



DEBATE PACK

Number CDP-2018-0057, 6 March 2018

Misogyny as a hate crime

Westminster Hall, Wednesday 7 March 2018, 9.30am

A Westminster Hall debate on Misogyny as a hate crime is scheduled for Wednesday 7 March 2018 at 9.30am. The Member leading the debate is Melanie Onn MP.

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1. Background

1.1 Definitions

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 a hostility or prejudice based on a person’s race or perceived race; religion or perceived religion; sexual orientation or perceived sexual orientation; disability or perceived disability and any crime motivated by a hostility or prejudice against a person who is transgender or perceived to be transgender.”¹

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.

Other types of hate crime

Criminal offences motivated by 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. For example, in 2013 Greater Manchester Police began to record hate crimes committed against members of alternative sub-cultures.² In 2016, Nottinghamshire Police began recording misogynistic hate crime: see section 1.5 for further details.

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.³

1.2 Hate crime legislation

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

¹ CPS, [Hate Crime Annual Report 2016-17](#), October 2017, p6

² Greater Manchester Police press release, [GMP begins to record alternative sub-culture hate crimes](#), 5 April 2013

³ True Vision website, [What is hate crime?](#) [accessed 28 February 2018]

- offences under Parts III and IIIA of the [Public Order Act 1986](#) of stirring up hatred on the grounds of race, religion or sexual orientation;
- aggravated offences under the [Crime and Disorder Act 1998](#), where perpetrators of specified “basic” criminal offences (including assault, criminal damage, public order offences and harassment) can be charged with an aggravated form of the offence (carrying a longer maximum sentence) if they demonstrated or were motivated by hostility on the basis of race or religion; and
- provisions for enhanced sentencing under the [Criminal Justice Act 2003](#) where a crime is motivated by race, religion, sexual orientation, disability or transgender identity.

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.

The CPS has published detailed guidance on the existing legislation:

- [Guidance on prosecuting cases of disability hate crime](#);
- [Sexual orientation: CPS guidance on stirring up hatred on the grounds of sexual orientation](#);
- [Guidance on prosecuting cases of homophobic and transphobic crime](#);
- [Racist and religious crime – CPS guidance](#);
- [Racist and religious crime – CPS prosecution policy](#).

1.3 Sentencing guidelines

In addition, in cases where hostility is directed towards a characteristic not covered by the *Criminal Justice Act 2003* for enhanced sentencing, courts may consider the targeted nature of a crime when determining the seriousness of an offence in accordance with applicable sentencing guidelines.

The sentencing guideline on the overarching principle of the seriousness of an offence includes the following two factors indicating higher culpability:

- offence motivated by hostility towards a minority group, or a member or members of it;

- deliberate targeting of vulnerable victim(s).⁴

Sentencing guidelines for certain specific offences also take account of 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)”.⁵

1.4 Online hate crime

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 “revenge pornography” offence under [section 33 of the Criminal Justice and Courts Act 2015](#), which makes it an offence for a person to disclose a private sexual photograph or film if the disclosure is made without the consent of an individual who appears in the photograph or film, and with the intention of causing that individual distress.

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](#).

When sentencing for such offences in the context of hate crime, the courts could make use of the enhanced sentencing regime under the *Criminal Justice Act 2003* (for offences committed on the basis of race, religion, sexual orientation, disability or transgender identity), or the

⁴ Sentencing Council, [Aggravating and mitigating factors](#) [accessed 28 February 2018]

⁵ Sentencing Council, [Assault: definitive guideline](#), 2011, p 4

general sentencing principles on seriousness outlined in section 1.3 above (for offences committed on the basis of other personal characteristics such as sex).

1.5 The police approach

Although the centrally monitored definition of hate crime only includes hostility to race, religion, sexual orientation, disability or transgender identity, individual police forces can record hate crime for other personal characteristics.

The College of Policing operational guidance on hate crime explains in more detail:

The five strands of monitored hate crime are the minimum categories that police officers and staff are expected to record. There are, however, many other groups in society who have been targeted with hostility and crime. During consultation to agree the monitored strands, a further 21 different groups were identified for consideration. It is essential that the focus on the monitored strands is not used to deny the existence of other hate crimes. Additional strands that were considered, but not included, range from sexual abuse to football violence.

