in question.

¹ <https://womansplaceuk.org/2020/07/24/wpuk-submission-hate-crime-public-order-scotland-bill/>

As a group of women volunteers, we are unable to respond to all of the questions set out in the consultation paper. We have instead chosen to focus on the questions which we believe we are best qualified to answer.

We believe that this consultation falls short of any guidance or standards on a reasonable consultation format.

WPUK response to consultation questions

Consultation Question 3

We provisionally propose that the criteria to determine whether a characteristic is included in hate crime laws should be:

(1) Demonstrable need: evidence that crime based on hostility or prejudice towards the group is prevalent.

(2) Additional Harm: there is evidence that criminal targeting based on hostility or prejudice towards the characteristic causes additional harm to the victim, members of the targeted group, and society more widely.

(3) Suitability: protection of the characteristic would fit logically within the broader offences and sentencing framework, prove workable in practice, represent an efficient use of criminal justice resources, and is consistent with the rights of others.

Do consultees agree?

WPUK broadly agrees that the inclusion of a characteristic in hate crime laws should be based on need, additional harm, and suitability. We do not believe that the types of crimes against women being considered by this consultation meet those tests.

Furthermore, we suggest that the third criteria, suitability, should explicitly include consideration of any potential negative consequences of including a characteristic in the hate crime framework. We believe that not only would the inclusion of women/misogyny in the hate crime framework fail to reduce the high levels of misogyny, violent crime and harassment directed at women, we also believe there could be negative consequences to this approach.

For example, we anticipate that the reporting rates would be low (as they currently are for crimes relating to sexual harassment in public and in the workplace, sexual violence, and domestic violence) which would create the false impression that these crimes are rare or unusual. There would be public interest in the official data relating to hate crime and there is a risk that low reporting figures would fuel existing misogynistic tropes that women exaggerate the scale of VAWG crimes.

Consultation Question 7

We invite consultees' views on whether "asexuality" should be included within the definition of sexual orientation.

No, WPUK does not support the inclusion of asexuality in a definition of sexual orientation. Asexuality is a broad umbrella term which encompasses people who may have some sexual relationships, people who may have romantic relationships but do not experience sexual attraction, and people who may not have romantic or sexual relationships².

Even if it were appropriate to include asexuality in the definition of sexual orientation, it is difficult to envisage how the concept of "hate crime" could usefully be applied to acts of prejudice against those who identify as asexual. It is not clear how asexuality would meet the criteria set out in Question 3:

(1) Demonstrable need: evidence that crime based on hostility or prejudice towards the group is prevalent.

(2) Additional Harm: there is evidence that criminal targeting based on hostility or prejudice towards the characteristic causes additional harm to the victim, members of the targeted group, and society more widely.

(3) Suitability: protection of the characteristic would fit logically within the broader offences and sentencing framework, prove workable in practice, represent an efficient use of criminal justice resources, and is consistent with the rights of others.

The consultation paper fails to make a convincing case that "hate crimes" against asexual people are prevalent, that there is additional harm to the victim, or that this category would sit logically in the sentencing framework, be workable in practice, or represent an efficient use of criminal justice resources.

Consultation Question 11

We provisionally propose that gender or sex should be a protected characteristic for the purposes of hate crime law. Do consultees agree?

WPUK does not support the proposal to include either gender or sex as a protected characteristic for the purposes of hate crime law. We do not support the further expansion of hate crime legislation to cover any additional groups and believe that adding to a never-ending

² Brunning and McKeever, *Asexuality*, Journal of Applied Philosophy, October 2020
<https://onlinelibrary.wiley.com/doi/full/10.1111/japp.12472>

list of groups and sub-groups of identities or characteristics is unhelpful. While “gender” and “sex” are frequently used interchangeably³ in everyday speech, they are not synonymous. The fact that this question has been posed so loosely, with gender and sex presented as interchangeable terms, is likely to lead to confusing and confused responses. However, the lack of definition of terms does not alter our response. We do not believe that either “gender” or “sex” should be included in hate crime legislation.

WPUK recognises that some feminists have called for the inclusion of sex in hate crime legislation and understands the sense of unfairness and frustration caused by the omission of women from the existing framework. However, we are of the view that broadening the scope of the existing framework to include sex would do nothing to reduce the endemic levels of violence against women in UK society. We are also concerned that there may be some negative repercussions of including sex within the scope of the existing framework.

