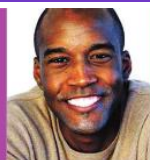


# Hate Crime Legislation

## Consultation Response

February 2019



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# 1 INTRODUCTION

## 1.1 Who Are BEMIS?

**BEMIS** is the national Ethnic Minorities led umbrella body supporting the development of the Ethnic Minorities Voluntary Sector in Scotland and the communities that this sector represents. Our vision is of a Scotland that is equal, inclusive and responsive: A society where:

- people from the diverse communities are valued, treated with dignity and respect,
- have equal citizenship, opportunities and equality of life,
- and who actively participate in civic society.

Within the context of its work and generation of policy response BEMIS ascribe to the human rights based approach PANEL principles. These are:

Participation, Accountability, Non-Discrimination and Equality, Empowerment and Legality.<sup>1</sup>

## 1.2 Executive Summary

Below is a summary of BEMIS key points. Rationale behind these positions is extended in detail within our response.

- The right of the victim remains to identify the nature of any crime. This fundamental basis of remedy, for the victim, must remain.
- Human Rights compliance and education must underpin the development of the Act. This must include both technical legal compliance with the European Convention on Human Rights, the continuation of integration of International Human Rights Law into the domestic regime and an upskilling of citizens via capacity development for them to understand the act and how to use it.
- **A future racial statutory aggravation should reflect precisely** the coverage extended by the pre-existing wording inherent in international human rights law.
- A future racial statutory aggravation **should reflect precisely** coverage extended by the pre-existing wording inherent in Scottish criminal and UK equalities law.

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<sup>1</sup> The Scottish Human Rights Commission, 'A Human Rights Based Approach' – available here: [http://www.scottishhumanrights.com/media/1409/shrc\\_hrba\\_leaflet.pdf](http://www.scottishhumanrights.com/media/1409/shrc_hrba_leaflet.pdf)

- The wording and definition of race hate crime statutory aggravation should be - “a group of persons defined by reference to race, colour, nationality (including citizenship) or ethnic or national origins”.
- In accordance with the international and legal definitions above it must be made explicit that pre-dating case law which affects the defining characteristics of ‘Race’ – colour, nationality etc... are continued into the interpretation of any future act.
- To express hostile ‘opposition or antagonism in action, thought or principle’ sets a clearly lower threshold than demonstrating malicious ‘intention or desire to do evil or cause injury to another person’
- Given the recognition that the statutory aggravation process works well and no specific legal barriers exist to the definition ‘malice and ill will’ we can make the language more accessible by integration the word ‘demonstrates’ without lowering the threshold unnecessarily.

**Thus, BEMIS recommend** that the updated wording for the evidentiary basis of the statutory aggravation should be;

- At the time of committing the offence, or immediately before or after doing so **‘the offender demonstrates malice or ill will’** towards the victim based on the protected characteristic *or*
- The offence is motivated by (Wholly or partly) **‘malice or ill will’** based on the protected characteristic.
- BEMIS reject in its entirety the proposal to create a ‘sectarian aggravation’. It is clear in the case law and analysis of Lord Bracadale that current legal protections suffice. Furthermore the proposal lacks credibility in the communities it supposedly seeks to protect. The proposal does not respond to the general ‘tidy up’ principles of Bracadale’s review and risks reinforcing discrimination by categorising people and communities as sectarian when they evidently are not.
- **‘Sectarianisation’ equates the ‘malice and ill will’ of the perpetrator with the cultural identity of the ‘victim’**. In doing so ‘sectarianisation’ punishes the victim for expressing intrinsic elements of their identity which do not, will not and cannot be the focus of criminal law unless the threshold of the offence is set at an alarmingly low level. This is precisely what happened with section 12 (e), covering offence to a reasonable person, within the Offensive Behaviour at Football and Threatening Communication Act (Scotland) 2012

(OBTCA). The sectarian aggravation proposal holds chilling echoes of the rationale which drove that now repealed legislation.

- The Stirring up racial hatred – Public Order Act 1986 has strong case law and should be integrated into a new piece of hate crime legislation.
- The definition of RACE in the ‘Stirring Up of Hatred’ offense should reflect precisely the statutory aggravation and should be ‘colour, nationality, and citizenship, ethnic or national origins’
- Further analysis and discussion is required, focussing on ECHR compatibility, with all concerned stakeholders of equalities groups and characteristic representatives around the requirement for and role of any additional stirring up of hatred offences.
- We will give careful consideration to the creation of a ‘stirring up of hatred’ offense in respect of religion. Religion differs from race in that it is a belief system. Belief systems like politics must be open to scrutiny and appropriate discussion in a healthy democratic society. We agree with Lord Bracadale that any offense must be balanced with the ECHR.
- We do not feel that any other stirring up of hatred offenses are required in reference to any other characteristics. However we would take guidance from equalities colleagues on this and will listen to all considerations and arguments put forward.
- BEMIS also note that the ‘Section 50 A Criminal Law (Consolidation) (Scotland) Act 1995’ standalone aggravation was introduced before the delivery of the MacPherson report in 1999. Therefore there is an evidentiary standard threshold which makes it harder to respond to Macphersons principle that a crime is racist and must be ‘reported, recorded and investigated’ if perceived as such by the victim or witness.
- In order to prosecute a case under ‘Section 50 A Criminal Law (Consolidation) (Scotland) Act 1995’ two (2) pieces of evidence are required. This sets the evidentiary threshold above the Section 96 statutory aggravation which only requires a single piece of evidence. As such and given the analysis put forward by Lord Bracadale in relation to charges, prosecutions and use of Section 50, BEMIS will support its repeal and the integration of a ‘racial aggravation’ into a new piece of hate crime legislation.

### 1.3 Note on background to consultation

As part of the stage 1 evidence sessions facilitated by the Justice Committee of the Scottish Parliament into James Kelly MSP's Offensive Behaviour at Football and Threatening Communications (Repeal) (Scotland) Bill BEMIS highlighted the anomaly that the social concept of 'sectarianism' was a word which had no legal meaning.

Despite the concept's lack of legal character it was a term utilised continuously in public consciousness and debate with regards to the act's success or not and in direct reference to charges progressed under Section 12 (e) of the Offensive Behaviour at Football and Threatening Communications Act (Scotland) 2012.<sup>2</sup>

*"the concept of sectarianism remains a contested social issue. We have had recommendations from Dr Duncan Morrow's independent advisory group on what the definition of sectarianism should be, but our general argument is that it has to happen independently of the judiciary as a first port of call because it remains a contested term. When hate crime occurs, irrespective of whether it is anti-Catholic, anti-Protestant, anti-Semitic or Islamophobic, it is quite clear.*

*The policy memorandum that supports the 2012 act acknowledges that sectarianism is not a legal concept in Scots law".<sup>3</sup>*

It should be noted that BEMIS analysis was not founded on a plea to define sectarianism in Scots law. We were of and remain of the opinion that the aggravations covering religion and race are sufficient to deal with such behaviour. It was and continues to be an anomaly that a sociological concept that has no legal character remains so prominent within criminal law.

