



BRIEFING PAPER

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Hate crime

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Summary

What is hate crime?

The police and the Crown Prosecution Service (CPS) have adopted the following [central definition of hate crime](#):

“Any criminal offence which is perceived by the victim or any other person, to be motivated by hostility or prejudice, based on a person's disability or perceived disability; race or perceived race; or religion or perceived religion; or sexual orientation or perceived sexual orientation or transgender identity or perceived transgender identity.”

The five personal characteristics set out in the definition – race, religion, sexual orientation, disability and transgender status – are the only centrally monitored strands of hate crime.

Criminal offences motivated by other characteristics - such as sex, age or appearance - can also be treated as hate crimes, but are not centrally monitored as such. Some police forces have developed localised recording practices for monitoring such crimes.

The criminal law

There is no single piece of legislation criminalising hate crime in England and Wales. Instead, there are three different ways in which the law deals with hate crime:

- aggravated forms of certain “basic” offences – such as assault or criminal damage – that were motivated by hatred on the grounds of race or religion
- enhanced sentences for offenders who were motivated by hatred on the grounds of race, religion, disability, sexual orientation or transgender status
- offences of stirring up hatred based on race, religion or sexual orientation

Detailed guidance on this legislation and sentencing practice is available via the central [Hate Crime](#) page of the CPS website.

Policing policy on investigating hate crime is set out in the College of Policing publications [National Policing Hate Crime Strategy](#) and [College of Policing Hate Crime Operational Guidance](#).

The Government's Action Plan

In July 2016 the Government published a four year [Hate Crime Action Plan](#), which set out a programme of activity running to May 2020. The Action Plan was based on five key areas:

- Preventing hate crime by challenging the beliefs and attitudes that can underlie such crimes.
- Responding to hate crime in communities with the aim of reducing the number of hate crime incidents.
- Increasing the reporting of hate crime.
- Improving support for the victims of hate crime.
- Building understanding of hate crime through improved data.

Actions set out in the 2016 plan included working with schools and community partners on educational projects for young people, a [new funding scheme for community projects](#)

[that respond to hate crime](#), a [new funding scheme for security measures at vulnerable faith institutions](#), publishing CPS guidance for the public on what hate crime is and how to report it, and refreshing CPS guidance for prosecutors on hate crime prosecutions.

In 2018 the Government published a [progress update](#), together with a [“refresh” of the action plan](#) and a [thematic review of evidence](#) on hate crime.

The Law Commission’s review

In 2013 the Law Commission launched a [consultation on hate crime legislation](#), after the project was referred to it by the Ministry of Justice. The Law Commission’s terms of reference were to examine:

- whether the stirring up hatred offences in the 1986 Act should be extended to cover disability and transgender identity hate crime; and
- whether the aggravated offences set out in the 1998 Act should be extended to cover disability, sexual orientation and transgender identity hate crime.

The Law Commission also examined the effectiveness of the enhanced sentencing regime, which covers all five characteristics.

In its [final report](#), published in 2014, the Law Commission recommended that the Government and criminal justice agencies should conduct a full scale review of existing hate crime legislation:

Such a review should examine all the available data to establish whether such offences and sentencing provisions should be retained, amended, extended or repealed, what characteristics need to be protected, and the basis on which characteristics should be selected.

In October 2018, the Government asked the Law Commission to proceed with such a review. The Law Commission launched its review in March 2019 with the publication of [Hate Crime: Background to Our Review](#). The Law Commission’s [hate crime project page](#) states that a full consultation paper will be published in early 2020.

The information in this briefing relates to England and Wales only.

For statistics, please see [Commons Library Briefing Paper 8537 Hate Crime Statistics](#).

1. What is hate crime?

Hate crime involves criminal behaviour where the perpetrator is motivated by hostility towards personal characteristics of the victim.

