



THE JUSTICE COMMITTEE INQUIRY INTO THE HATE CRIME AND PUBLIC ORDER (SCOTLAND) BILL

We've had
enough.

Dear
haters,
We've had
enough

The Justice Committee inquiry into the Hate Crime and Public Order (Scotland) Bill

A Submission from Muslim Engagement and Development (MEND)

July 2020

MEND's contribution to the inquiry

This submission from Muslim Engagement and Development (MEND) to the Justice Committee call for views regarding the Hate Crime and Public Order (Scotland) Bill seeks to explore the impact of the bill for BAME communities, and Muslims in particular.

MEND is a community-funded organisation that seeks to encourage political, civic, and social engagement within British Muslim communities through empowering British Muslims to interact with political and media institutions effectively. Our approach to achieving this involves a combination of community engagement (through education, community events, local campaigns to encourage voting etc.) and advocacy work (involving victim support, submissions to parliamentary inquiries, media analysis, election resources, briefings etc.).

The Islamophobia Response Unit (IRU) was founded by MEND in response to rising anti-Muslim attacks across Europe and a growing tide of anti-Muslim sentiment. The IRU offers a platform for victims of Islamophobic hate crime and discrimination to report and share their experiences and serves as a source of free casework and advice, legal and emotional support, and referral services.

Considering MEND's expertise in hate crime and abuse directed at Muslim communities, we feel that we can provide valuable insights into the potential benefits, impacts, and oversights of the bill. As such, MEND hopes that our recommendations may provide guidance to the Justice Committee in reviewing important factors that must be taken into account during the consideration of the bill.

Do you think there is a need for this bill and, if so, why? Are there alternatives to this legislation that would be effective, such as non-legislative measures, wider reforms to police or criminal justice procedures? Are there other provisions you would have liked to have seen in the bill or other improvements that should have been made to the law on hate crime?

The bill is indeed essential as the consolidation of varying powers can only streamline the process and elevate confusion for all those involved, including providing clarity to victims regarding the protections to which they are entitled. However, while the bill itself presents a significant legislative improvement, there should also be a simultaneous focus on encouraging the reporting of hate crimes, nurturing relationships between local police forces and communities, ensuring a robust approach to Islamophobia specifically, and improving police training and recording practices.

Nurturing relationships between police forces and local communities

In the daily lives of most people, the police are perhaps the most visible representation of the state. As such, the relationship between minority communities and their local police is reflective of the relationship between communities and the state. Therefore, trust and understanding are critical in building healthy communities. Consequently, the adequate

representation of minorities within the police force becomes a fundamental asset in nurturing understanding, trust, and a feeling of representation. Indeed, increasing the diversity within local forces has the benefit of allowing communities to feel represented, whilst also providing police forces with nuanced understandings of the issues and experiences of such communities, as well as helping them to respond to their needs and concerns meaningfully and with greater sensitivity.

However, it has recently been revealed that Police Scotland still suffers from a severe lack of diversity, especially amongst its senior ranks. It appears that only 253 out of 17,693 officers in Scotland (1.4%) are from BAME backgrounds, and there are no BAME officers amongst Police Scotland's executive team of senior officers.¹ The lack of BAME representation at senior levels is particularly problematic. Indeed, such a lack affects the police service's leadership, culture, and understanding of the community it serves. Meanwhile, people of a BAME background wishing to develop their careers within the police service may lack role models, encounter barriers when trying to access necessary training, and face selection panels which are frequently lacking in diversity.

As a result, MEND would encourage Police Scotland to fully examine its current policies and procedures at all levels of recruitment, retention, and progression, in order to develop a clear strategy for improving diversity across every level of seniority within the force.

