

JUSTICE COMMITTEE

PROSECUTION OF ELDER ABUSE

SUBMISSION FROM POLICE SCOTLAND

The purpose of this submission is to provide the Scottish Parliament (Justice Committee) with Police Scotland's response to whether there is merit in the potential introduction of an aggravated offence of Elder Abuse in Scotland.

Public Protection – Definition Concerns

In providing a response to this request, Police Scotland have identified a concern regarding the terminology 'Elder Abuse'. Police Scotland would welcome clarity on the terms 'elderly' and 'abusive', as (in the realm of public protection and concern hubs) the majority of concern reports will not necessarily be about 'abuse' but instead a wellbeing concern.

This information is critical, it affords Police Scotland the opportunity to assess the impact that an Elder Abuse aggravator would have across a number of specialist areas within Police Scotland.

Lord Bracadale - Review of Hate Crime Legislation

When considering if an 'Elder Abuse' aggravator is required, it is critical that the Scottish Parliament (Justice Committee) considers the outcome of Lord Bracadale Independent Review of Hate Crime legislation in Scotland. In particular, section 4.55 of his report that was published on 31 May 2018, this review is scheduled to conclude on 24 February 2019.

Key extracts from Lord Bracadale report that relate to crime against elderly people are provided at Annex One below. These are important points that should be considered prior to any decision being made about this aggravator being introduced.

The Lord Bracadale consultation incorporates the issues of 'elder abuse' and 'age hostility'. Upon the closure of the public consultation phase, the Scottish Government will analyse the responses received, the content of that analysis will undoubtedly assist the Justice Committee's deliberations when considering if 'Elder Abuse' should have its own aggravation indicator.

Lord Bracadale identifies the difficulty of applying the concept of 'age hostility' (Section 4.52), he noted that 'there is considerable support for some form of recognition that offences against the elderly do constitute a type of offence which the criminal law should mark in a particular way'. This emerged from Lord Bracadale meetings with Age Scotland and a meeting of the Scottish Older People's Assembly (SOPA), as well as from written responses to consultation. However, Lord Bracadale also adds the following observation:

‘The difficulty which emerges from all these sources is that, although some offences committed against the elderly are motivated by, or demonstrate, hostility, the majority are committed because of the frailty and vulnerability of the elderly victims.’

It is this element that Police Scotland fully supports as opposed to an aggravator for Elder Abuse. Having in place a process that allows the courts to consider if a crime has been committed against a person based on the frailty and vulnerability of a victim will ensure a greater percentage of our vulnerable communities would be protected as opposed to simply being based on a person’s age.

Justice Committee Specific Questions

The Justice Committee have requested that Police Scotland respond to specific questions to assist them with this consultation process.

The merits of having a specific statutory offence of elder abuse (possibly based on the new domestic abuse offence provided for in the Domestic Abuse (S) Act 2018)?

The merits of introducing a new statutory aggravator applying to situations where a more general offence involves elder abuse?

Lord Bracadale was reluctant to recommend the creation of a standalone offence of elder abuse. He argued that ‘any new standalone offence would have a considerable cross-over with other existing offences, which risks causing confusion and undermining the aim of collecting reliable data’ (section 4.65).

Police Scotland submitted to Lord Bracadale’s own public consultation in 2017 that elderly victims are often made the targets of exploitative crime for reasons relating to age-related impairments (such as dementia), in much the same way that people with disabilities are often made the targets of crime for reasons relating to their disabilities or conditions (such as learning disability or autism). Many crimes of fraud, deception or abuse are opportunistically targeted at victims who are elderly and/or have a disability.

Lord Bracadale report made two recommendations relevant to the issue of exploitation of elderly people:

Recommendation 10

‘There should be a new statutory aggravation based on age hostility. Where an offence is committed, and it is proved that the offence was motivated by hostility based on age, or the offender demonstrates hostility towards the victim based on age during, or immediately before or after, the commission of the offence, it will be recorded as aggravated by age hostility. The court would be required to state that fact on conviction and take it into account when sentencing’.

Recommendation 11

‘The Scottish Government should consider the introduction, out with the hate crime scheme, of a general aggravation covering exploitation and vulnerability’.