The Government has described hate crimes as “pernicious”:

...they send the message that some people deserve to be targeted solely because of who they are or who they are believed to be. Such crimes have a deep impact on victims because they are targeted against some intrinsic part of their identity (their race, religion, sexual orientation, disability or transgender identity). Those who commit hate crimes also attack the fundamental values that underpin our diverse society, values of acceptance and respect for others. Through the spread of fear, abuse and violence, hate crime can limit people’s opportunities, stopping them from enjoying the full benefits of our society and can lead to isolation and segregation.¹

Only certain types of hate crime are centrally monitored and covered by legislation. However, other types of hate crime may be monitored on a localised basis, and can be dealt with at court using general sentencing guidelines.

1.1 Centrally monitored hate crime

The police and the Crown Prosecution Service (CPS) have adopted the following central definition of hate crime:

“Any criminal offence which is perceived by the victim or any other person, to be motivated by hostility or prejudice, based on a person’s disability or perceived disability; race or perceived race; or religion or perceived religion; or sexual orientation or perceived sexual orientation or transgender identity or perceived transgender identity.”²

The CPS notes that there is no legal definition of “hostility”, so it uses the “everyday understanding of the word which includes ill-will, spite, contempt, prejudice, unfriendliness, antagonism, resentment and dislike”.³

The five personal characteristics set out in the definition – race, religion, sexual orientation, disability and transgender status – are the only centrally monitored strands of hate crime.

1.2 Other types of hate crime

Criminal offences motivated by hostility or prejudice towards other characteristics – for example sex, age or appearance – can also be treated as hate crimes, but are not centrally monitored as such. Some police forces have developed localised recording practices for monitoring such crimes.

¹ Home Office, [Action Against Hate: The UK Government’s plan for tackling hate crime](#), July 2016, para 9

² CPS website, [Hate Crime](#) [accessed 14 January 2020]

³ Ibid

For example, in 2013 Greater Manchester Police began to record hate crimes committed against members of alternative sub-cultures.⁴ This decision was prompted by consultation with the [Sophie Lancaster Foundation](#), set up following the 2007 murder of Sophie Lancaster.⁵

Another example is Nottinghamshire Police, which announced in 2016 that it would expand its categories of hate crime to include misogynistic incidents.⁶ The change, which was initially a two month experiment in July and August 2016, is still in place at Nottinghamshire Police, with the success of the trial drawing national interest from other police forces.⁷

In evidence to the Home Affairs Committee in February 2017, Assistant Chief Constable Mark Hamilton, National Policing Lead for Hate Crime, said that five police forces tracked misogyny-based hate crime and that no national consensus had yet been reached on whether it should be centrally monitored.⁸

1.3 Hate incidents

A hate incident is conduct that falls short of a criminal offence, but which is perceived by the victim or anyone else to have been motivated by hostility towards one of the five centrally monitored personal characteristics. Such incidents – which might include, for example, bullying or verbal abuse – cannot be prosecuted in the criminal courts, but can still be reported to the police:

Hate Incidents can feel like crimes to those who suffer them and often escalate to crimes or tension in a community. For this reason the police are concerned about incidents and you can use this site [\[True Vision\]](#) to report non-crime hate incidents. The police can only prosecute when the law is broken but can work with partners to try and prevent any escalation in seriousness.⁹

This represents a “victim focussed” policing response, in line with the Home Office [Counting Rules for Recorded Crime](#):

All reports of incidents, whether from victims, witnesses or third parties and whether crime related or not, will, unless immediately recorded as a crime, result in the registration of an auditable incident report by the police.¹⁰

⁴ “[Hate crime: Police record attacks on punks, emos and goths](#)”, BBC News, 4 April 2013

⁵ “[Boys sentenced over Goth murder](#)”, BBC News, 28 April 2008

⁶ “[Nottinghamshire Police records misogyny as hate crime](#)”, BBC News, 13 July 2016

⁷ “[Police in England and Wales consider making misogyny a hate crime](#)”, The Guardian, 10 September 2016

⁸ Home Affairs Committee, Hate crime: abuse, hate and extremism online, 25 April 2017, HC 609, [Q383](#)

⁹ True Vision website, [What is hate crime?](#) [accessed 14 January 2020]

¹⁰ Home Office, [Counting Rules for Recorded Crime: Crime Recording General Rules](#), April 2019, para 2.1

2. Reporting hate crime

2.1 Direct police reports

The most obvious way to report a hate crime or incident is by contacting the police directly. This can be done by contacting the local police force in person or by phone, online using the police-run [True Vision website](#), or using a [self-reporting form](#).