The concept of 'sectarianism' requires to be completely de-constructed in order that we can respond to the component parts that have evolved over a sustained period of time. If a crime is religiously aggravated it should be identified as such. If a crime is racially aggravated it should be identified as such. As things stand;

- The right of the victim remains to identify the nature of any crime. This fundamental basis of remedy, for the victim, must remain.
- The burden of proof, collation of evidence and successful prosecution rests with the criminal justice system, in support to the victim.

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<sup>2</sup> Procurator Fiscal v Donnelly and Walsh

<sup>3</sup> Official Report of the Scottish Parliament - Justice Committee 24 October 2017 – Session 5: available here: <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11144>

On March the 24<sup>th</sup> 2018, following the publication of the Justice Committees final report which contained the point specifically identified by BEMIS that sectarianism is a contested social concept with no legal character,<sup>4</sup> the Scottish Government announced that they would convene an Independent Advisory Group to:

- consider and weigh up the pros and cons of establishing a legal definition of 'sectarianism' in Scots law
- report the findings of these considerations to Scottish Ministers making clear recommendations on whether such a definition should be introduced and, if so, propose the text of such a definition<sup>5</sup>

With reference to the aforementioned human rights based approach PANEL principles it is crucial for policy and legislative development to be rooted in, understood and shaped by communities who experience the direct consequences of any actions which may be the catalyst for a legislative response.

A basic principle of human rights based policy development in relation to hate crime ensures that an issue such as anti-Semitism would involve our Jewish community as a central voice. An issue such as Islamophobia would place the Muslim community at the heart of this process.

With this in mind BEMIS place on record significant concerns that no formal representation was given on the working group to either official representatives of the Catholic Church or Catholic community or official representatives of Irish cultural or any representative community organisations. When policy is developed in isolation of communities it is intended to impact on it has the outcome of lacking credibility before it has had the opportunity to develop momentum.

The locus of the catholic community's relevance to the evolution of a "sectarianism" aggravation is abundantly clear. In every year of reporting since devolution anti-catholicism has constituted over 55%<sup>6</sup> of all religiously aggravated hate crime in

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<sup>4</sup> Stage 1 report on the Offensive Behaviour at Football and Threatening Communications (Repeal) (Scotland) Bill – Justice Committee – Scottish Parliament – January 2018. Pg. 57 – 'Definition of Sectarianism'.

<sup>5</sup> Group info and remit accessed 20/02/19 < <https://www.gov.scot/groups/legal-definition-of-sectarianism-working-group/>>

<sup>6</sup> Religiously Aggravated Offending in Scotland 2017-18 - Table 7: Religious affiliation that was the subject of offensive conduct – Pg. 17 – Accessed here on 20/02/19 < <https://www.gov.scot/binaries/content/documents/govscot/publications/research-publication/2018/06/religiously-aggravated-offending-scotland-2017-18/documents/00536774-pdf/00536774-pdf/govscot%3Adocument>>

Scotland. This is despite this minority community constituting between 14-16% of Scotland's population over the reporting period of 2012 – 2018.<sup>7</sup>

While we attended, alongside colleagues from the Catholic church, a meeting of the advisory group on the 26<sup>th</sup> June 2018 we note that the concerns we raised have not been recorded in the minutes released of that meeting<sup>8</sup> or the final report of the group.

As such we reiterate these concerns communicated to secretariat in November 2018 following the release of the minutes and the group's final report.

*"BEMIS must however raise a concern, I understand to be shared by my colleague Anthony Horan from the Catholic Church, that the minutes do not reflect the actual substance of the meeting.*

*BEMIS raised a number of concerns with regards the creation of sectarian aggravation beyond the pre-existing aggravations of religion and race and this isn't noted in the minutes. As you can see we requested a copy of the notes taken on the 3<sup>rd</sup> July and were somewhat surprised to then only see these post publication.*

*BEMIS think it would be beneficial to note that there was no unanimous agreement on the definition presented to us that day and that as a minimum significant further consultation, clarification and dialogue was required to assess the functionality, purpose and requirement for this new aggravation beyond the pre-existing protections afforded by the religious and racial aggravations".<sup>9</sup>*

BEMIS welcome the opportunity now to engage in this further debate with regards to the proposed sectarianism aggravation and will extend further evidenced based arguments in section 2.3 of this submission entitled – **SECTARIANISM**.

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<sup>7</sup> Equality Evidence Finder – Scottish Government - Summary: Religion Demographics <https://www2.gov.scot/Topics/People/Equality/Equalities/DataGrid/Religion/RelPopMig>

<sup>8</sup> Minutes of Meeting 26/06/18 - <https://bit.ly/2DWiifJ>

<sup>9</sup> BEMIS communication to secretariat via email 16/11/18



## 1.4 BEMIS Consultations

On Friday the 8<sup>th</sup> of February 2019 BEMIS facilitated two consultations on the Scottish Governments hate crime proposals.

- ✓ **Session number 1:** 10 - 12: Hate Crime Consultation: *Racial Aggravations and Legislative Structure*
- ✓ **Session number 2:** 2 - 4: Hate Crime Consultation: *Political Entities and Sectarianism*

In addition on the 31<sup>st</sup> of October 2018 BEMIS held a national conference on 'Tackling Prejudice and Building Connected Communities – A Thematic Conference on hate crime motivated by Racial and Religious Prejudice'.

The Learning outcomes and next steps are included under section 4 of the paper entitled 'A Comprehensive Approach to Challenging Hate Crime and Prejudice'

Our 'hate has no home' consultations in 2019 and 2018 conference BEMIS were informed by and engaged with;

- ✓ Attended by 143 delegates
- ✓ **Representatives from duty bearers** (i.e. local authorities, Police Scotland, Scottish Government, NHS, Crown Procurator and Fiscal Service, The Scottish Football Association, Boxing Scotland and others)
- ✓ **Representatives from rights holders** and community organisation representatives (Our human rights based approach places communities at the heart of our engagements. For example 'The Voices from our Communities Panel' at conference 2018 with Jewish, African (Kenyan), Catholic, Polish, Gypsy Traveller and AMINA Muslim Women delegates.
- ✓ **3<sup>rd</sup> Sector strategic organisations and partners.** For example AMINA Muslim Womens Resource Centre, SCOjEC, Call-it-Out, Kenyan Women in Scotland Association, SACRO, Positive Action in Housing, Police Scotland Violence Reduction Unit, PKAVS 'Perth and Kinross Voluntary Services' and others.