MEND would also encourage local forces to build relationships with representative grassroots organisations, such as MEND, who may assist them in a variety of ways, including:

- **Facilitating engagement and platforms for discussion with local Muslim communities,**
- **Providing training and expertise in the issues experienced by Muslim communities,**
- **Serving as a third-party reporting centre (in the form of our IRU), which is able to both encourage reporting and also act as a liaison between police and local victims.**

Encouraging the reporting of hate crimes

A critical problem facing Muslim communities in tackling the widespread prevalence of Islamophobic hate crime is the significant level of underreporting, which results in an incomplete and inaccurate picture of the rate of hate crime targeting Muslim communities. As with all types of hate crime and other forms of violent crime, a significant number of cases are not reported due to factors such as victims facing intimidation from the suspect; anxiety from the incident; a lack of confidence in the police; and a lack of knowledge regarding how to report an incident. There are also concerns that there are issues of misreporting religiously aggravated hate crimes as racially aggravated hate crimes. This is particularly relevant for cases of Islamophobia due to the way it is frequently conflated with other forms of racism, and as such, it may be difficult to determine the true motivation of a perpetrator. It is, therefore, imperative that further initiatives are promoted to encourage greater levels of reporting in order to glean an accurate understanding of the scale of these incidents.

Consequently, MEND urges the Scottish Parliament to undertake a holistic examination of the barriers that minority communities face in reporting crimes, and commit to developing enhanced strategies to combat these challenges through engagement with representative grassroots organisations.

¹ "Police Scotland Slated over Diversity as Only 253 BAME Officers Recruited," Dailyrecord, June 21, 2020, <https://www.dailyrecord.co.uk/news/scottish-news/cops-shamed-over-diversity-only-22226516>

Ensuring a robust approach to Islamophobia specifically

The Cross-Party Group (CPG) on tackling Islamophobia has observed that Islamophobia in Scotland poses a significant problem. In particular, they discovered that 83% of Muslims had experienced Islamophobia in Scotland, and 79% of Muslims in Scotland feel that Islamophobia is getting worse.² Additionally, a ComRes poll commissioned by MEND in 2018 found that nearly half of all Scottish people felt that there was more negative discrimination against Muslims than people of other faiths.³

However, one of the greatest challenges in tackling Islamophobic hate crime is the intersection between race and religion within the motivation of the offence. In many cases, it becomes essentially impossible to distinguish between the two motives. In Todd Green's seminal work, *The Fear of Islam*, he states that "Islamophobia is not racially blind, nor is it simply a manifestation of older forms of racism rooted in biological inferiority. It is an example of what some scholars have labelled "cultural racism". This form of racism incites hatred and hostility based on religious beliefs, cultural traditions, and ethnic backgrounds."⁴ This is an important understanding to have, for while animosity towards religion is frequently used as a justification for prejudicial sentiments, this hostility is also a product of animosity towards race, ethnicity, and culture, with Muslims becoming treated as a racialised group. A case in point is the conflation between ethnic and religious insults (such as the application of "p*ki" in reference to a Muslim as well as an ethnic identity), or the reality that British Sikhs have frequently been the unfortunate targets of Islamophobic abuse on the basis of their ethnicity and assumed connection to a Muslim identity. Therefore, rather than viewing Islamophobia in a vacuum, it is important to approach it through the lens of racism as it often manifests itself and functions through these logics.

However, at the same time, Muslims are incredibly diverse in terms of ethnicity, language, culture, and an array of other variables. Therefore, Muslims cannot be considered a race in the same way as Jewish or Sikh communities. The result is frequently confusion in how to record such hate crimes, which impacts not only the protections to which victims are entitled (indeed the difference in protections afforded on the grounds of race and religion will be discussed further below), but also the ways in which data is recorded; data which forms the foundation for exploring patterns of crime and highlighting areas in need of improved strategies and particular focus. Consequently, without recording Islamophobia as a specific category of hate crime within police procedures, the actual levels of Islamophobic abuse will remain hidden.

As such, MEND recommends that the bill in question specifically includes a requirement for the police to record Islamophobic hate crime as a separate category of hate crime, in order to assist in effective policy development and application.

Do you have any views on the Scottish Government's plans to retain the threshold of 'threatening, abusive or insulting' behaviour in relation to the stirring up of racial hatred, contrary to Lord Bracadale's views that 'insulting' should be removed?