In accordance with national guidance, the police will adopt a “perception-based” response to recording reports of hate crime and hate incidents:

For recording purposes, the perception of the victim, or any other person, is the defining factor in determining whether an incident is a hate incident, or in recognising the hostility element of a hate crime. The victim does not have to justify or provide evidence of their belief, and police officers or staff should not directly challenge this perception. Evidence of the hostility is not required for an incident or crime to be recorded as a hate crime or hate incident.¹¹

The objective of this approach is to reduce under-reporting:

Crimes and incidents must be correctly recorded if the police are to meet the objective of reducing under-reporting and improve understanding of the nature of hate crime. The alleged actions of the perpetrator must amount to a crime under normal crime recording rules. If this is the case, the perception of the victim, or any other person, will decide whether the crime is recorded as a hate crime. If the facts do not identify any recordable crime but the victim perceived it to be a hate crime, the circumstances should be recorded as a non-crime hate incident and not a hate crime.¹²

2.2 Third party reporting

Victims or other parties may not wish to report the matter to the police directly. They may instead prefer to report the matter via a “third party reporting” centre.

Third party reporting is based on one of the recommendations of the [Macpherson Report](#) into the murder of Stephen Lawrence, which concluded that there was a “significant under-reporting of ‘racial incidents’ occasioned largely by a lack of confidence in the police and their perceived unwillingness to take such incidents seriously”. The report therefore recommended that

... all possible steps should be taken by Police Services at local level in consultation with local Government and other agencies and local communities to encourage the reporting of racist incidents and crimes. This should include:

- the ability to report at locations other than police stations; and

¹¹ College of Policing, [Hate Crime Operational Guidance](#), 2014, para 1.2.3

¹² Ibid

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- the ability to report 24 hours a day.¹³

Police guidance notes that this recommendation has had “consistent support from successive governments and criminal justice agencies” and that it remains “a significant part of the broad police response”.¹⁴

Third party reporting involves an individual reporting the matter to a non-police organisation, which should then deal with the information in accordance with the police protocol [National Hate Crimes Reporting Procedures for Third Party Reporting Centres](#) (undated). This may involve the organisation reporting the matter to the police on the individual’s behalf.

Examples of organisations involved in third party reporting include community groups, charities, housing trusts, student unions and local libraries.

There is no central list of third party reporting centres. Details can usually be found on the websites of local authorities and the local police. See for example:

- Bedfordshire Police, [Third party reporting centres](#)
- Police and Crime Commissioner for Cleveland, [Hate crime and how to report it](#)
- Oldham Council, [Reporting a hate crime](#)
- Trafford Council, [Hate crime: How to report a hate crime](#)

The website of [Stop Hate UK](#), a charity that supports people affected by hate crime, also carries details of how to make third party reports in certain geographic areas.

¹³ [The Stephen Lawrence Inquiry: Report of an Inquiry by Sir William Macpherson of Cluny](#), February 1999, Cm 4262-I, recommendation 16

¹⁴ College of Policing, [Hate Crime Operational Guidance](#), 2014, para 4

3. The criminal law

There is no specific offence of “hate crime”. However, various pieces of legislation and guidance target offenders motivated by hostility or hatred. For example, legislation provides for:

- aggravated forms of certain “basic” offences – such as assault or criminal damage – that were motivated by hatred on the grounds of race or religion
- enhanced sentences for offenders who were motivated by hatred on the grounds of race, religion, disability, sexual orientation or transgender status
- offences of stirring up hatred based on race, religion or sexual orientation

The existing law has been developed in a piecemeal fashion over a number of years. Initially the law only focused on racially motivated hate crime. Hate crime motivated by religion was next to be targeted, followed by hate crime motivated by disability and sexual orientation and (finally) transgender status. Paragraphs 1.9-1.20 and chapter 2 of the [Law Commission’s Consultation Paper No 213 Hate crime: the case for extending the existing offences](#) set out full details of how the law has developed over time.