Motivation

Unpicking and understanding the motivation for violent crime is always difficult. In the case of intimate partner crime and sexual violence and harassment, the motivations can rarely be reduced to “hate”. As Professor Liz Kelly has argued:

“In most of its uses, the term “hate crime” presupposes that perpetrators are motivated by animosity towards the victim, based on separation from, and stereotyping of, the other group. Yet the most likely perpetrators of violence against women, children, the elderly and adults with disabilities are those they live in close proximity to – partners, relatives, friends, carers – all of whom are positioned in relationships of intimacy, trust and/or care. In these contexts violent and abusive practices are frequently normalised, taken for granted forms of social interaction based on perceptions of others as “worth less” and/or undeserving of the same entitlements or rights as the perpetrators.

Not only does “hate” entirely fail to capture these realities, it runs the risk of reducing structural inequalities to individual psychology, thus bypassing the complex intersections between violence, equalities and human rights. Across most of Europe “hate crime” is associated with political extremism, rather than inequalities, and thus directs attention to the attitudes of a small minority, rather than the structures which reproduce power and privilege.”⁴

In the same article, Kelly points to the difficulty of framing specific types of VAWG perpetrated within families, such as FGM, as motivated by “hate”. Do we really believe that hate is the driver

³ <https://debuk.wordpress.com/2016/12/15/a-brief-history-of-gender/>

⁴ <http://www.troubleandstrife.org/new-articles/the-trouble-with-hate/>

behind such harmful practices? Does “hate” even begin to capture the complex social and cultural contexts and power relations at play? And is the young girl at risk of FGM any more likely to seek help if she is told that her parents “hate” her for wishing to subject her to this ordeal?

Like Kelly, WPUK believes “hate” is an inadequate concept for dealing with VAWG as it fails to recognise the wider structural, cultural, and social context of women’s oppression.

Low rates of reporting

Rates of reporting for all types of VAWG, from street harassment, to rape, to domestic violence, to FGM, are extraordinarily low. The reasons for low levels of reporting are well understood and documented. Trauma, lack of trust in police, fear of retaliation, shame, stigma, fear of not being believed, and love or loyalty towards the perpetrator are all factors in women and girls not reporting violent crimes.

The failure of the police, the Crown Prosecution Service, and the whole criminal justice system to take VAWG seriously, believe survivors, treat them with respect and dignity, and pursue prosecutions against perpetrators, has undermined women’s trust in the system.

In this context, it is hard to argue that an aggravated offence would improve women’s access to justice when offences simply aren’t being reported or recorded.

Suitability

WPUK believes that the inclusion of sex in the scope of hate crime legislation would fail to meet the test of suitability. That is to say that the inclusion of the characteristic of sex would “fit logically within the broader offences and sentencing framework, prove workable in practice, represent an efficient use of criminal justice resources”. The main reason for our scepticism with regard to the suitability of including sex within the hate crime framework, is that the types of crimes perpetrated against women – namely VAWG – that this proposal seeks to address are amongst the least reported, least prosecuted, and least likely to end in successful conviction. Conviction rates for rape fell to just 2% last year, leading the End Violence Against Women coalition to say that rape had effectively been decriminalised in the UK:

“A conviction rate of less than 2% of all rapes reported to the police is, in our opinion, leading to the effective decriminalising of rape. Let us remember that rape is still severely under reported – how can we expect that to change when the figures continue to show a total failure to deliver justice?”⁵

⁵ <https://www.endviolenceagainstwomen.org.uk/the-effective-decriminalisation-of-rape-reflected-in-latest-figures/>

The same coalition, EVAW, commenced legal proceedings in 2019 against the Crown Prosecution Service claiming that the CPS changed its policy and practice in relation to decision-making on rape cases, leading to a dramatic fall in the number of rape cases being charged⁶.

It is not just a failure of the CPS to prosecute rape cases. It is also the case that the police fail to properly investigate VAWG offences. In 2018/19 there were almost 60,000 reports of rape to the police, but fewer than 1,800 men were charged, and there were fewer than 1,000 convictions⁷

The CPS and Ministry of Justice's own figures show that while rapes reported to the police have nearly tripled (up by 173%) between 2014 and 2019, the number of cases charged and sent to court is actually down by 51% across 5 years and is the lowest on record.⁸

These failings do not just relate to rape and sexual assault. The same criticisms can be levelled against the police in relation to domestic violence where women's experiences are often minimised or disbelieved and insufficient action is taken to protect women and children. 1 in 5 women murdered by their partners in the UK had previously been in touch with the police⁹.

