

EMAIL 1

From: Tim Hopkins <Tim@equality-network.org>
Sent: 20 February 2020 10:35
To: [REDACTED]>
Cc: [REDACTED]>
Subject: RE: Hate Crime Bill - Gender/Sex

Just to add to this, my colleague [REDACTED] notes:

A man who is not a trans woman but wears a dress for a drag performance, or a trip to the Rocky Horror Picture Show, or because he feels an emotional need to cross-dress occasionally is at high risk of transphobic hate crime and it is very likely that a perpetrator could later claim that they have no issue with "trans women who are really transitioning" and only had a problem with men dressing up as women without transitioning, so when they used the term "tranny" in the attack, they were only referring to transvestism / cross-dressing. The aggravation would not then apply if transvestism / cross-dressing is removed from the protection, because the prejudice was based on cross-dressing not on gender identity.

Even just looking at anti-trans comments on Twitter, many of them seek to differentiate "true trans women" from what they call "autogynophilic men in dresses" so we are likely to increasingly see people attack or abuse others in ways which it would be very easy for them to claim was not about someone's gender identity but rather about them cross-dressing, and to claim that if they had believed the victim was a "true" trans woman, and not a cross-dressing person, then they wouldn't have been abusive. This would give an open door for people who are transphobic to wiggle out of being found to have committed a hate crime (even when the victim is a trans woman and not a cross-dressing person).

Tim

From: Tim Hopkins <Tim@equality-network.org>
Sent: 20 February 2020 06:44
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Hate Crime Bill - Gender/Sex

Hi [REDACTED] and [REDACTED]

That was a quick reply last night as I was just going into a meeting! I hope though it explains why we are clear that cross-dressing people will not be properly protected unless explicitly included in some way (as they are by “transvestism” in the current legislation). Basing the definition on gender identity alone will not provide that protection, as in the example I provided last night. Nor is it an answer to say that a sex aggravation would provide it – firstly, we may very well not get a sex aggravation given that it’s not the way the women’s organisations want the law to develop, and secondly it does not seem at all clear that a sex prejudice aggravation would cover an attack against someone because they were wearing the “wrong” clothes. That does not directly relate to their sex/gender identity or to the accused’s perception of that.

Overall I’d like to emphasise that the last thing we want to see is a bill introduced that reduces the protections of the current law, taking away protections from cross-dressers that they have had for 10 years under the 2009 Act. Cross-dressers are not trans men or trans women, but they do fall under the wider transgender umbrella. At the current time, when transgender identities of all sorts are under sustained attack, and people have been disappointed by delays in gender recognition reform, it would be very problematic to have the Scottish Government removing existing protection from part of the transgender umbrella.

So in our view it’s vital that the “transvestism” element of the current protection is clearly and explicitly maintained in the new bill. As I suggested last night, that could be done by adding gender expression (perhaps limited to expression through the medium of clothing) to the gender identity based definition you have.

Our preference though would be the list definition: trans man, trans woman, non-binary person or cross-dressing person. That is similar in style to, and exactly matches the scope of, the existing definition, so will be less contentious. We think the language has settled down more now so it won’t need to be rewritten in 10 years time. And the definitions of those 4 types of person are clear, easy to explain, and increasingly widely understood.

I hope that helps!

Tim

From: Tim Hopkins
Sent: 19 February 2020 19:18
To: [REDACTED]
Cc: [REDACTED]
Subject: Re: Hate Crime Bill - Gender/Sex

Hi [REDACTED],

Our concern would be that the accused could successfully use the defence that they knew the cross dressing complainer was not a trans man or woman or non-binary. For example, the person might be their neighbour who they know only cross dresses some of the time? But they attack them for that reason.

Perhaps the solution is to qualify "expression" as "expression by means of clothing"? That would leave it no wider than the existing law.

Tim

Sent from my iPhone

On 19 Feb 2020, at 19:05, "[REDACTED]" <[REDACTED]> wrote:

Hi Tim

Thanks again for your comments. They are really helpful.

There is one aspect I'd like to pick up with you in regards to the transgender definition and cross-dressing. Looking at the option where you suggest using the term 'gender expression', my concerns with this is that it broadens out the definition quite significantly and brings some matters under the definition of transgender identity that do not properly relate to transgender identity (i.e. women who wear what are typically thought to be men's clothes which is arguably more relevant to a possible sex/gender aggravation as opposed to her having a transgender identity). As discussed, we had considered this earlier on and partly for these reasons landed on the proposed definition.

However, I appreciate your point about the inclusion of 'transvestism' in the current definition and that the proposed new definition may not cover someone who is attacked for cross-dressing for reasons not relating to their gender identity. Although I find it hard to envisage circumstances where someone is attacked for cross-dressing that is not based on the perception of the perpetrator that they have a gender identity that is different from their sex registered at birth. If the perpetrator has assumed that a person cross-dresses because they are transgender, or because they have another gender identity, then the aggravation will apply because it is the perception of the perpetrator that is relevant.

It might also be worth pointing out that we are proposing that 'association' is extended to cover all characteristics so if a cross-dressing person was attacked because they are perceived to have an association someone who is transgender (or a group defined by reference to transgender identity) – that would also be covered.