Detailed guidance on this legislation and sentencing practice is available via the central [Hate Crime](#) page of the CPS website.

Policing policy on investigating hate crime is set out in the College of Policing publications [National Policing Hate Crime Strategy](#) and [College of Policing Hate Crime Operational Guidance](#).

3.1 Aggravated offences

The [Crime and Disorder Act 1998](#) sets out racially or religiously aggravated forms of certain “basic” criminal offences.¹⁵ The offences covered include various types of assault, criminal damage, public order offences, harassment and stalking.¹⁶ The CPS notes that “monitoring had indicated that these were the most common types of crime experienced by the victims of racially and religiously aggravated violence or harassment”.¹⁷

The aggravated forms of these offences carry higher maximum sentences than their basic equivalents: for example, basic criminal damage carries a maximum sentence of 10 years, while racially or religiously aggravated criminal damage carries a maximum sentence of 14 years.

¹⁵ The aggravated offences in the 1998 Act only apply to hate crime motivated by hostility on the basis of race or religion. There are no equivalent aggravated offences available in cases of hostility on the basis of disability, sexual orientation or transgender status. Such offences would instead be dealt with using the enhanced sentencing provisions described in section 3.2 of this Briefing Paper.

¹⁶ Racial or religious hostility for offences not on this list can be dealt with using the enhanced sentencing provisions described in section 3.2 of this Briefing Paper

¹⁷ CPS, [Public statement on prosecuting racist and religious hate crime](#), 2017, p2

Under the 1998 Act, an offence is racially or religiously aggravated if:

- at the time of committing the offence, or immediately before or after doing so, the offender demonstrated towards the victim hostility based on the victim's membership (or presumed membership¹⁸) of a racial or religious group; or
- the offence was motivated (wholly or partly) by hostility towards members of a racial or religious group based on their membership of that group.

For these purposes "racial group" means a group of persons defined by reference to race, colour, nationality (including citizenship) or ethnic or national origins. Race relations case law has established that Sikhs, Jews, Romany gypsies and Irish Travellers can be considered racial groups.¹⁹ The courts have held that "racial group" is also capable of covering generic terms such as "bloody foreigners".²⁰

"Religious group" means a group of persons defined by reference to religious belief or lack of religious belief.

3.2 Enhanced sentencing

Statutory aggravating factors

Where a crime has been motivated by hostility based on race, religion, sexual orientation, disability or transgender identity, under [sections 145 and 146 of the Criminal Justice Act 2003](#) the court must treat this as an aggravating factor when sentencing the offender.²¹ The sentencing judge must state in open court that the offence was aggravated on this basis.

The extent to which the sentence is increased will depend on the seriousness of the aggravation. The Sentencing Council website lists some of the factors that might indicate a higher level of aggravation:

Offender's intention

- The element of aggravation based on race, religion, disability, sexual orientation or transgender identity was planned.
- The offence was part of a pattern of offending by the offender.
- The offender was a member of, or was associated with, a group promoting hostility based on race, religion, disability, sexual orientation or transgender identity.
- The incident was deliberately set up to be offensive or humiliating to the victim or to the group of which the victim is a member.

¹⁸ This presumption referred to here is the offender's, and will catch offences committed on the basis of a mistaken belief about the victim's membership of a racial or religious group

¹⁹ Law Commission Consultation Paper No 213, [Hate crime: the case for extending the existing offences](#), 2013, para 2.37

²⁰ [R v Rogers \[2007\] UKHL 8](#)

²¹ These provisions do not apply to aggravated offences under the 1998 Act – these offences already carry enhanced sentences

Impact on the victim or others

- The offence was committed in the victim's home.
- The victim was providing a service to the public.
- The timing or location of the offence was calculated to maximise the harm or distress it caused.
- The expressions of hostility were repeated or prolonged.
- The offence caused fear and distress throughout a local community or more widely.
- The offence caused particular distress to the victim and/or the victim's family.²²

Sentencing guidelines

When sentencing an offender, the courts are required to follow any sentencing guidelines that are relevant to the offender's case.