On average the police receive an emergency call relating to domestic abuse every 30 seconds. Yet in a damning report in 2014, Her Majesty's Inspectorate of Constabulary (HMIC) found that:

*"The overall police response to victims of domestic abuse is not good enough. This is despite considerable improvements in the service over the last decade, and the commitment and dedication of many able police officers and police staff. In too many forces there are weaknesses in the service provided to victims; some of these are serious and this means that victims are put at unnecessary risk. Many forces need to take action now."*¹⁰

A super-complaint brought by the Centre for Women's Justice highlights the failure of the police to use bail in rape cases, to take action when Non-Molestation Orders are breached, or to apply Domestic Violence Protection Orders.

⁶ <https://www.endviolenceagainstwomen.org.uk/womens-groups-commence-legal-proceedings-in-judicial-review-against-crown-prosecution-service-for-failure-to-prosecute-rape/>

⁷ <https://www.theguardian.com/law/2019/sep/12/prosecutions-in-england-and-wales-at-lowest-level-in-a-decade>

⁸ <https://www.endviolenceagainstwomen.org.uk/womens-groups-commence-legal-proceedings-in-judicial-review-against-crown-prosecution-service-for-failure-to-prosecute-rape/>

⁹ <https://www.thetimes.co.uk/edition/news/one-in-five-women-killed-by-their-partners-had-contacted-the-police-nc009nggl>

¹⁰ <https://www.justiceinspectors.gov.uk/hmicfrs/publications/improving-the-police-response-to-domestic-abuse/>

In the case of bail, the CWJ notes that,

“since April 2017 there has been a dramatic fall in the use of bail in rape, domestic abuse and harassment and stalking cases. Many suspects are released without any bail conditions, not even the most basic conditions not to contact the victim or go to her home address, which were standard practice in such cases previously.

The biggest change is reported by Rape Crisis centres. In the majority of rape cases the parties know each other, and stranger rapes are rarer. One sexual violence service reports that in a sample of 120 current active cases, only approximately five are on bail.”¹¹

In relation to Non-Molestation Orders, the CWJ super complaint points to evidence that such breaches are trivialised by police officers, who do not understand them within the wider patterns of domestic abuse, harassment and stalking, and of escalating risk.

The CWJ also point to statistics published by the Police Inspectorate that show that some police forces are not using Domestic Violence Protection Orders at all. The Metropolitan Police did not issue a single DVPO in 2017. According to the CWJ, there is anecdotal evidence that police forces are not using these orders because they involve too much work for frontline officers in units that are already seriously under-resourced.

When existing tools are so woefully underutilised by the police, it is the opinion of WPUK that it is unlikely that introducing new aggravated “hate” offences will improve the policing of existing offences.

Unintended consequences

Not only do we believe that the proposal to include sex in hate crime legislation would fail to tackle the causes of VAWG, to act as a deterrent, or to reduce offending rates, we also believe that there are risks in taking the approach proposed by the Law Commission.

As we have already noted, reporting rates for all types of VAWG are extraordinarily low. But we know that the prevalence of VAWG is extremely high in the UK. It is likely that there would be a good deal of media interest in a new hate crime category and Home Office data releases relating to police recorded hate crime would be seen as an authoritative source of data on the prevalence of VAWG. Yet we anticipate that the reporting rates would remain low. We believe

11

<https://static1.squarespace.com/static/5aa98420f2e6b1ba0c874e42/t/5c91f55c9b747a252efe260c/1553069406371/Super-complaint+report.FINAL.pdf>

that there is a risk that the likely low levels of reporting would be misunderstood by many as an indication that VAWG is not as prevalent as women say and is less prevalent than crimes against other groups.

Consultation Question 12

We invite consultees' view as to whether sex or gender-based hate crime protection should be limited to women or include both women and men.

We do not believe that either sex or gender should be included in hate crime legislation.

Consultation Question 13

We provisionally propose that a protected category of "women" is more suitable than "misogyny", if sex or gender-based hate crime protection were to be limited to the female sex or gender. Do consultees agree?

We do not believe that women, sex, gender or misogyny should be included as protected characteristics in hate crime legislation. If however a new protected category is to be included in the framework, it would be logical to mirror the wording of other relevant legislation such as the Equality Act which refers to both "sex" and "women".

Consultation Question 14

We provisionally propose a protected category of "sex or gender" rather than choosing between either "gender" or "sex" if hate crime protection were to adopt a general approach. Do consultees agree?

No. As set out above, WPUK does not support the inclusion of sex or gender in hate crime legislation but if the Law Commission's proposals were to become law, clear and precise language would be required.

As we have noted elsewhere in our consultation response, we recognise that historically "sex" and "gender" have been used interchangeably and to many people they remain synonymous, but for others they are now contested terms. In particular, "gender" has come to mean different things to different people.

For the avoidance of confusion or ambiguity, legislation aimed at protecting women should clearly refer to "sex".