## 2 CONSULTATION PROPOSAL PART 1

### 2.1 Statutory Aggravations

#### **Lord Bracadale's Recommendation 20**

All Scottish hate crime legislation should be consolidated.

#### **Lord Bracadale's Recommendation 1**

Statutory aggravations should continue to be the core method of prosecuting hate crimes in Scotland.

BEMIS Scotland agree with Lord Bracadale's recommendation hate crime legislation should be consolidated into a single act and that statutory aggravations should continue to be the 'core method' utilised for 'prosecuting hate crimes in Scotland'.

The benefits of consolidating hate crime legislation into a single act can;

- ✓ Help make hate crime legislation simpler
- ✓ Help make hate crime legislation easier to articulate for victims and witnesses
- ✓ Help make hate crime legislation more accessible to victims of hate crime

### 2.2 Racial Aggravations:

Under current legislation, ethnic and cultural minority communities in Scotland find the different legislative statutes in existence to charge and prosecute hate crimes overly complicated. As things stand, racist hate crimes, depending on the circumstances, can be charged and prosecuted using the following methods:

- (Aggravation) Section 96 of the Crime and Disorder Act 1998
- (Standalone) Section 50A of the Criminal Law (Consolidation) (Scotland) Act 1995
- (Standalone) Stirring up racial hatred – Public Order Act 1986

Before we consider the evidence thresholds and circumstances required to successfully obtain convictions utilising any of these methods it is useful to remind ourselves of the single most important characteristic they have in common.

All of these offenses share the same legal description of who and whom can be targeted in a racist hate crime.

### **Section 96 of the Crime and Disorder Act 1998**

*In this section “racial group” means a group of persons defined by reference to **race, colour, nationality (including citizenship) or ethnic or national origins.***

### **Section 50A of the Criminal Law (Consolidation) (Scotland) Act 1995**

*“Racial group” means a group of persons defined by reference to **race, colour, nationality (including citizenship) or ethnic or national origins.***

### **Stirring up racial hatred – Public Order Act 1986**

*Meaning of “racial hatred”.*

*In this Part “racial hatred” means hatred against a group of persons F25... defined by reference to **colour, race, nationality (including citizenship) or ethnic or national origins.***

This continuity of language reflects the positive integration of international human rights law into our domestic legislation. **The International Convention on the Elimination of all forms of Racial Discrimination articulates in Article 1 of the convention what constitutes racial discrimination.**

“In this Convention, the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on **race, colour, descent, or national or ethnic origin** which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life”<sup>10</sup>

During the course of BEMIS consultations into the future of hate crime legislation we heard from some communities that they were concerned that repeal of **Section 50A of the Criminal Law (Consolidation) (Scotland) Act 1995** and the integration of **Section 96 of the Crime and Disorder Act 1998** statutory aggravation of RACE into a new piece of hate crime legislation would undermine the seriousness of or take focus away from on the significant number of racially aggravated hate crimes which take place in Scotland.

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<sup>10</sup> UN General Assembly, International Convention on the Elimination of All Forms of Racial Discrimination, 21 December 1965, United Nations, Treaty Series, vol. 660, p. 195 – Article 1

**BEMIS analysis is that repeal of Section 50 and the integration of a Section 96 racial aggravation into a single piece of hate crime legislation *would not undermine our efforts to provide a legal remedy to victims of racist hate crime.***

On the contrary, a single piece of legislation would be simpler, more accessible and easier to discuss knowledgeably. Knowledge and empowerment is a key principle of a human rights based approach and is critical to credible and coherent legislation.

We will explain in further detail why BEMIS believe that **Section 50A of the Criminal Law (Consolidation) (Scotland) Act 1995** is potentially incompatible, due to the evidentiary requirements, with the general principles of the Macpherson Report in the relevant section of this paper.

However in relation to statutory aggravations BEMIS agree with Lord Bracadale that these should continue to be primary method utilised for prosecuting racist hate crime.

**In addition BEMIS recommend that:**

- A future racial statutory aggravation **should reflect precisely** the coverage extended by the pre-existing wording inherent in international human rights law.
- A future racial statutory aggravation **should reflect precisely** coverage extended by the pre-existing wording inherent in Scottish criminal and UK equalities law.
- The wording and definition of race hate crime statutory aggravation should be - “a group of persons defined by reference to race, colour, nationality (including citizenship) or ethnic or national origins”.
- In accordance with the international and legal definitions above it must be made explicit that pre-dating case law which affects the defining characteristics of ‘Race’ – colour, nationality etc... are continued into the interpretation of any future act.
- Individual and community capacity development is required in relation to the ‘hate crime equation’ i.e. that a, **criminal act + statutory aggravation = racially aggravated hate crime.**
- Capacity development should focus on raising awareness of that:
  - (i) The Criminal Act requires corroborated evidence. This means that there must be two (2) sources of evidence. For example this could be the victim and a friend, family member, member of the general public, police officer or other source.

- (ii) The Statutory aggravation, in compliance with the MacPherson report, requires only a single piece of evidence. This can be the victim.

## **DEFINITION OF RACIST INCIDENT**

### **12. That the definition should be:**

*"A racist incident is any incident which is perceived to be racist by the victim or any other person".*

**13. That the term "racist incident" must be understood to include crimes and non-crimes in policing terms. Both must be reported, recorded and investigated with equal commitment.**

**14. That this definition should be universally adopted by the Police, local Government and other relevant agencies.**

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## **2.3 Updating Language – Statutory Aggravation Thresholds**

### **Lord Bracadale's Recommendation 2**

The two thresholds for the statutory aggravations are effective and should be retained but with updated language. They should apply where:

- at the time of committing the offence, or immediately before or after doing so, the offender demonstrates hostility towards the victim based on the protected characteristic; or
- the offence is motivated (wholly or partly) by hostility based on the protected characteristic.

It should remain the case that evidence from a single source is sufficient evidence to establish the aggravation.

The recommendation to update the language of the statutory aggravation thresholds from 'evince malice and ill-will' to 'demonstrating hostility' provoked a detailed discussion at BEMIS consultation events.

The Oxford English Dictionary defines '**Malice**' as:

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<sup>11</sup> THE STEPHEN LAWRENCE INQUIRY REPORT OF AN INQUIRY BY SIR WILLIAM MACPHERSON OF CLUNY – Published by Secretary of State for the Home Department by Command of Her Majesty. February 1999 –Pg. 376 / Point 13 "definition of a racist incident" – accessed here: <https://bit.ly/2s61xbM>

“1 **.Malicious Intent** 1a. The intention or desire to do evil or cause injury to another person; active ill will or hatred. In later use also in weakened sense: mischievous intent, the desire to discomfort.