The sentencing guideline [Overarching principles: seriousness](#) states that the following two factors indicate higher culpability:

- offence motivated by hostility towards a minority group, or a member or members of it;
- deliberate targeting of vulnerable victim(s).²³

The court should therefore treat these as aggravating factors when sentencing. This means that in cases where hostility is directed towards a characteristic not covered by the statutory aggravating factors – for example sex or age – the courts can still take the targeted nature of the crime into account when sentencing the offender.

Sentencing guidelines for certain specific offences also include factors relating to hate crime. For example, the sentencing guideline on causing grievous bodily harm lists a number of statutory aggravating factors, including the enhanced sentencing regime for offences motivated by, or demonstrating hostility to, race, religion, sexual orientation, and disability. It also lists a number of "other" aggravating factors, one of which is that the offence was motivated by, or demonstrated, hostility based on "the victim's age, sex, gender identity (or presumed gender identity)".²⁴

3.3 Offences of stirring up hatred

Racial hatred

[Part 3 of the Public Order Act 1986](#) sets out a number of offences relating to acts intended or likely to stir up racial hatred, and to the possession of racially inflammatory material.

²² Sentencing Council website, [Explanatory Materials: Hate Crime – Approach to sentencing](#) [accessed 14 January 2020]

²³ Sentencing Council website, [Aggravating and mitigating factors](#) [accessed 14 January 2020]

²⁴ Sentencing Council website, [Sentencing guideline: Causing grievous bodily harm with intent to do grievous bodily harm / Wounding with intent to do GBH](#) [accessed 14 January 2020]

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For these purposes “racial hatred” means “hatred against a group of persons defined by reference to colour, race, nationality (including citizenship) or ethnic or national origins”.

For each of the offences in the 1986 Act the conduct described must be intended to or likely in all the circumstances to stir up racial hatred. The offences cover six types of conduct:

- using threatening, abusive or insulting words or behaviour, or displaying written material which is threatening, abusive or insulting, in public or in private (section 18);²⁵
- publishing or distributing written material that is threatening, abusive or insulting (section 19);
- presenting or directing the public performance of a play involving the use of threatening, abusive or insulting words or behaviour (section 20);²⁶
- distributing, showing or playing a recording of visual images or sounds which are threatening, abusive or insulting (section 21);
- including threatening, abusive or insulting visual images or sounds in a programme service (section 22);²⁷
- possessing written material which is threatening, abusive or insulting, or a recording of visual images or sounds which are threatening, abusive or insulting, with a view to displaying, publishing, distributing or playing it (section 23).

Whether material is “threatening, abusive or insulting” is a question of fact, to be decided on the basis of the facts in the case.²⁸

Prosecutions under Part 3 of the 1986 Act cannot be brought without the permission of the Attorney General. The CPS prosecution guidance acknowledges that these offences involve “questions of public policy”:

In deciding upon the public interest of charging these offences it is essential that prosecutors keep in mind that in a free, democratic and tolerant society people are able to robustly exchange views, even when these may cause offence. However, the rights of the individual to freedom of expression must be balanced against the duty of the state to act proportionately in the interests of public safety, to prevent disorder and crime, and to protect the rights of others.²⁹

The guidance states that prosecutions for Part 3 offences will be led by the Special Crime & Counter Terrorism Division at the CPS, given the “highly sensitive” nature of such allegations.

²⁵ The offence is not committed where the words or behaviour are used, or the written material is displayed, by a person inside a dwelling, and are not heard or seen except by other persons in that or another dwelling

²⁶ The offence can only be committed by a person who presents or directs the play. It will not be committed by a performer just by virtue of taking part, unless they perform other than in accordance with direction.