It is assessed that the merits of Recommendation 10 (the creation of a new statutory aggravation based on age hostility) requires wider exploration for the same reasons that Lord Bracadale himself expresses when he attaches caveats to Recommendation 10.

Lord Bracadale’s final report did not find that elderly people are generally targeted for hate crime because of their age. Instead, Lord Bracadale found that, in the vast majority of cases, elderly people are targeted by criminals opportunistically, because their vulnerability makes them easy targets for criminal exploitation.

Police Scotland therefore supports Lord Bracadale’s further observation (section 4.70) that: ‘I am conscious of the strength of feeling supporting the introduction of a statutory aggravation which would capture the bulk of the offences committed against the elderly on the basis of perceived vulnerability. I also note that a proportion of offences committed against disabled persons are based, not on hostility, but on perceived vulnerability. For these reasons, although noting that it would not fall within the hate crime scheme which I envisage, I invite the Scottish Government to consider the option of introducing a wider aggravation that would cover exploitation and vulnerability generally. This would have the advantage of including opportunistic crimes committed against the elderly and disabled persons’.

Police Scotland supports Lord Bracadale’s Recommendation 11 (the proposed Exploitation of Vulnerability aggravation) as a potentially more efficacious tool for sending a message that offences against elderly people (and people with disabilities or incapacity) will not be tolerated.

The ability and willingness of victims to be able to report elder abuse?

Incapacity (impairment of sight, hearing and/or mental capacity) and shame/embarrassment are among the inhibitors to elderly victims reporting crimes of exploitation against them. As with victims who are disabled, elderly people may need support to report.

Any specialist skills which may be required within the police and prosecution system to adequately address elder abuse offences?

Where there is some incapacity in elderly victims (such as impairment of sight hearing, or mental capacity) they may need support to report.

Many of the initiatives necessary to protect elderly people from exploitation involve building partnerships with staff in other agencies such as Banks, Post Offices, Local Authority Consumer & Trading Standards, etc.

Any parallels in the criminal protections extended to persons based on certain equality protected characteristics, (i.e. race, disability, those under a certain

age etc.) and the lack a specific aggravating factor in relation to offences targeted at those over a certain age?

Police Scotland's experience is that elderly victims are often made the targets of crime for reasons relating to age-related impairments (such as dementia), in much the same way that people with disabilities are often made the targets of crime for reasons relating to their disabilities or conditions (e.g. learning disability or autism).

Whether Scotland is fully meeting its international human rights commitments to older people in terms of not having a statutory offence on elder abuse?

On its website, the Canadian Department of Justice examines some legal definitions of elder abuse and neglect. The Canadian Department of Justice reaches the following conclusion: 'The UK has been a leader in defining elder abuse and neglect, the definition of Action on Elder Abuse serving as a model on the international human rights front and focusing the concept around breaches of trust. However, the tenor of recent law and policy is to move away the term elder abuse altogether. The terms "adult at risk" and "vulnerable adult"—the latter of which can be found in the Canadian adult protection statutes—are used instead. Moreover, the influential No Secrets policy characterizes elder abuse as a human rights issue, an approach, which, based on our review, is not common amongst documents issued by governments'

Annex One - Key extracts from Lord Bracadale's report that relate to crime against elderly people