Consultation Question 17

We invite consultees' views on whether "sex workers" should be recognised as a hate crime category.

WPUK does not support the inclusion of "sex workers" in hate crime legislation. Women in prostitution face extraordinarily high levels of violence. This is just one of the reasons why we do not accept the framing of prostitution as "sex work" as there is no other line of "work" where rape, harassment, violent assault, and murder are accepted as routine hazards of the job. WPUK takes the view that prostitution is inherently exploitative and constitutes a form of violence against women and girls.

All of the points made in response to question 11 apply to women in prostitution. Even it were helpful to frame these types of crimes as motivated by "hatred", it would still be the case that reporting rates are even lower for women in prostitution, trust in police is lower, prosecutions and convictions of perpetrators are lower. WPUK would like to see the police and the criminal justice system get to grips with arresting, prosecuting and convicting perpetrators.

Marginalised women need financial support, access to healthcare and education, routes out of prostitution, and the means of seeking employment without past criminal convictions acting as a barrier.

Consultation Question 49

We provisionally propose that the stirring up offences be extended to cover sex or gender. Do consultees agree?

No. WPUK does not support the extension of stirring up offences to cover either sex or gender. We are unconvinced about the proposals to extend the offence of stirring up hatred.

Any extension of the reach of criminal law must be advanced on the basis of evidence, not just symbolism. We support the retention of hate crime laws when it comes to racial hatred. Racism remains an animating force in society and racially motivated crime can be differentiated from other forms of hate crime by the degree of political organisation.

Given our experience of campaigning on women's rights over the past three years, we would be particularly concerned about a new offence of stirring up hatred on the basis of transgender identity. The debate on women's rights and the rights of trans people, and the conceptualisation of sex and gender identity in law and policy, has become a flashpoint over the past few years. It is our view that, across the UK, public authorities and civic institutions have abrogated

responsibility for creating space to debate this conflict of rights. Governments at all levels and other public authorities have also failed to make clear statements about the parameters of existing anti-discrimination legislation. Until that situation changes, it is likely that the debate about these issues will continue to be highly charged.

A desire to create fora where ordinary women could engage in the debate about proposals to reform the Gender Recognition Act (GRA) 2004 is what prompted the establishment of WPUK. Since September 2017, WPUK has organised 27 public meetings around the UK, including a one-day conference in London in February this year which was attended by just under 1,000 people. We have been persistently mischaracterised as a 'hate group' and nearly every one of our events has been hosted in the face of substantial obstacles including aggressive and intimidating protests, attempts to shut the meeting down and threats of violence, including a bomb threat¹².

Against this backdrop, we are concerned that the introduction of an offence of stirring up hatred on the basis of transgender identity would have a chilling effect on the ability of WPUK and other groups of women to debate and discuss these critical issues.

¹² <https://womansplaceuk.org/a-record-of-womans-place-uk-meetings/>

Summary

WPUK welcomes the Law Commission's interest in legislative solutions to the endemic levels of violence against women and girls in the UK. However, we do not believe that extending hate crime legislation to include sex, gender, or misogyny would lead to any reduction in VAWG. Indeed, we contend it could have some negative, unintended consequences.

WPUK does not believe that rape, domestic violence, FGM, sexual harassment, stalking and many other VAWG crimes can be shoehorned into a conceptual framework of "hate". To attempt to do so would be a mischaracterisation and an oversimplification of the motivations of many perpetrators. Furthermore, it would fail to recognise the wider social and cultural factors at play in the oppression of women and girls.

Given the low levels of reporting of all forms of VAWG, the well documented failures of the police to investigate VAWG offences or to use existing powers to safeguard women, and the dereliction of duty by the CPS in relation to prosecuting rape cases, WPUK contends that the criminal justice system is failing women and girls. There is no value in creating aggravated offences when the offences in question are not being policed, investigated, or prosecuted and when the conviction rate is so low that women's groups have stated that rape has effectively been decriminalised.

We believe the Law Commission's proposal puts the cart before the horse. We must first take action to tackle the root causes of VAWG and to ensure that women have access to justice. The solutions are wide ranging and far from simple. Investment in education, policing, and the women's sector are all vital. Economic strategies to increase women's incomes and financial independence are also necessary. Twelve years have now passed since the government signed the Istanbul Convention and avowed its intention to ratify. It should now do so.

Extending hate crime legislation to include sex, gender, or misogyny would be a symbolic gesture which would have little or no practical benefit and which would be based on a fundamentally flawed conceptualisation of the dynamics and context of VAWG.

WPUK calls for meaningful government action, not empty symbolic gestures.

For further information, please email contact@womansplace.org