²⁷ The offence can only be committed by the person providing the programme service, any person by whom the programme is produced or directed, or any person by whom the words or behaviour are used

²⁸ *Cakmak* [2002] EWCA Crim 500

²⁹ CPS, [Racist and Religious Hate Crime - Prosecution Guidance: Incitement to Racial Hatred - Part III Public Order Act 1986](#) [accessed 14 January 2020]

Religious and sexual orientation hatred

[Part 3A of the Public Order Act 1986](#) makes similar provision for offences relating to acts intended or likely to stir up hatred on the grounds of religion or sexual orientation.³⁰

Religious hatred is defined as “hatred against a group of persons defined by reference to religious belief or lack of religious belief”.

Hatred on the grounds of sexual orientation is defined as “hatred against a group of persons defined by reference to sexual orientation (whether towards persons of the same sex, the opposite sex or both)”.

Part 3A covers the same six types of conduct as Part 3. However, there are some significant differences between the scope of the Part 3 and Part 3A offences, which mean that the Part 3A offences cover a narrower range of behaviour than the Part 3 offences:

- The Part 3 offences on racial hatred cover “threatening, abusive or insulting” activity. However, the Part 3A offences on religious and sexual orientation hatred only cover “threatening” activity.
- The Part 3 offences can be committed either where the defendant intended to stir up racial hatred, or where it was likely (having regard to all the circumstances) that such hatred would be stirred up. The Part 3A offences can only be committed where the defendant intended to stir up hatred: reckless conduct is not covered.
- There is also a “freedom of expression” defence to the religious and sexual orientation hatred offences. The religious defence states that nothing in Part 3A

shall be read or given effect in a way which prohibits or restricts discussion, criticism or expressions of antipathy, dislike, ridicule, insult or abuse of particular religions or the beliefs or practices of their adherents, or of any other belief system or the beliefs or practices of its adherents, or proselytising or urging adherents of a different religion or belief system to cease practising their religion or belief system.³¹

The sexual orientation defence states that

the discussion or criticism of sexual conduct or practices or the urging of persons to refrain from or modify such conduct or practices shall not be taken of itself to be threatening or intended to stir up hatred [and] any discussion or criticism of marriage which concerns the sex of the parties to marriage shall not be taken of itself to be threatening or intended to stir up hatred.³²

³⁰ The religious hatred offences were added to the 1986 Act by the Racial and Religious Hatred Act 2006, and the sexual orientation hatred offences were added by the Criminal Justice and Immigration Act 2008

³¹ Section 29J of the 1986 Act

³² Section 29JA of the 1986 Act

The Law Commission has noted that it is currently difficult to assess the practical effect of these freedom of expression defences, as there has so far been no judicial interpretation of them.³³

3.4 Online offences

Existing offences

There are a number of general criminal offences that could be used to prosecute online hate crime. The most relevant general offences that could be used are as follows:

- [section 1 of the Malicious Communications Act 1988](#), which makes it an offence to send indecent, grossly offensive, threatening or false electronic communications if the purpose (or one of the purposes) of the sender is to cause the recipient distress or anxiety.
- [section 127 of the Communications Act 2003](#), which makes it an offence to use a public electronic communications network to send a message (or other matter) that is grossly offensive or of an indecent, obscene or menacing character; or to send a false message "for the purpose of causing annoyance, inconvenience or needless anxiety to another".
- Harassment or stalking offences under [sections 2, 2A, 4 or 4A of the Protection from Harassment Act 1997](#). Full details of these offences are set out in [Library Briefing Paper 6648 The Protection from Harassment Act 1997](#).

The Crown Prosecution Service has published guidance on the use of these offences (and others) to prosecute social media communications: see [Legal guidance: Social Media: Guidelines on prosecuting cases involving communications sent via social media](#) (there is a specific section covering [hate crime](#)).

When sentencing for such offences in the context of online hate crime, the courts could make use of the enhanced sentencing regime set out in section 3.2 of this paper.