MEND firmly believes that protections against insulting behaviours should be maintained within the legislation. Indeed, permitting insulting words against people on the grounds of race directly contributes to discrimination and institutional racism that negatively impact the lives of minority communities by creating barriers to their participation within social, civic, economic and political life. As such, the long-term impacts of the perpetuation of such statements can be equally detrimental to the lives of victims as physical violence.

Moreover, protections against abusive and insulting behaviour should also be included on the grounds of religion. As previously mentioned, Islamophobia frequently manifests itself as a

² Beaton, Ailean. 2020. "Third Of Scottish Muslims Say Islamophobia Is An 'Everyday Issue'". *Holyrood*. <https://www.holyrood.com/news/view/third-of-scottish-muslims-say-islamophobia-is-an-everyday-issue-15169.htm>.

³ "MEND - Islamophobia Poll, October 2018". 2018. *Comresglobal.Com*. <https://comresglobal.com/wp-content/uploads/2018/10/MEND-Islamophobia-Poll-October-2018-1.pdf>.

⁴ Todd H. Green, *The Fear of Islam: an Introduction to Islamophobia in the West* (Minneapolis: Fortress Press, 2015), 27.

form of racism, but Muslims are not defined as a race, and therefore are not entitled to the protections against racially motivated hate crimes in the same way as Jewish and Sikh communities. However, just as insulting behaviours on the grounds of race can contribute to discrimination and institutional racism that create barriers to minority participation within social, civic, economic and political life, such propagating of insulting Islamophobic hatred can have these consequences for Muslims.

Therefore, especially considering the intersection between race and religion within Islamophobia, MEND urges legislators to:

- **Maintain the protections against “insulting” behaviour in relation to the stirring up of racial hatred,**
- **Mirror this protection in relation to the stirring up of religious hatred.**

Do you have any comments on what should be covered by the ‘protection of freedom of expression’ provision in the Bill?

Part III Schedule 11b (protection of freedom of expression: religion) would devalue the bill of a great deal of protective power when applied to Islamophobic abuse unless it is accompanied by a robust and policy applicable definition of Islamophobia. In 2018, the All-Party Parliamentary Group (APPG) for British Muslims launched an inquiry into a definition of Islamophobia. The APPG concluded this inquiry by proposing the following definition: “Islamophobia is rooted in racism and is a type of racism that targets expressions of Muslimness or perceived Muslimness.” It is essential that this definition is grounded within legislation. Moreover, considering the importance of clarity when attempting to balance the protection of vulnerable people with the protection of freedom of speech, MEND advocates for combining the above definition with clear guidelines. MEND has proposed the following guidelines to secure a holistic and robust understanding of Islamophobia:

Islamophobia is rooted in racism and is a type of racism that targets expressions of Muslimness or perceived Muslimness. It is demonstrated in, and articulated through, speech, writing, behaviours, structures, policies, legislation or activities that work to control, regulate or exclude Muslim participation within social, civic, economic and political life, or which embody hatred, vilification, stereotyping, abuse, discrimination, or violence directed at Muslims.

Taking into account the overall context, examples of Islamophobia in public life, the media, schools, the workplace, and in the religious sphere may include (but are in no way limited to):

- *Any distinction, exclusion, restriction, or preference against Muslims that 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.*
- *Causing, calling for, aiding, or justifying the killing or harming of Muslims or those perceived to be Muslim due to their religious identity.*
- *Causing, calling for, aiding, or justifying the killing or harming of individuals due to their perceived or actual connection to or support of Muslims.*
- *Charging Muslims with conspiring to harm humanity and/or the Western way of life or blaming Muslims for the economic and social ills of society.*