2. **Law.** Esp. in malice aforethought (see aforethought adj.) and, formerly, in malice prepense (see prepense adj.): (a) wrongful intention generally; (b) the state of mind required for a person to be found guilty of certain criminal offences (esp. of murder); (c) the state of mind required for a person to be made liable for certain torts”.<sup>12</sup>

In comparison **‘Hostility’** is defined as:

“1 a. **The state or fact of** being hostile; hostile action exercised by one community, state, or power against another; esp. such as involves war.

2. transf. and fig. **Opposition or antagonism** in action, thought, or principle.<sup>13</sup>

While BEMIS support the principle of Lord Bracadale’s proposal to make the law and language more accessible we recommend that rather than changing the language of the evidentiary threshold from **‘evincing malice or ill will’** to **‘demonstrate hostility’** that we should maintain the accessible language of ‘malice and ill-will’ which is well defined in law and understood by the general public and instead only change the word ‘evince’ to ‘demonstrate’.

The integration of ‘hostility’ as an alternative to ‘malice and ill will’ may unintentionally lower the threshold of a statutory aggravation and instigate compliance issues with European Convention of Human Rights (ECHR).

Utilising the Oxford dictionary definitions:

- To express hostile ‘opposition or antagonism in action, thought or principle’ sets a clearly lower threshold than demonstrating malicious ‘intention or desire to do evil or cause injury to another person’
- Given the recognition that the statutory aggravation process works well and no specific legal barriers exist to the definition ‘malice and ill will’ we can make the language more accessible by integration the word ‘demonstrates’ without lowering the threshold unnecessarily.

**Thus, BEMIS recommend** that the updated wording for the evidentiary basis of the statutory aggravation should be:

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<sup>12</sup> "Malice, n." OED Online. Oxford University Press, December 2018. Web. 21 February 2019.

<sup>13</sup> "hostility, n." OED Online. Oxford University Press, December 2018. Web. 21 February 2019.



- At the time of committing the offence, or immediately before or after doing so **'the offender demonstrates malice or ill will'** towards the victim based on the protected characteristic *or*
- The offence is motivated by (Wholly or partly) **'malice or ill will'** based on the protected characteristic.

## 2.4 Sectarianism Aggravation

The proposed Sectarianism Definition is:

**Definition:** Sectarianism should be defined in law and that the definition should reflect the common understanding of sectarianism in modern Scotland. The Group's view is that sectarianism as it is commonly understood in Scotland is rooted in religious antipathy based on perceived Christian denominational affiliation, and hostility expressed in terms of perceived British or Irish national origins and citizenship. In other words, for the purpose of naming sectarianism in Scots Law, sectarianism should be defined as hostility based on perceived (a) Roman Catholic or Protestant denominational affiliation, (b) British or Irish citizenship, nationality or national origins or (c) a combination of (a) and (b).

14

BEMIS Scotland agree with Lord Bracadale's assessment that the non-existence of a legal statutory aggravation covering the contested sociological, wide ranging description of 'sectarianism' leaves any religious or racial minority community unprotected by criminal law.

Lord Bracadale noted that there was no consensus among those consulted during his review on what is meant by sectarianism, and noted that there were 'sharp divisions of opinion on whether it is a religious concept, a political and cultural concept or involves a mixture of religion, politics and culture.' Given the Working Group was specifically tasked with considering the merits of a legal definition of sectarianism, and the Working Group had not reported at the time he delivered his review, Lord Bracadale stated that the Working Group was 'best suited to take [this] forward'.

Sectarianism is often described as an intersectional issue – meaning that expressions of sectarianism can combine prejudice toward different characteristics, some of which are already protected in law, such as religion and race, and some which are not, such as the more difficult to define concept of culture. Lord Bracadale concluded that the absence of a statutory aggravation based on sectarianism would not leave a gap in the law because both the race and religion statutory aggravations can be attached to any specific offence once proven.

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<sup>14</sup> One Scotland: Hate Has No Home Here Consultation on amending Scottish hate crime legislation - Pg. 26

<sup>15</sup> One Scotland: Hate Has No Home Here Consultation on amending Scottish hate crime legislation – Pg. 23

- ✓ Given the lack of victim's participation in or appropriate integration of communities identified in the new working definition within the development of its wording, scope or reference the development of the proposed aggravation lacks credibility.
- ✓ The aforementioned human based approach PANEL process must precede any evolution or discussions with regards to the development of a new 'sectarianism' aggravation. In this instance the concept of equalities and human rights policy development that our baseline should be '**nothing about us without us**' has unfortunately not been applied.
- ✓ While BEMIS agree that we need to tackle all forms of hate crime it is also crucial that we are able to identify the nature, locus, trends and specific circumstances which relate to each crime. This means naming crimes specifically. If it is anti-Catholic call it that. If it is anti-Protestant call it that. If it is anti-Irish racism, call it that. If it is anti-British racism, call it that. Individual citizens hold fundamental rights to identify the nature of crimes. It is then the responsibility of the criminal justice system to determine.
- ✓ We also have a duty and obligation to listen to communities affected by any forms of hate crime and respond to their concerns. At both our 2018 hate crime conference and 2019 consultations **official representatives from the Catholic Church and Irish community organisations explicitly told us that they wish to continue to be protected using the existing religious and racial aggravations.**
- ✓ **Significant further engagement and consultation** is required between concerned communities, Government and anti-sectarianism bodies to understand why there is such a concerning negative reaction to a 'sectarianism' aggravation from communities most likely to be victims of religiously aggravated hate crime. This is a clear anomaly. This must occur outside the scope of criminal law. Meanwhile religious and racial statutory aggravations will continue to protect victims of religious and racial hate crimes.
- ✓ Lord Bracadale recognised that in relation to 'new groups' to be covered by evolution of religious or racial aggravations such as Migrants, Gypsy Travellers or Gaelic speakers that they would be covered by the existing definition of Race.
- ✓ For clarity race refers to '**colour, nationality, citizenship, ethnic or national origins**'. A sequence of high profile pre-existing case law clearly identifies that racial aggravations which pertain to anti-Irish racism have been successfully



'fair labelled', identified, charged, prosecuted and convicted as racist hate crime.<sup>16</sup>