Law Commission review

In February 2018 the Government asked the Law Commission to "review the laws around offensive communications and assess whether they provide the right protection to victims online". The Law Commission published its [Scoping Report](#) in November 2018, and says that the Department for Digital, Culture, Media and Sport will analyse this and decide on next steps.³⁴

³³ Law Commission, [Consultation Paper No 213, Hate Crime: The case for extending the existing offences](#), 2013, paras 2.117 to 2.124

³⁴ Law Commission, [Project Page: Abusive and Offensive Online Communications](#)

4. The Government's Action Plan

In July 2016 the Government published a four year [Hate Crime Action Plan](#), which set out a programme of activity running to May 2020. The Action Plan was based on five key areas:

- Preventing hate crime by challenging the beliefs and attitudes that can underlie such crimes.
- Responding to hate crime in communities with the aim of reducing the number of hate crime incidents.
- Increasing the reporting of hate crime, through improving the reporting process, encouraging the use of third party reporting and working with groups who may under-report.
- Improving support for the victims of hate crime.
- Building understanding of hate crime through improved data, including the disaggregation of hate crimes records by religion.

Actions set out in the 2016 plan included working with schools and community partners on educational projects for young people, a [new funding scheme for community projects that respond to hate crime](#), a [new funding scheme for security measures at vulnerable faith institutions](#), publishing CPS guidance for the public on what hate crime is and how to report it, and refreshing CPS guidance for prosecutors on hate crime prosecutions.

In 2018 the Government published a progress update, together with a "refresh" of the action plan and a thematic review of evidence on hate crime.

For full details see the following:

- [Action against hate: the UK government's plan for tackling hate crime](#) (July 2016)
- [Hate crime: a thematic review of the current evidence](#) (October 2018)
- [Update on the actions from the UK Government's 2016 'Action Against Hate' action plan](#) (October 2018)
- [Action against hate, the UK government's plan for tackling hate crime – 'two years on'](#) (October 2018)

5. The Law Commission

5.1 The 2013 review

In 2013 the Law Commission launched a consultation on hate crime legislation, after the project was referred to it by the Ministry of Justice. The Law Commission's terms of reference were to examine:

- whether the stirring up hatred offences in the 1986 Act should be extended to cover disability and transgender identity hate crime; and
- whether the aggravated offences set out in the 1998 Act should be extended to cover disability, sexual orientation and transgender identity hate crime.

The Law Commission also examined the effectiveness of the enhanced sentencing regime, which covers all five types of hate crime.³⁵

The Law Commission's terms of reference did not include examining the rationale for the existing offences, or considering whether current legislation should be extended to other characteristics such as sex or age.

The final report was published in 2014. It did not receive a formal response from the Government. The Commission's recommendations on the existing legislation are summarised below.

Enhanced sentencing

On enhanced sentencing, the Commission concluded that "most if not all of the benefits that might flow from the extension of aggravated offences could flow from the properly applied and accurately recorded use of the enhanced sentencing system."³⁶ The Commission considered, however, that the enhanced sentencing regime is currently underused by judges, which has a "potential adverse effect on community confidence and victim satisfaction". It therefore made the following recommendations:

- The Sentencing Council should issue new guidance for judges on the approach to sentencing hostility-based offending, both under the aggravated offences provisions in the 1998 Act and under the enhanced sentencing provisions in the 2003 Act. The Commission considered that this would "enhance consistency in sentencing".³⁷
- The fact that an offender has been sentenced using the enhanced sentencing provisions in the 2003 Act should always be flagged on the offender's record on the Police National Computer. This would "assist sentencing courts by providing a full picture of the punishment merited for subsequent offending, the danger posed

³⁵ Law Commission Consultation Paper No 213, [Hate Crime: The case for extending the existing offences](#), 2013

³⁶ Law Commission Report No 348, [Hate Crime: Should the current offences be extended?](#), May 2014, para 1.44

³⁷ *Ibid*, paras 1.47-1.48

by the offender to the public or sections of it, and the likely response to rehabilitation". It would also give prison and probation services more accurate information about the offender, enabling them to tailor rehabilitation and education programmes. It would ensure that details of hostility-based offending could be made available as part of a criminal records check.³⁸

Aggravated offences under the 1998 Act

The Commission reiterated its view that reform of the existing enhanced sentencing provisions could provide an effective response to hate crime. However, it shared the view expressed by most respondents to the consultation that it was "undesirable for the aggravated offences not to apply equally to hostility based on race, religion, transgender identity, sexual orientation and disability", as this sent "the wrong message about the seriousness with which such offending is taken and the severity of its impact".³⁹

The Commission highlighted serious concerns raised by consultees about the current operation of the aggravated offences, with a particular focus on the complexities and principles of the offences. It considered that extending the existing aggravated offences without first addressing these concerns would be of little practical value, and might waste resources and result in poor outcomes for victims.

