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1. About Galop

- 1.1 Galop is the UK's only specialist LGBT+ anti-violence charity. Our mission is to make life safe, just and fair for LGBT+ people. We provide advice, support and advocacy to people who have experienced hate crime, domestic abuse and sexual violence. Further information at www.galop.org.uk.

2. Executive Summary

- 2.1 LGBT+ people face high levels of violence and abuse driven by hostility. Home Office figures show that anti-LGBT+ hate crime has, for the second year running, risen at twice the rate of other forms of hate crime. In the most recent data, reported hate crime has grown by 8%, while hate crime against LGB people has risen 19% in the same period, and transphobic hate crimes grew by 16%¹. Updating legal protections to ensure diverse LGBT+ people can expect dignity, respect and safety is desperately needed and long overdue. Galop welcomes the Law Commission proposals and makes the following suggestions:
- 2.2 Adopt a single legal approach across all hate crime strands for ordinary criminal offences, stirring up offences and football chanting offences.
- 2.3 Establish a statutory duty requiring the creation of a Hate Crime Commissioner role to drive best practice improvements in policy and victim support.
- 2.4 Redefine the current definition of 'transgender identity' hate to include trans, non-binary, gender non-conforming and intersex people.
- 2.5 Extend the current definition of 'sexual orientation' hate to include ace people (asexual and aromantic).
- 2.6 Create a single Hate Crime Act containing all relevant legislation to remedy the confusing and dispersed pieces of legislation as they stand.
- 2.7 Extend the hate crime legal test from 'hostility' to 'hostility or prejudice' as a means of making hate crime legislation more relevant to the forms of abuse faced by deaf and disabled people.

¹ Hate Crime, England and Wales, 2019/20, Home Office <https://www.gov.uk/government/statistics/hate-crime-england-and-wales-2019-to-2020>.

3. Aggravated and offences sentence uplift

We provisionally propose that aggravated offences should apply to all five of the current characteristics equally, and any further characteristics that are added. Do you agree?

- 3.1 Galop strongly supports this proposal. The current two-tier system of hate crime laws give lesser protections to LGBT+ and disabled people targeted compared with laws focused on BAME people and people of faith. The law should censure all forms of hate crime equally. The current legal framework sends a signal that some groups are less worthy of protection than others, undermining the confidence of LGBT+ and disabled victims in the law.
- 3.2 A key issue is the disparity in sentencing maxima. As an example, there is a six month maximum sentence for common assault demonstrating or motivated by disability or anti-LGBT+ hostility, while the same offence would have a two year maximum for race or faith hate crime.
- 3.3 Only enabling recognition of the hate element within disability and anti-LGBT+ offences through sentence uplift, rather than acknowledging it as a core part of an aggravated offence means it is often not properly documented on the criminal records of offenders. That prevents courts, prisons and probation services from identifying and challenging the prejudice driving repeat offender's behaviour.
- 3.4 Lastly, race and faith aggravated offences are indictable offences, while LGBT+ and disability hate crimes are not. The primary disparity this creates is the six month time limit for a case to be heard after the offence complained of. No such limit exists for race and faith hate crime, creating confusion among investigating police officers leading to numerous cases we have supported becoming 'timed out'. The difference in trial venue (Crown Court for indictable offences and Magistrates for those that are not) is a further gap leaving LGBT+ and disabled people without the additional support and protections afforded to Crown Court witnesses. It also creates a disparity in the policing powers available to officers at an investigative level. For example, s.17 of PACE enables officers to enter a property to arrest the suspect of an indictable offence, which they cannot do for a summary offence
- 3.5 Galop supports the proposal to contain all hate crime provisions within a single Hate Crime Act to remedy the confusing and disparate legislative framework that currently exists.

We provisionally propose that the current legal position – where the commission of a hate crime can be satisfied through proof that the defendant demonstrated hostility towards a protected characteristic of the victim – should be maintained. Do you agree?

- 3.6 Galop supports the proposal to retain demonstration as a limb by which an offence can be established as hate crime. Due to the difficulty in proving the thoughts and feelings driving an offender's actions, motivation is a necessary but difficult to utilise option within the hate crime legal test. For that reason, the vast majority of successful hate crime prosecutions are secured on the basis of demonstrating hostility through words or behaviours. The provisions

enabling demonstration to be used in this way is a core component of what makes the UK a global leader in responding to hate crime. In contrast, we are aware of many overseas cases supported by our international partners where clear anti-LGBT+ language was used as part of a violent act, but courts were not able to prove it to be hate crime because demonstration was not a permissible means of proving the hate element in their jurisdiction. Removing that option from criminal courts in England & Wales would be a significant backward step in securing an effective response for victims of hate crime.