- ✓ With specific reference to anti-British racism and Lord Bracadale's assessment of 'new groups', such a legal protection as defined in pre-existing international human rights and domestic criminal law clearly applies. Where anti-British, anti-English, anti-Scottish or anti-Welsh racism occurs the legal tools clearly exist to attend to any occurrences of such crimes.
- ✓ **The advisory group's recommendation to restrict the definition to 'Catholic, Protestant, Irish and British'** would create an anomaly and differentiation between criminal law and equalities law. Irish community representatives have informed BEMIS repeatedly that narrow reading of the equalities law definition of race which focuses primarily on 'colour' and not also on 'nationality, citizenship, ethnic and national origins' routinely isolates them from appropriate opportunities to engage in policy development relevant to them. This non recognition and isolation from participation is in itself is a form of discrimination. A 'sectarianism' aggravation would further compound that ambiguity and inequality by removing in criminal law the protection and transparency of that community's locus to the legal definition of 'RACE'.
- ✓ **The advisory group's recommendation to restrict the definition to 'Catholic, Protestant, Irish and British'** risks reinforcing ignorance about who is responsible for and within which context these crimes occur. Ecumenical relations within the intra-Christian denominations are positive, pro-active, responsive and progressive. There can be no insinuation, as is the case within dynamics of the general populace<sup>17</sup> and more concerningly via Government funded anti-sectarianism educational resources<sup>18</sup>, that these institutions in themselves and their structures, including the existence of Catholic schools, are responsible for 'sectarianism'. Or that hate crimes which are directed towards either community only manifest within and between these groups.

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<sup>16</sup> William Walls v Procurator Fiscal, Kilmarnock [2009] HCJAC 59, para 19. Accessible here: <https://www.scotcourts.gov.uk/search-judgments/judgment?id=1c2e86a6-8980-69d2-b500-ff0000d74aa7>

<sup>17</sup> The Herald Newspaper – 21<sup>st</sup> February 2015 – “*Two in five Scots oppose Catholic schools, first major survey into sectarianism finds*” Available here: <https://bit.ly/2SgPyDm>

<sup>18</sup> WESREC – 'Mainstreaming anti-sectarianism in Equalities Toolkit' (2018) - **Lupitas Story** Pg. 47 “However now she has found out that having a baptism certificate could be an advantage if she wants her daughter to go to a Catholic school, rated amongst the best in Scotland. This does not seem fair to her though; firstly because, why should there be state funded Catholic schools? and secondly, why should she have this sort of advantage due to something, which for her, is so random and meaningless?”

- ✓ Given that the general principles of the Bracadale review have been to tidy up, consolidate, simplify and make accessible hate crime legislation we are unable to identify the value that a ‘sectarianism’ aggravation would bring beyond what is already protected by religious and racial aggravations.
- ✓ On the contrary our understanding from speaking directly to affected communities is that a ‘sectarianism’ aggravation could have a negative impact on the perceptions of their minority community within the general population and undermine their agency to speak on their own behalf.
- ✓ The ‘sectarianisation’ of minority communities occurs when cultural aspects of their identities such as St. Patricks Day, the Irish national flag, Gaelic athletic tops, and other visible or verbal expressions of Irish cultural identity are perceived as sectarian. This happens regularly. A sectarian aggravation risks reinforcing this ignorance and not attending to long held miss-conceptions about the historical nature of prejudice in Scotland in relation to the Irish community and how this manifests in present day Scotland.
- ✓ **‘Sectarianisation’ equates the ‘malice and ill will’ of the perpetrator with the cultural identity of the ‘victim’.** In doing so ‘sectarianisation’ punishes the victim for expressing intrinsic elements of their identity which do not, will not and cannot be the focus of criminal law unless the threshold of the offence is set at an alarmingly low level. This is precisely what happened with section 12 (e), covering offense to a reasonable person, within the Offensive Behaviour at Football and Threatening Communication Act (Scotland) 2012 (OBTCA). The sectarian aggravation proposal holds chilling echoes of the rationale which drove that now repealed legislation.
- ✓ “Sectarianism” is not a problem Scotland has inherited from Ireland, sectarianism has its roots in British Imperialism and history and the subjugation of the Irish in Britain, including Scotland, as an inferior or menacing ‘race’.<sup>19</sup> The UN Committee on the Elimination of Racial Discrimination called on education authorities in the UK/Scotland to:

*“Strengthen efforts to eliminate all racist bullying and harassment in the State party’s schools, including by requiring schools to collect qualitative and quantitative data on bullying and exclusions from school on the grounds of race, colour, descent, or national or ethnic origin, and to use the data to develop concrete strategies;*

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<sup>19</sup> 1923 Church and Nation Report – The Menace of the Irish Race to the Scottish Nation

*(c) Ensure that the school curricula across its jurisdiction contain a balanced account of the history of the British Empire and colonialism, including of slavery and other grave human rights violations”.<sup>20</sup>*

- ✓ Thus, BEMIS reject in its entirety the proposal to create a ‘sectarian aggravation’. It is clear in the case law and analysis of Lord Bracadale that current legal protections suffice. Furthermore the proposal lacks credibility in the communities it supposedly seeks to protect. The proposal does not respond to the general ‘tidy up’ principles of Bracadale’s review and risks reinforcing discrimination by categorising people and communities as sectarian when they evidently are not.

## 2.5 Stirring Up Of Hatred

### **Lord Bracadale’s Recommendation 13**

Stirring up of hatred offences should be introduced in respect of each of the protected characteristics including any new protected characteristics.

### **Lord Bracadale’s Recommendation 14**

Any new stirring up of hatred offences should (a) require conduct which is threatening or abusive; and (b) include a requirement (i) of an intention to stir up hatred, or (ii) that having regard to all the circumstances hatred in relation to the particular protected characteristic is likely to be stirred up thereby.

### **Lord Bracadale’s Recommendation 15**

The current provisions in relation to stirring up racial hatred under the Public Order Act 1986 should be revised and consolidated in a new Act containing all hate crime and stirring up of hatred legislation.

Any replacement for the stirring up of racial hatred provisions should (a) require conduct which is threatening or abusive; and (b) include a requirement (i) of an intention to stir up hatred, or (ii) that having regard to all the circumstances hatred in relation to the particular protected characteristic is likely to be stirred up thereby.

Lord Bracadale’s recommendation that stirring up of hatred offenses should mirror and accompany statutory aggravations in a new consolidated hate crime act instigated an inquisitive discussion with consultation attendees.

While stirring up of hatred in reference to RACE has a long standing legal pedigree via ‘*Stirring up racial hatred – Public Order Act 1986*’ and more recently religion via

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<sup>20</sup> October 2016 (CERD/C/GBR/CO/21-23)

section 6 of the OBTCA this is not the case with any other characteristics or proposed characteristics.