I would really appreciate your views on this. Do let me know if I have misunderstood, or if I'm missing something. Happy to chat through on the phone tomorrow if that would help.

Copied to [REDACTED] for his interests.

Thanks again

[REDACTED]

Cohesive Communities | Connected Communities Unit | Scottish Government
3H North | Victoria Quay | Edinburgh | EH6 6QQ

☎ [REDACTED] | 📱 [REDACTED]
<image001.png>

From: Tim Hopkins <Tim@equality-network.org>

Sent: 19 February 2020 13:45

To: [REDACTED]>

Subject: RE: Hate Crime Bill - Gender/Sex

Hi [REDACTED],

Just getting back after our phone conversation yesterday – I've had a chance now to discuss the questions with colleagues here on the STA project and the intersex project.

[REDACTED – OUT OF SCOPE]

Thirdly, on the trans definition.

The existing definition is:

- (a) transvestism, transsexualism, intersexuality or having, by virtue of the Gender Recognition Act 2004, changed gender, or
- (b) any other gender identity that is not standard male or female gender identity.

Obviously intersex/VSC is being covered separately, so 'intersexuality' is gone, and we have long felt that the other language in the current definition is very out of date.

But we are concerned that the proposed new definition excludes cross-dressing people (covered by 'transvestism' in the existing definition), because they arguably do not differ from their sex registered at birth in their gender identity, but in their gender expression. So the proposed definition could we think make the new legislation narrower in coverage than the existing law, which clearly should be avoided.

Our preference (as mentioned in our response to the Scottish Government's consultation on the proposals last year) would be to keep the 'list' approach but update the language, to:

... trans man, trans woman, non-binary person or cross-dressing person.

These are all very widely used terms nowadays, both here in Scotland and internationally. If it was felt necessary to include definitions of any of them, we would be happy to discuss that.

An alternative, although it would be our second preference, would be:

... whose gender identity or expression differs from those typically associated with the person's sex registered at birth. [or "...typically associated with the sex registered for the person at birth"]

We have added in "or expression" for the reason mentioned above, and also 'registered' because some trans people consider themselves to have always had a sex matching their gender identity – that is, they consider that the sex registered for them at birth was the wrong sex. So "sex registered at birth" is much better than "sex at birth" – the former is clearly defined while the latter is not.

"Sex registered at birth" is similar language to that used in the definition of trans in the proposed trans status question for the Census 2021, which refers to "the sex they were registered at birth".

I hope that is helpful – we'd be happy to discuss it further.

All the best,

Tim

Tim Hopkins (he/him)
Director
<image002.png>

Equality Network
30 Bernard Street
Edinburgh
EH6 6PR
Telephone: [REDACTED]
www.equality-network.org

[Donate to the Equality Network](#)



Registered Scottish Charity: SC037852

From: [REDACTED]>
Sent: 18 February 2020 13:35
To: Tim Hopkins <Tim@equality-network.org>; [REDACTED] **Subject:** Hate
Crime Bill - Gender/Sex
Importance: High

Hi both

Do either or one of you have time for a quick chat this afternoon?

Thanks

[REDACTED]
Cohesive Communities | Connected Communities Unit | Scottish Government
3H North | Victoria Quay | Edinburgh | EH6 6QQ
 [REDACTED] |  [REDACTED]

EMAIL 2

From: [REDACTED]>
Sent: 20 May 2020 17:59
To: Tim Hopkins <Tim@equality-network.org>
Cc: [REDACTED]>; [REDACTED]>
Subject: RE: Hate Crime Bill

Hi Tim

Thanks for your email. That's all really useful and we have noted the feedback in regards to the use of the word 'conditions'. Copied to [REDACTED] for his interests.

We will also come back separately on Becky's email about language.

We really appreciate the feedback

Thanks again!

[REDACTED] Cohesive Communities | Connected Communities Unit | Scottish Government
3H North | Victoria Quay | Edinburgh | EH6 6QQ



[REDACTED] | [REDACTED]



gov.scot

From: Tim Hopkins <Tim@equality-network.org>
Sent: 20 May 2020 15:10
To: [REDACTED]
Subject: RE: Hate Crime Bill

Hi [REDACTED],

Thanks again for taking on board our feedback about language around the hate crime bill.

We've got one more point on that, for future reference!

The topic note on transgender identity and VSC refers to intersex as "a condition, or range of conditions", and we just wanted to flag up that the feedback we have had from stakeholders is that it's preferable not to use the term "condition", which can be seen as pathologising, and to stick with "variation". That also would keep the terminology in line with what is in the legislation. So it would be better to say something like "variations in sex characteristics relate to a person's physical and biological characteristics, and transgender identity relates to a person's gender identity".

[REDACTED – OUT OF SCOPE]

I hope that's helpful.

All the best,

Tim

Tim Hopkins (he/him)
Director



Equality Network
30 Bernard Street
Edinburgh
EH6 6PR
Telephone: [REDACTED]

www.equality-network.org

[Donate to the Equality Network](#)

Registered Scottish Charity: SC037852
Company limited by guarantee: SC220213