We invite consultees' views as to whether the current motivation test should be amended so that it asks whether the crime was motivated by hostility or prejudice towards the protected characteristic

- 3.7 Galop supports the Law Commission proposal to extend the legal test from 'hostility' to 'hostility or prejudice' as a means of making the test more relevant to the forms of abuse that deaf and disabled people face. In our view 'prejudice' is an accurate description of the mental element driving hate crime offending and it is a concept that is generally well understood among the public, criminal justice professions, the judiciary and jurors.

4. Defining sexual orientation and trans identity

We also consider some further refinements of the definitions currently used Including "asexuality" within the definition of sexual orientation.

- 4.1 Galop supports refining the definition of sexual orientation. Hate crime law currently defines sexual orientation as 'attraction towards persons of the same sex, the opposite sex or persons of both sexes'. We propose altering the definition to 'attraction towards persons of the same gender, a different gender, persons of any gender or the lack of attraction to other persons' in order to explicitly protect the growing number of ace people (asexual and aromantic) from violence and abuse driven by hostility toward their sexual orientation.
- 4.2 Ace communities as a sub-community within the LGBT+ umbrella include both asexual people who experience little or no sexual attraction and aromantic people who experience little or no romantic attraction. The consultation paper invites views on defining sexual orientation in a manner that includes only asexual people, however the existing definition draws on the concept of 'attraction' without specifying what form of attraction. This means it inherently includes a range of forms of attraction, including both sexual and romantic. Therefore nuancing the existing definition to include asexual people will inevitably also extended those protections to aromantic people.

We also consider some further refinements to the transgender definition to make explicit reference to people who are transgender, non-binary, cross-dressing or intersex.

- 4.3 We support updating the definition of 'transgender identity' hate to include trans, non-binary, gender non-conforming and intersex people. Language around gender identity and

the demographic composition of trans communities has rapidly changed in recent years, outpacing the current definition and making it impractical to utilise.

- 4.4 Trans, non-binary, gender non-conforming and intersex people face high levels of violence and abuse driven by transphobia². The current definition explicitly includes only a small proportion of these people targeted by transphobic offences. This is mediated somewhat by provisions allowing sentence uplift of offences targeting those mistakenly perceived by the offender as falling within the definition for this form of hate crime. Despite this, it is overdue for each of these groups to be formally recognised within hate crime protections for those facing transphobic offences.
- 4.5 Current legislation relating to sentence uplift defines transgender identity as “being transsexual, or undergoing, proposing to undergo or having undergone a process or part of a process of gender reassignment” (Section 146(6) of the CJA 2003). A definition reliant on the gender recognition certificate (GRC) process is highly problematic. Many trans people are unable to access the process or do not wish to. The recent government consultation on reform of the Gender Recognition Act contrasts approximately 300 GRC applications received each year with the much larger UK trans population estimates of between 200,000 and 500,000 people. This makes it clear that any revised definition should abandon reliance on GRCs as a defining factor.
- 4.5 We propose an alternative definition that follows the existing model of disability and transgender identity by simply listing the protected groups; namely ‘trans, non-binary, gender non-conforming and intersex people’. In formulating a definition, it would be advisable to use the word ‘trans’ and avoid the words ‘transsexual’ and ‘transgender’ as they have come to hold negative connotations for trans communities in the same way that using the word ‘homosexual’ has come to feel outdated. Similarly, we advise against using the label ‘cross-dresser’ and instead use ‘gender non-conforming’.

5. Hate crime commissioner

Should a Hate Crime Commissioner be introduced in England and Wales?

- 5.1 Galop supports the establishment of a statutory duty requiring the creation of a Hate Crime Commissioner role. The equivalent role for domestic abuse has been incredibly helpful in supporting domestic abuse support services and driving forward policy in that area. Against a background of rising levels of hate crime³, victims and the services supporting them would benefit immeasurably from such support.

6. Stirring up offences

² Bradley, C. (2020) Transphobic Hate Crime Report 2020, London: Galop <http://www.galop.org.uk/transphobic-hate-crime-report-2020/>

³ Hate Crime, England and Wales, 2019/20, Home Office <https://www.gov.uk/government/statistics/hate-crime-england-and-wales-2019-to-2020>.

We provisionally propose that the current protections for discussion of religion and sexual orientation should apply to the new offence of stirring up hatred; similar protections be given in respect of transgender identity, sex/gender and disability. Do you agree and if so what should these cover?