- *Making mendacious, dehumanising, vilifying, demonising, or stereotypical allegations about Muslims.*
- *Objectifying and generalising Muslims as different, exotic or underdeveloped, or implying that they are outside of, distinct from, or incompatible with British society and identity.*
- *Espousing the belief that Muslims are inferior to other social or religious groups.*
- *Accusing Muslims as a collective of being responsible for real or imagined wrongdoing committed by a single Muslim person, group or nation, or even for acts committed by non-Muslims.*
- *Applying double standards by requiring of Muslims a behaviour not expected or demanded of any other social, religious or ethnic group.*
- *Applying ethnocentric approaches to the treatment of Muslims (judging another culture solely by the values and standards of one's own culture), for example, evaluating Muslim women's choice of dress exclusively through the speaker's expectations and without reference to the personal cultural norms and values of the women in question.*
- *Acts of aggression within which the targets, whether they are people or property – such as buildings, schools, places of worship and cemeteries – are selected because they are, or are perceived to be, Muslim(s) or linked to Muslims.*

While criticism of Islam within legitimate realms of debate and free speech is not in itself Islamophobic, it may become Islamophobic if the arguments presented are used to justify or encourage vilification, stereotyping, dehumanisation, demonisation or exclusion of Muslims. For example, by using criticism of religion to argue that Muslims are collectively evil or violent.

Consequently, MEND urges the Scottish Government to:

- **Adopt the definition of Islamophobia produced by the APPG for British Muslims: “Islamophobia is rooted in racism and is a type of racism that targets expressions of Muslimness or perceived Muslimness.”**
- **Apply the above definition in conjunction with the aforementioned guidelines.**

It is through the adoption of these guidelines that a holistic understanding may be approached that is robust enough to foresee any potential confusion when applied in conjunction with the principles of freedom of speech.

Do you agree with the Scottish Government that Section 50A of the Criminal Law (Consolidation) (Scotland) Act 1995 about racially aggravated harassment should not be repealed?

Protections against racial harassment outlined in Section 50A of the Criminal Law (Consolidation) (Scotland) Act 1995 should not be repealed. Moreover, as discussed above, while Muslims are not a race, Islamophobia frequently manifests itself as a form of racism, especially considering the frequent impossibility to distinguish between racial and religious motivations of the perpetrator. Therefore, these protections should be expanded to include harassment on the grounds of religion.

MEND thus calls on policymakers to create a parity between the level of protections that are afforded on the grounds of race and religion.

Conclusions and recommendations

As explored throughout this submission, Islamophobia poses a particular challenge in relation to legislating against hate crime. Consequently, MEND humbly suggests the following recommendations:

- **Police Scotland fully examine its current policies and procedures at all levels of recruitment, retention, and progression, in order to develop a clear strategy for improving diversity across every level of seniority within the force.**
- **Local police forces build relationships with representative grassroots organisations, such as MEND, who may assist them in representing the interests and needs of local communities.**
- **The Scottish Parliament undertake a holistic examination of the barriers that minority communities face in reporting crimes and commit to developing enhanced strategies to combat these challenges through engagement with representative grassroots organisations.**
- **The bill in question be amended to specifically include a requirement for the police to record Islamophobic hate crime as a separate category of hate crime.**
- **The bill retains the protections against “insulting” behaviour in relation to the stirring up of racial hatred, while also mirroring this protection in relation to the stirring up of religious hatred.**
- **The Scottish Parliament adopt the definition of Islamophobia produced by the APPG for British Muslims: “Islamophobia is rooted in racism and is a type of racism that targets expressions of Muslimness or perceived Muslimness” and apply this definition in conjunction with the guidelines outlined within this submission.**
- **Legislators ensure that there is a parity within hate crime legislation between the level of protections that are afforded on the grounds of race and religion.**

How MEND can assist parliamentarians, policymakers, and community stakeholders

- **Providing briefings, information, analysis, and expertise on issues impacting Muslim communities.**
- **Arranging opportunities for parliamentarians, policymakers, and community stakeholders to engage with their local Muslim communities.**
- **Conducting research within Muslim communities.**
- **Connecting parliamentarians, policymakers, and community stakeholders to other local stakeholders.**

If MEND can be of any assistance to your work, please feel free to contact info@mend.org.uk