



## Briefing for the Public Petitions Committee

**Petition Number:** [PE1728](#)

**Main Petitioner:** Frances Nixon

**Subject:** Make false allegations a hate crime

Calls on the Parliament to urge the Scottish Government to consider legislation to ensure that false allegations are considered as a hate crime and dealt with in law as such.

### Introduction

The petition argues that malicious false allegations of criminal behaviour should be treated as a hate crime.

This briefing provides information on:

- current criminal offences relating to false allegations of criminal behaviour
- the meaning of hate crime and the current scope of hate crime laws
- the civil law of defamation

### False Accusation

A false accusation of criminal behaviour may itself amount to a crime under the common law. Gordon's Criminal Law notes that it is "a crime falsely to accuse someone else of a crime" (para 55.36).<sup>1</sup> Whilst the Stair Memorial Encyclopaedia states that it is "a crime at common law to make a false accusation of a crime against a person" (para 494).<sup>2</sup>

The Stair Memorial Encyclopaedia goes on to say:

"The offence of false accusation of a crime goes beyond simple verbal injury, or damage to reputation. It places the victim under suspicion of having committed an offence, and therefore in danger of prosecution and possible ultimate deprivation of liberty. In the three most recent reported cases, it was libelled that the accused had made the false accusation to an officer of the law, but there is no reason to believe that Hume's<sup>3</sup> view that

<sup>1</sup> The Criminal Law of Scotland, 4<sup>th</sup> ed, vol II, 2017 by J Chalmers and F Leverick.

<sup>2</sup> The Laws of Scotland, Stair Memorial Encyclopaedia, Criminal Law (Reissue).

<sup>3</sup> David Hume (1757-1838) was one of several legal practitioners whose writings have been recognised by the courts as authoritative statements of the law as it stood at the time.

the crime could be committed by circulating false accusations publicly has not survived the more general decriminalisation of defamation. The wide circulation of allegations of having committed a crime could expose the victim to the same potential dangers as direct reporting to officers of the law.

It is essential to the crime that the accused knows that the accusation was false. According to Hume the accused must also be shown to have acted with the intention of injuring the victim. However, the words used may sometimes speak for themselves, the malice being 'evident in the whole circumstances of the story'." (paras 497-498)

Examples of the offence are seen in the following decisions of the High Court of Justiciary, dealing with appeals against sentence. In *Leiper v McGlennan* (1995) the appellant pled guilty to attempting to pervert the course of justice by telling the police that her husband had threatened her with a gun, but omitting to tell them that she knew it was a toy gun. As a result, the husband was remanded in custody and indicted on a charge of assaulting the appellant by placing a gun at her head and threatening to shoot her. In upholding the custodial sentence of 60 days imposed by the sheriff, the High Court said:

"We consider that this was a very serious charge indeed. It was a false accusation of crime which was persisted in from 17<sup>th</sup> June 1994 up until 6<sup>th</sup> December 1994 and, as a result of that false accusation, her husband was detained in prison."

In *Simpkins v HM Advocate* (1985) the two appellants were convicted of falsely accusing two boys of shoplifting in a store at which they were working as security officers. The sheriff imposed custodial sentences of nine and six months. In upholding the sentences imposed by the sheriff, the High Court noted that the appellants:

"were convicted after trial on indictment on what on any view is a very serious charge. The charge can be loosely described as one of falsely accusing two persons in a shop of having committed the crime of theft and of fabricating evidence tending to support that false accusation which was reported to the police."

## **False Reporting**

Making a false report to the police may also amount to a crime under the common law, even if it doesn't involve accusations directed at a particular individual. The Stair Memorial Encyclopaedia notes that:

"The crime of false accusation discussed above involves accusing a named person of a criminal offence. In the twentieth century, a separate crime of making a false report to the police has developed. For such an offence it is not necessary to name the individual being accused, or even to provide a means to identify him. Nor is it necessary to allege that a crime has taken place." (para 499)

Adding that “the crime is essentially that of wasting police time by causing them by a false report to make an investigation”. (para 500)

## **Perjury**

If false allegations of criminal behaviour lead to a trial, at which the person making the allegations gives evidence, there is also the possibility of a charge of perjury. Gordon’s Criminal Law states that:

“Perjury is committed by wilfully giving false evidence on oath or affirmation in any judicial proceedings. Perjury was at one time dealt with in a number of now repealed Scots statutes, and it can today be prosecuted under particular provisions of the Criminal Law (Consolidation) (Scotland) Act 1995, but in practice it is always dealt with at common law.” (para 55.02)

## **Hate Crime**

The final report of the [Independent Review of Hate Crime Legislation in Scotland](#) (Lord Bracadale 2018) notes that:

“There is no single accepted definition of the term hate crime. Different definitions may be produced for different purposes. In the consultation paper I used the following working definition: offences ‘which adhere to the principle that crimes motivated by hatred or prejudice towards particular features of the victim’s identity should be treated differently from ordinary crimes’.

Prejudice is expressed in terms of hostility, or, currently in Scotland, malice and ill-will. The definition is qualified in the sense that it is not necessary to prove motivation: it is sufficient if, in committing a crime, the perpetrator demonstrates hostility based on a particular feature of the victim’s identity.” (para 2.10)

Under the above definition, a false accusation of criminal behaviour could amount to a hate crime, but only if motivated as indicated.

Lord Bracadale’s report goes on to say:

“The concept of particular features of the victim’s identity is expressed in terms of protected characteristics. A protected characteristic is a characteristic shared by a group. Currently, in Scotland the criminal law recognises the following protected characteristics: race, religion, disability, sexual orientation and transgender identity.” (para 2.11)

Current hate crime legislation is outlined in annex 3 of the report.

In November 2018, the Scottish Government published a consultation on amending hate crime legislation – [One Scotland: Hate Has No Home Here](#) (with responses sought by February 2019).

On its website, under the heading of [Consultation on Scottish Hate Crime Legislation](#), the Scottish Government currently states that it is considering

consultation responses as it continues to develop consolidated hate crime legislation to be introduced during the current parliamentary period.

## **Defamation**

Depending on the facts, a false accusation of criminal behaviour could also amount to defamation and potentially the obligation to pay damages under civil law.

A recent [report](#) by the Scottish Law Commission (2017) defines defamation as follows:

“Defamation may be described as the civil wrong committed when a person makes a false and damaging imputation against the character or reputation of another person. The essence of what makes a statement defamatory is whether it would damage the reputation of the pursuer in the eyes of the ordinary reader, viewer, or listener.”

The Scottish Government is currently [consulting](#) on changes to the law on defamation following recommendations made by the Scottish Law Commission in the report mentioned above.

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