The Commission therefore recommended that the Government and criminal justice agencies should conduct a full scale review of the aggravated offences (and the enhanced sentencing regime):

Such a review should examine all the available data to establish whether such offences and sentencing provisions should be retained, amended, extended or repealed, what characteristics need to be protected, and the basis on which characteristics should be selected.⁴⁰

The Commission did, however, recognise that such a review would require Government support and resources, and that without this a review of sufficient scope would be impossible.

As an alternative, in the event that the Government did not support a wider review, the Commission therefore recommended that the aggravated offences be extended to disability, sexual orientation and transgender identity, to bring about equality of treatment. It stressed that this would be a less valuable reform option.

Stirring up hatred under the 1986 Act

The Commission concluded that there would be "a justification in principle for creating new offences of stirring up hatred on grounds of disability or transgender identity, provided that a practical need could be shown for doing so".⁴¹ However, it considered that no such practical need existed, based on the following observations:

³⁸ Ibid, paras 1.49-1.52

³⁹ Ibid, para 1.53

⁴⁰ Ibid, para 161

⁴¹ Ibid, para 165

- There are very few prosecutions for the existing offences of stirring up hatred.
- The type of hate speech typically found in relation to disability and transgender identity is unlikely to satisfy the requirements for a stirring up offence, as it often amounts to statements of opinion (albeit highly offensive) that are intended to provoke comment or debate, rather than to stir up hatred.
- Many of the examples raised by consultation respondents would be covered by other offences.
- There would therefore be even fewer successful prosecutions for the new stirring up offences than there are for the existing ones.

The Commission recommended that the existing stirring up offences should not, therefore, be extended.

5.2 The current review

In its 2016 Action Plan, the Government said it would consider the Law Commission's recommendations for a full review of hate crime legislation.

In October 2018, the Government asked the Law Commission to proceed with such a review.⁴² The Law Commission launched its review in March 2019 with the publication of [Hate Crime: Background to Our Review](#). The terms of reference are as follows:

- Reviewing the current range of specific offences and aggravating factors in sentencing, and making recommendations on the most appropriate models to ensure that the criminal law provides consistent and effective protection from conduct motivated by hatred of protected groups or characteristics.
- Reviewing the existing range of protected characteristics, identifying gaps in the scope of the protection currently offered and making recommendations to promote a consistent approach.

In particular:

- To consider developments in the law since the publication of the Law Commission report "Hate Crime: should the current offences be extended" in 2014;
- To consider whether crimes motivated by, or demonstrating, hatred based on sex and gender characteristics, or hatred of older people or other potential protected characteristics should be hate crimes, with reference to underlying principle and the practical implications of changing the law;
- To consider the specific statutory incitement of hatred offences under the Public Order Act 1986 and to make recommendations on whether they should be extended or reformed;
- To consider the impact of changing the law relating to hate crime on other aspects of criminal justice, including other offences and sentencing practice;
- To ensure that any recommendations comply with, and are conceptually informed by, human rights obligations, including

⁴² Law Commission, [Law Commission review into hate crime announced](#), 18 October 2018

under articles 10 (freedom of expression) and 14 (prohibition of discrimination) of the European Convention on Human Rights;

- Consideration of the implications of any recommendations for other areas of law including the Equality Act 2010.⁴³

The Law Commission's [hate crime project page](#) states that a full consultation paper will be published in early 2020.

⁴³ Law Commission website, [Hate Crime](#) [accessed 13 January 2020]

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