Consultee's therefore were unanimous that further information is required from any future bill team, the Lord Advocate and the COPFS to determine the nature of future crimes that may be required to be prosecuted. I.E. What are we missing at the moment that requires a 'stirring up of hatred offence' to be created and applied to.

As identified by Lord Bracadale the intersection of any future 'stirring up of hatred' offence would have clear compliance requirements with Article 10 'Freedom of Expression' of the ECHR.

*"10.1 Everyone has the right to freedom of expression. This right shall include freedom to hold public opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers"*

The right to freedom of expression is not absolute and contains three integrated tests to sustain a balance between the right of the individual and the responsibility of the state. The right to freedom of expression can be curtailed if:

- 1) The offense is proscribed by law
- 2) Is necessary in a democratic society
- 3) Is in the interests of national security

When creating new legislation, particularly legislation which creates new offenses such as 'stirring up of hatred' against new 'characteristics' we should tread extremely carefully so as not to extend the reach of the criminal law into places, people and incidents that may occur now or in the future that would be derogate citizens ECHR rights.

While the European Court of Human Rights (ECtHR) places significant emphasis on protecting freedom of expression this has not prevented states from applying the 3 tests to restrict rights. The case law emanating from the European Court (which Scottish courts are obliged to give due regard to) has taken several definitive stances in relation to this article which is considered to be fundamental to the functioning of a democratic society.

**For example in Eon v. France - 26118/10**, Mr. Eon held up a placard to the French President saying "*get lost, you sad prick*" in 2013 had his conviction quashed by the European Court after he was prosecuted under French law. The court's reasoning that

prosecutions of this nature would have a '**chilling**' effect on the democratic principles of member states.<sup>21</sup>

Therefore, as we evolve considerations into the creation of new stand-alone offences we must have human rights law compliance and robust democratic rights central to our discussions. It is our shared responsibility in the present to forecast the worst possible scenario of the future within which such laws could be abused or extended dangerously into the realm of individual freedom.

While there is a general consensus between all concerned stakeholders that we want to pro-actively challenge hate crime we must be conscious that we do not rebrand having different opinions, faith or political beliefs as hate crime. Citizens are well within their rights to challenge extreme right wing political beliefs. Citizens are well within their rights to appropriately challenge the theological teachings of any monotheistic Abrahamic religion. They cannot act on the hatred of a religious person purely because they exist but they can disregard their ideas. This is applicable to any belief, religious, political or other.

The unintended consequences therefore of extending the 'stirring up of hatred' offense into new realms beyond race, at a time when ethno / religious identities and global challenges are manifesting should be approached with care so as not to have the unintended effect of bolstering support for the opinion the criminal law seeks to challenge.

**For example in the ECtHR case of ES v. Austria, (No. 38450/12)** the applicant, a leader of a right wing group based in Austria, made disparaging comments about Islam by interpreting a section of the Quran which the speaker identified as confirming that "Mohammad liked to do it with children" before making general about Muslims being unable to integrate into Austrian society as a consequence of their religious faith.

The individual was convicted of publicly "disparaging a person who is an object of veneration", namely "Muhammad" the "prophet of Islam", in a way likely to arouse justified indignation, in violation of section 188 of the Austrian Criminal Code".<sup>22</sup>

With reference to Lord Bracadale's rationale outlined in the 'Hate has no Home' consultation document with regards to the 'stirring up of hatred offense' the opinions of ES are, in the opinion of BEMIS, clearly wrong, harmful and serious. If this had occurred in a Scotland within which the legal protections of a standalone offense covering religion and belief applied as set out below:

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<sup>21</sup> Eon v. France - 26118/10 Judgment 14.3.2013 [Section V]

<sup>22</sup> <https://eclj.org/geopolitics/echr/do-we-have-the-right-to-criticise-islam>

**Lord Bracadale's Recommendation 14**

Any new stirring up of hatred offences should (a) require conduct which is threatening or abusive; and (b) include a requirement (i) of an intention to stir up hatred, or (ii) that having regard to all the circumstances hatred in relation to the particular protected characteristic is likely to be stirred up thereby.

then one can assess that such intended ignorance and clear misrepresentation of the Islamic faith could result in a successful prosecution. De-emotionalising this case and looking at it from a strictly legal perspective the European Centre for Law and Justice (ECLJ) argued however that

*“In the view of the ECLJ, only the propagation of gratuitously offensive and unnecessary obscenities to the debate as well as statements inciting to imminent violence could be restricted. Any other statement, especially one that is based on facts, should be guaranteed under freedom of expression”.<sup>23</sup>*

As a result of this case the perpetrator has moved from a position of obscurity at the national level (Austria) to significant recognition at the international level (Europe / US). Within the resultant melee the focus of the debate has moved away from being able to challenge the character of the discrimination identifiable in the inflammatory and offensive remarks, isolate and undermine it with policy and facts. The situation now is face off at the international level of the grand chamber of the ECtHR receiving formal petitions on one hand from Christian evangelicals armed with a 60,000 signatory petition demanding the ‘right to criticise Islam’ and on the other the ‘Organisation of Islamic Cooperation’ who would like to impose, in international law, a crime of blasphemy, also called crime of “defamation against Islam”.

Within this context the prosecution of what could be a ‘stirring up of hatred’ offence has instigated a hyperbolic debate that has potentially made life in Austria for individual Muslims significantly harder.

Thus in relation to any potential stirring up of Hatred Offenses BEMIS recommend that;

- The Stirring up racial hatred – Public Order Act 1986 has strong case law and should be integrated into a new piece of hate crime legislation.
- The definition of RACE should be ‘colour, nationality, and citizenship, ethnic or national origins’

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<sup>23</sup> <https://eclj.org/geopolitics/echr/do-we-have-the-right-to-criticise-islam>



- Further analysis and discussion is required, focussing on ECHR compatibility, with all concerned stakeholders of equalities groups and characteristic representatives around the requirement for and role of any additional stirring up of hatred offences.
- We will give careful consideration to the creation of a 'stirring up of hatred' offense in respect of religion. Religion differs from race in that it is a belief system. Belief systems like politics must be open to scrutiny and appropriate discussion in a healthy democratic society. We agree with Lord Bracadale that any offense must be balanced with the ECHR.
- We do not feel that any other stirring up of hatred offenses are required in reference to any other characteristics. However we would take guidance from equalities colleagues on this and will listen to all considerations and arguments put forward.
- There should be no stirring up of hatred offense in relation to the proposed definition of sectarianism. Any such evolution of the law for stirring up of hatred offense of sectarianism will be adequately and appropriately covered, as in statutory aggravations, by race and religion.