- 6.1 Galop supports the proposal to create parity between stirring up offences across all protected characteristics. At present the sexual orientation stirring up offence is weak compared to other strands. No stirring up offence exists for transphobia at all, despite trans people facing high levels of social hostility and attacks that would arguably meet the stirring up legal threshold. Despite the use of stirring up offences being rare, their existence sends an important message to society and acts to shape the behaviour of hate groups who are often careful to stay within the law.

We provisionally propose that the offence in section 3 of the Football (Offences) Act 1991 should be extended to cover chanting based on sexual orientation. Do you agree?

- 6.2 Galop supports extending the football chanting offence to sexual orientation hatred. Homophobic behaviours by offenders within football supporting contexts creates a clear opportunity for such an offence to be utilised. However, in line with the principle of parity between strands outlined above, we propose extending this offence to all hate crime strands (transphobia, faith, disability and any new strands added). We believe this will future-proof the offence by ensuring it remains relevant and avoid it needing to be updated soon after its creation.

7. Additional strands

We provisionally propose that the criteria that should be considered for the addition of any further characteristics into hate crime laws should be demonstrable need, additional harm and suitability. Do you agree?

- 7.1 The points set out by the consultation document gathered from Hate Studies literature collectively form a comprehensive and accurate hate crime definition. In contrast, we hesitantly support the three criteria proposed above given the need for a clear and defensible means of deciding whether a particular strand should be included or not. However, our responses below are based on a definition that takes a macro-societal viewpoint of what hate crime is, rather than technical legal responses to it. That view can be summarised in defining hate crime as 'violence and abuse against marginalised social groups as a means of keeping them marginalised'.
- 7.2 The above definition draws on the following fuller description provided by Barbara Perry⁴. "Hate crime ... involves acts of violence and intimidation, usually directed towards already stigmatised and marginalised groups. As such, it is a mechanism of power and oppression, intended to reaffirm the precarious hierarchies that characterise a given social order. It

⁴ Perry, B. (2001). In the Name of Hate: Understanding Hate Crimes. (Routledge).

attempts to re-create simultaneously the threatened (real or imagined) hegemony of the perpetrator's group and the 'appropriate' subordinate identity of the victim's group. It is a means of marking both the Self and the Other in such a way as to re-establish their 'proper' relative positions, as given and reproduced by broader ideologies and patterns of social and political inequality."

Should the characteristic of "sex or gender" be added to the characteristics protected by hate crime laws?

- 7.3 Given the prevalence of misogyny as a driving factor in offending against women as a means of enforcing patriarchal power systems, this would appear to fit the definition outlined above as a potential additional strand. If a recommendation is made to add this is a hate crime strand, we join women's sector organisations in calling for it to be named 'sex or gender' as a flexible term that avoids conceptual conflicts with the existing transphobic hate crime strand.
- 7.4 Despite the above, we are concerned about the prospect of carve outs for sexual and domestic violence offences for this potential strand. A core principle of anti-hate crime work is that hate crime encompasses all offences driven by that form of hostility, from verbal abuse all the way up to murder. We understand and support the arguments made in favour of the carve outs to defend existing work tackling existing sexual and domestic abuse, but we also believe that implementing them would undermine the effectiveness of efforts to address existing stands by leaving anti-hate crime work open to attacks at a policy and media level from those characterising hate crime as 'minor' or expressions of offensive but legitimate free speech.

Should the characteristic of "age" be added to the characteristics protected by hate crime laws?

- 7.5 Galop does not support adding the characteristic of age. It is true that young people and older people face specific forms of targeted violence and abuse, but we do not believe it would be accurate to broadly characterise them as being driven by hostility or prejudice toward that person's age.

Should any of the following groups be specifically protected by hate crime laws?: Sex workers, homeless people, alternative subcultures (for example, goths, punks, metallers, emos), or philosophical beliefs (for example, humanism).

- 7.6 It is our view that crimes driven by hostility or prejudice toward sex workers, homeless people and alternative subcultures all fit the hate crime criteria we outline above. All are marginalised groups that face high levels of violence and abuse that arguably reinforces and maintains the low social status of those groups. Despite the above view, the anti-hate crime model risks losing effectiveness the more strands are added to it. For that reason, we believe a high threshold should be utilised in deciding whether extra strands should be added.

- 7.7 Our view is that philosophical beliefs is not a suitable category for inclusion due to its breadth, uncertainty over which groups would be included and lack of compelling evidence of hostility or prejudice toward groups within it.