

PE1728/A

Scottish Government submission of 18 October 2019

I am writing to provide the Public Petitions Committee with a response to petition PE1728.

The petitioner calls for the Scottish Government to consider legislation that would classify any type of false allegation as a hate crime.

Falsely accusing someone of having committed a crime can have a very serious impact on the victim of that allegation and it is important that people who knowingly make false allegations are 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 is important to emphasise that behaviour amounting to making false allegations can already be dealt with under our existing and long-standing common law, such as attempting to pervert the course of justice; wasting police time; and perjury. Of course, the determination as to what behaviour amounts to a common law crime is a matter for the police and our independent prosecutors and courts, having regard to the individual facts and circumstances of each case.

The SPICe briefing which accompanies the petition provides a detailed explanation of each of these common law crimes.

Turning to the question of whether falsely accusing someone of a crime should be treated as a 'hate crime', Lord Bracadale, in his final report of the *Independent Review of Hate Crime Legislation in Scotland* adopts the following definition of 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)

The law currently recognises hate crime as offending behaviour motivated by prejudice based on a number of identity-based 'protected' characteristics.

These are: race, religion, disability, sexual orientation and transgender identity, and may be extended to further characteristics during the Scottish Government's current reform exercise of hate crime legislation. 'Prejudice' is currently expressed in Scotland in terms of malice and ill-will.

Under this definition of hate crime, a false accusation of criminal behaviour could already amount to a hate crime if the false accusation is motivated (wholly or partly) by malice and ill-will towards members of a group defined by reference to one of the recognised protected characteristics listed above. However, the definition of a 'hate crime' is not so wide as to include all crimes motivated by animus towards an individual. In his report, Lord Bracadale notes that "hate crimes are likely to cause harm which is additional to the harm caused by the underlying offence. This involves harm both to the direct victim and to members of the group to which the victim belongs." It is not clear on what basis a false allegation made against someone should be treated as a 'hate crime' where other offences committed in the same circumstances and with the same motivation, such as assault or threatening or abusive behaviour, would not be.

The Scottish Government is therefore 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.

I hope that this reply is helpful to the Committee's deliberations.