### 3 CONSULTATION PROPOSAL PART 2

#### 3.1 Repeal of Section 50 (A) Criminal Law (Consolidation) (Scotland) Act 1995 – Racial Aggravation

##### **Lord Bracadale's Recommendation 18**

Section 50A of the Criminal Law (Consolidation) (Scotland) Act 1995 should be repealed.

BEMIS agree with Lord Bracadale's analysis that repeal of the 'Section 50A of the Criminal Law (Consolidation) (Scotland) ACT 1995' would not leave a gap in the law or undermine our efforts to target racially aggravated hate crimes.

- BEMIS also note that the 'Section 50 A Criminal Law (Consolidation) (Scotland) Act 1995' standalone aggravation was introduced before the delivery of the MacPherson report in 1999. Therefore there is an evidentiary standard threshold which makes it harder to respond to Macpherson's principle that a crime is racist and must be 'reported, recorded and investigated' if perceived as such by the victim or witness.
- In order to prosecute a case under 'Section 50 A Criminal Law (Consolidation) (Scotland) Act 1995' two (2) pieces of evidence are required. This sets the evidentiary threshold above the Section 96 statutory aggravation which only requires a single piece of evidence. As such and given the analysis put forward by Lord Bracadale in relation to charges, prosecutions and use of Section 50, BEMIS will support its repeal and the integration of a 'racial aggravation' into a new piece of hate crime legislation.



## 4 A COMPREHENSIVE APPROACH TO CHALLENGING HATE CRIME

The Macpherson report instructed that racist incidents which include ‘crimes and non-crimes’ must be responded to by the Police. BEMIS believe that while the criminal justice system, including the Police and COPFS clearly have a critical and fundamental role in tackling hate crime, they cannot be expected to do this alone or in isolation of key stakeholders. The duty to tackle prejudice and help build and foster connected communities is not only for law. Hate Crime response requires a comprehensive approach. This means that education, culture, communication opportunities, human rights education, restorative justice and other relevant policy areas are key to tackling hate crime pro-actively. In October 2018 BEMIS and Police Scotland held a thematic conference on hate crime motivated by racial and religious prejudice.

The conference generated a series of outcomes which will inform our response to the broad hate crime agenda in 2019 and beyond.

### 4.1 Learning Outcomes

1. Restorative Justice
2. Pro-active race equality educational resources (Not to be confused with anti-bullying resources. A component of a Race Equality Educational Package)
3. Coherent hate crime legislation
4. Sociological terms vs. Legal understandings (Race and Sectarianism)
5. Cultural recognition of diverse communities and resources to integrate diverse communities pro-actively into an ‘inclusive national identity’
6. Increased communication opportunities with Police Scotland and communities
7. A human rights based approach. “Voices from our Communities”. This engagement must underpin our collaborative and comprehensive efforts to tackle hate crime in Scotland. Capacity building and what are our rights?
8. Intersectional challenges, recognition and solidarity. Learning from each other’s best practice, methods and experience.

Conference Outcome	Next Steps		Action	Potential Conference 2019 Lead
1	Restorative Justice	<p>Rania Hamad of Edinburgh City Council to help integrate this key area of work into conference 2019 programme.</p> <p>What is Restorative Justice and Hate Crime?</p> <p>Hate crime often targets the core of a person's identity. Research indicates that, as a consequence, the emotional and psychological trauma caused by hate crime can be heightened compared to other types of crime, and vicarious trauma can be experienced by those who share the same identity characteristics as the victim, such as family or community members.</p> <p>As such, developing an understanding of the harms caused by hate crime (the core concept of fostering victim empathy) is viewed as an important facet of any rehabilitative intervention with people who commit hate crime.</p> <p>Many perpetrators are potentially not fully aware of the harm caused by their actions at the time of committing the offence.</p> <p>A restorative justice (RJ) approach may thus be well-placed to address the harms of hate crime by allowing those responsible for the harm to foster empathic connections, develop victim empathy, and challenge negative stereotypes they may hold, with a view to reducing the risk of further offending and harm.</p> <p>Furthermore, traditional 'retributive justice' often fails to consider that seemingly isolated hate offences typically form part of a 'process of victimisation', with many of these incidents occurring within broader inter-</p>	Ongoing	Rania Hamad Edinburgh City Council – Restorative Justice Team

		<p>personal conflicts between local community members and with several underlying causes.</p> <p>Therefore, an RJ approach may well be able to strive to resolve these complex disputes and repair the harms. Ultimately, with RJ, victims of hate crime will be afforded the opportunity to ‘tell their story’ and move from feeling disempowered to empowered.</p>		
2	Pro-active Race Equality Educational Resources	<p>Human characteristics such as language, faith, culture, identity, migration history, colonialism, empire history (as identified by the UN Committee of Elimination of Racial Discrimination) and all that define people as individuals are relevant to race equality education. Race equality resources used within CfE could emanate from any number of sources, topics or curriculum approaches. This emphasises that race equality is more than solely anti-racism resources, important as these are.</p> <ul style="list-style-type: none"> <li>• Race equality education needs to be embedded in the life and teaching of schools and colleges. Race equality education is not only for schools and colleges with high numbers of ethnic minority learners but benefits all the young people of Scotland as we learn more about our communities and the diverse people who call Scotland home.</li> <li>• Race equality education should be cognisant of the United Nations Convention on the Rights of the Child. Future work would benefit from further engagement with the office of the Children and Young People’s</li> </ul> <p>Education Scotland and partners involved in the Curriculum Resources Review Group (CRRG) will continue the next stage of the work to progress race equality educational resources in conjunction with the time frames of the race equality action plan in the months and years ahead</p>	Ongoing	Education Scotland and members of the Curriculum Resources Review Group

3	Coherent Hate Crime legislation:	<p>In November 2018 the Scottish Government published its consultation paper on the future of hate crime legislation in Scotland.</p> <p>BEMIS will hold consultations in early February 2019 to consider key racial and religious aspects of the proposals.</p>	Ongoing	BEMIS / Police Scotland / communities / government
4	Sociological terms vs. Legal Understandings	<p>This topic is linked to ongoing hate crime legislation proposals. In short it has become apparent to BEMIS that the term ‘Race’ is used simultaneously as both a sociological race studies concept and as a legal definition. Where the terms are used at the same time in their different understandings it can create confusion and miss-understanding.</p> <p>Race as a sociological term is more restrictive than the legal definition of ‘race’ inherent in international human rights law and domestic equalities and existing hate crime legislation.</p> <p>There continues to be a confusion across society about what the word ‘race’ actually means.</p> <ul style="list-style-type: none"> <li>• As a scientific fact there is only a single human race.</li> <li>• As an area of sociological theory and academic study it predominantly considers people and communities as racial classifications such as black, white, brown etc....</li> <li>• Race in international human rights law, domestic equalities legislation and domestic criminal law reflects the scope of Article 1 of the International Convention on the Elimination of all forms of Racial Discrimination. Namely race covers “colour, nationality, and citizenship, ethnic and national origins”.</li> </ul> <p>It would be beneficial for statutory bodies, duty bearers and individual citizens to understand when each applies and in what circumstances.</p>	Ongoing	BEMIS