- 4.53. The UK charity Action on Elder Abuse has campaigned for a new offence of 'elder abuse' since June 2016. In 2017 it conducted a poll of 3,183 people across the UK to assess attitudes to making elder abuse a hate crime. Almost 95% of respondents considered that the abuse of older people should be an aggravated offence similar to hate crimes based on race, religion or disability. The survey also showed that 95% of respondents agreed or strongly agreed that older people are specifically targeted for abuse due to their perceived physical frailty or mental vulnerability.
- 4.54. In their response to the consultation paper Action on Elder Abuse noted that in relation to crimes such as theft, fraud or assault, older people were often specifically targeted due to their actual or perceived vulnerability. This might be based on physical frailty, mental capacity, memory difficulties, loneliness and isolation, or dependency on others for basic care needs. While in some cases older people may experience malice or ill-will on the basis of their age, the vast majority of crimes against older people were driven by the perpetrator's perception of the victim's vulnerability due to their age.
- 4.55. Action on Elder Abuse indicated that their preference would be for elder abuse to be a standalone offence. They contended that this would send a stronger message to perpetrators about the seriousness of such crimes. They went on, however, to state that as an alternative they believed that the current list of statutory aggravations should be extended to include old age. Recognising that it might not be obvious that crime driven by the perpetrator's perception of the victim's vulnerability due to their age was a hate crime, they suggested that consideration should be given to an alternative name for the offence. They suggested possible titles: 'targeted crime', 'motivated crime', or 'prejudicial crime' with 'age' or 'old age' being included as a specific aggravating factor.
- 4.56. They went on to submit that while crimes against older people which are committed due to the victim's perceived vulnerability comprise a much bigger problem than crimes motivated by hatred or prejudice due to the person's age, they were nevertheless aware that the latter type of crime can also be an issue for many older people. This might be due to perceptions that older people receive more state support (including financial support) than younger people, generational hostility or disrespect towards older people. They often received calls to their Helpline regarding verbal abuse, harassment or general anti-social behaviour from younger people, with many older people telling the charity that they believe they are being targeted because of their age.
- 4.57. A number of other organisations noted that many crimes committed against the elderly were committed because of their perceived vulnerability and that that should be the basis for an aggravation. .
- 4.58. Other respondents opposed adding old age as a protected characteristic. Some, including City of Edinburgh Council, the Faculty of Advocates, the Law Society of Scotland and the Glasgow Bar Association, pointed out that the existing law was robust enough to deal with offences committed because of the perceived vulnerability of the elderly. Sentencers could take the vulnerability into account in the sentencing process.

- 4.64. I found considerable support for some form of recognition that offences against the elderly do constitute a type of offence which the criminal law should mark in a particular way. There is, however, also a recognition that while some offences committed against the elderly reflect hostility or malice and ill-will, and could therefore fit the current definition of hate crime in the Scottish legislation, offences committed on the basis of perceived vulnerability do not meet the thresholds based on hostility. In [chapter 3](#) I examined the case for the introduction of a third threshold as a result of which an offence is committed 'by reason of' the victim's membership of the group with the protected characteristic. This involves selecting a victim because of the group to which the victim belongs. It is based on identity rather than hostility. I recognise that the adoption of this threshold would allow the inclusion, as hate crime, of offences committed because of the perceived vulnerability of the individual, arising from a protected characteristic. I came to the view, however, that this approach would take the focus too far away from what is generally understood by society to be hate crime. I also considered that it might be difficult to find appropriate evidence that there was an intention to select the victim because of vulnerability due to old age.
- 4.65. I think the clearest and most effective way to mark out hate crime is a scheme involving baseline offences and statutory aggravations which reflect identity hostility. That is the underlying philosophy which I have applied throughout the scheme which I am recommending. I would depart from that approach if I felt that it was necessary in order to achieve effective recognition of age-based hate crime. However, based on the evidence and arguments which I have heard, I do not think there is any real gap in relation to patterns of conduct against the elderly which ought to be criminal but are not. Rather, the desire is to mark the criminal behaviour in a particular way. Any new standalone offence would therefore have a considerable cross-over with other existing offences, which risks causing confusion and undermining the aim of collecting reliable data.
- 4.66. I consider that there is sufficient evidence of hostility-based offences against the elderly, particularly in the light of the information provided by Action for Elder Abuse, to include age as a protected characteristic based on the current model of hostility.
- 4.70. I recognise however, that this approach is likely to capture a relatively small proportion of the offences committed against elderly persons. I am conscious of the strength of feeling supporting the introduction of a statutory aggravation which would capture the bulk of the offences committed against the elderly on the basis of perceived vulnerability. I also note that a proportion of offences committed against disabled persons are based, not on hostility, but on perceived vulnerability. For these reasons, although noting that it would not fall within the hate crime scheme which I envisage, I invite the Scottish Government to consider the option of introducing a wider aggravation that would cover exploitation and vulnerability generally. This would have the advantage of including opportunistic crimes committed against the elderly and disabled persons.