		<p>Sectarianism is also a sociological term which causes confusion and frustration within the context of hate crime legislation. Currently, sectarian crimes would be prosecuted using either a religious or racial aggravation. The language of “sectarianism” however is used to discuss issues which would not meet the criminal law thresholds such as political or cultural expressions and are therefore not hate crimes.</p> <p>Communities that are disproportionately the victims of religiously aggravated hate crimes and most likely to be analysed as ‘sectarian’ such as ‘Catholics’ have indicated that they would prefer their experience to be identified as the statutory aggravation which covers the motivation of the crime and not via a sociological concept.</p> <p>In order to track trends of issues which fall within the discussion of “sectarianism” it would be highly beneficial to be able to identify the locus, manifestation and regularity of ‘anti-Protestantism’ as well as the specific issues of Islamophobic and anti-Semitic religious aggravations. This would enable concerned stakeholders to respond to specific issues and not generic sociological concepts which confuse ‘hate crime’ with political or cultural expressions.</p> <p>Thus, the value of the social concept of sectarianism within criminal law remains contested and it will be critical, from a human rights based approach, to listen to victims and respond accordingly.</p>		
5	Cultural Recognition of diverse communities and resources to	Scotland diversity increases on a weekly, monthly and annual basis. The intangible cultural heritages of all of the people of Scotland are core assets and can be utilised to find communality between cultural characteristics.	ONGOING	Approach to key cultural sector organisations. For example – Creative

	<p>integrate diverse communities pro-actively into an 'inclusive national identity'</p>	<p>Utilisation of individual and communities core cultural assets can be utilised to isolate ignorance and undermine prejudice.</p> <p>BEMIS have, in conjunction with the Scottish Government and other key partners including the Scottish Football Association, GRAMNet, Food and Drink Scotland, Dundee Health and Leisure, Glasgow Life, Architecture and Design Scotland, Celtic Connections International Music Festival, The Fair Saturday Foundation and Traditional Arts and Culture Scotland facilitated community events, conferences, bespoke cultural events and film screenings.</p> <p>These events aspire to progress the utilisation of 'cultural rights' as a pathway to citizenship, belonging and integration.</p> <p>While this may provide an example of good practice there is still significant progress to be made in integrating diverse communities into sustainable and available arts and culture core funding streams.</p> <p>Increased awareness is also required as to the core value of intangible cultural heritage as a route to integration, an inclusive national identity and method of tackling prejudice and hate crime.</p>		<p>Scotland and local authority arts bodies.</p>
6	<p>Increased communication opportunities with Police Scotland and communities</p>	<p>Police Scotland engages with all communities, from a variety of backgrounds and operates within its Code of Ethics and values of Integrity, Fairness, Respect and the protection of fundamental Human Rights. Engagement with all communities, partner agencies and key stakeholders takes place at various levels, with regular communication and activity across Scotland through contacts in place at both local, operational and national, strategic levels.</p> <p>Police Scotland is committed to effective engagement, so that we can better understand our evolving communities and tailor our responses and services as appropriate. We are acutely aware of the enormous diversity of community</p>	ONGOING	<p>Police / Communities / BEMIS etc...</p>

		groups (including diversity of faith, belief, ethnicity and culture) in contemporary Scotland. Police Scotland continually aims to better identify, network, coordinate and support such groups or individuals through either strategic or local police support, to enhance community relations.		
7	A human rights based approach. "Voices from our Communities". This engagement must underpin our collaborative and comprehensive efforts to tackle hate crime in Scotland.	<p>A human rights based approach must inform every aspect of work to develop a comprehensive approach to tackling prejudice and building connected communities.</p> <p>A key learning outcome illuminated the fact that many communities and individuals find hate crime, equalities and human rights legislation complicated. The inability to articulate and analyse the protections of communities as covered for example in the criminal law system of prosecuting hate crimes can create confusion in communities. This centres on the fact that hate crime law works as such;</p> <ol style="list-style-type: none"> <li>1) A crime must be committed (i.e. assault, verbal abuse, vandalism etc...) – <u>the crime must be corroborated by 2 sources of evidence.</u></li> <li>2) As an addition to the crime, a statutory aggravation can be attached to the act of the crime. A hate crime is reportable to COPFS when the charge in aggravated form is assessed as having sufficient evidence of malice and ill-will to be put before the court.</li> <li>3) This means that the COPFS will argue that the crime was motivated by hate. In order to attach an aggravation there is only required to be a <u>single source of evidence</u> (i.e. the victim)</li> <li>4) At the time of committing the crime the perpetrator must have demonstrated '<u>malice or ill will</u>' towards the victim.</li> </ol> <p>This process is understandably robust however new approaches are required to build the capacity of citizens to understand this process and the meaning of</p>	ONGOING	Approach key organisation. The Scottish Human Rights Commission. The Equality and Human Rights Commission. Human Rights Consortium Scotland.

		<p>the legal language such as ‘aggravations’, ‘thresholds’, ‘corroboration’ and other legal terms.</p> <p>The process of listening to individuals and communities is only the first step in a human rights based approach.</p> <p>The PANEL process - Participation, Accountability, Non-Discrimination and Equality, Empowerment and Legality will continue to shape and inform our response to the issue of tackling prejudice and building connected communities.</p> <p>Our feedback from the 2018 conference outlined that this was a key asset and should be broadened and extended into 2019.</p>		
8	<p>Intersectional challenges, recognition and solidarity.</p> <p>Learning from each other’s best practice, methods and experience.</p>	<p>Our conference in 2018 had a specific thematic focus on racial and religiously aggravated hate crime. In 2019 these aspects of hate crime will continue to receive a specific focus however BEMIS and Police Scotland want to extend the coverage of the conferences informed expertise.</p> <p>This is not dilute the issues which any community or protected characteristic faces. On the contrary, while each characteristic will receive specific focus there is much we can learn from each other’s individual and often intersectional experiences.</p> <p>With this in mind we intend to outreach to key agencies across other characteristics and invite them to programme a specific session relevant to their communities and members.</p> <p>The approach of recognition of the diversity of challenges faced by other communities in relation to hate crime and building connected communities is also part of our human rights based approach.</p>	ONGOING	Tackling prejudice and building connected communities strategic groups