Agencies and partnerships are free to extend their own policy response to include the hostilities that they believe are prevalent in their area or that are causing the greatest concern to the community. Telling a victim that a crime is not a hate crime could be deeply offensive to them. This is particularly the case when the circumstances fit the first part of the common definition: 'Any crime or incident where the perpetrator's hostility or prejudice against an identifiable group of people is a factor in determining who is victimised'.⁶

In July 2016, Nottinghamshire Police announced it would expand its categories of hate crime to include misogynistic incidents.⁷ 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.⁸

In evidence to the Home Affairs Committee in February 2017, Superintendent Ted Antill, Hate Crime Lead at Nottinghamshire Police, summarised what had happened in practice as a result of monitoring misogyny:

To date, the number of reports made to us is in the mid-80s, and the percentage split is that around 40% of those are crimes and 60% will be non-crime incidents. Those incidents range from, at one end, wolf-whistling, which you discussed in some detail with Melanie previously, right through to criminal acts of violence and

⁶ College of Policing, [Hate crime operational guidance](#), 2014, p7

⁷ 'Nottinghamshire Police records misogyny as hate crime', *BBC News*, 13 July 2016

⁸ 'Police in England and Wales consider making misogyny a hate crime', *The Guardian*, 10 September 2016

damage. To date, we have only one prosecution linked to one of those reports, which was an assault case. The extent of our investigation is very much based on the victim's wishes. In some cases, they simply want us to record it. We have been very open, as all forces are, that the simple act of reporting increases our intelligence understanding of hate crime across the board, in terms of where and when it is happening, and by whom and to whom, which enables us to be more intelligence-led with our patrolling and other policing activities to prevent and detect it.

Some of the most positive feedback we have had—this was referred to during the earlier panel—is that women are saying that even though they have not felt the need to come forward and report anything to us, the mere fact that we have identified this as unacceptable behaviour and invited people to come forward and report it to us has given them a greater confidence that the types of behaviour that were referred to before, such as changing routes to work, using different modes of transport and changing dress, are no longer necessary, because they understand that if they are victimised, they have recourse through the police, whether for a non-crime incident or an actually criminal act.⁹

In July 2017, North Yorkshire Police announced it would record misogyny as a hate crime.¹⁰

In an evidence session 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:

Can I clarify the national position on reporting misogyny-based hate crime? There are the five reported strands: race, religion, transgender, sexual orientation and disability. Those are the only ones that are monitored by all the police services. Five police services monitor misogyny-based hate crime locally. The work by Nottingham was carried out as a result of a local initiative led by the chief constable there. A debate is now developing in the police service about where we should go next with misogyny-based hate crime. Should it be a sixth reported strand of hate crime, or should it be dealt with as a separate area of criminality? There is no consensus or agreement on that, and papers have yet to go before the Chief Constables' Council. The definition that was used in Nottinghamshire is slightly different from the hate crime definition in our national guidance, which covers hate crime generally. Not all forces are identifying misogyny-based hate crime; only five are doing it specifically.¹¹

⁹ Home Affairs Committee, Hate crime: abuse, hate and extremism online, 25 April 2017, HC 609, [Q385](#)

¹⁰ 'North Yorkshire police to treat misogyny as hate crime', *BBC News*, 8 March 2017

¹¹ Home Affairs Committee, Hate crime: abuse, hate and extremism online, 25 April 2017, HC 609, [Q383](#)

1.6 Reports and reviews

The Law Commission

In 2013 the Law Commission conducted a consultation on hate crime legislation to examine whether the aggravated offences set out in the 1986 and 1998 Acts should be extended to cover disability, sexual orientation and transgender identity hate crime as well as race and religion. It also looked at the effectiveness of the enhanced sentencing regime, which covers all five types of hate crime.¹²

The final report included a section on 'Deeper questions of principle requiring consideration', which included a discussion on how characteristics have been selected for protection under hate crime legislation.¹³ The Law Commission concluded that a wider review of the legislative response to hate crime could usefully address, among other questions:

What protected characteristics should be specifically referred to in offences and/or the enhanced sentencing system? On what principles should they be selected?

The footnote in the report indicated that some consultees had put forward gender as well as other Equality Act 2010 protected characteristics as suggestions. The Law Commission recommended that a full-scale review of the aggravated offences and of the enhanced sentencing system could establish what characteristics need to be protected and the basis on which these characteristics should be treated as protected.

The Home Affairs Committee

In July 2016, the Home Affairs Committee launched an inquiry into hate crime and its violent consequences. The inquiry was cut short due to the 2017 general election, and the subsequent report therefore focused mainly on online abuse and the responsibilities of social media companies. However, the Committee did make reference to the experience of women online:

15. Women in particular have become targets for abuse and misogynistic harassment on social media, particularly on Twitter. In a study, Demos found that 10,000 tweets were sent from UK accounts in three weeks aggressively attacking individuals as a "slut" or a "whore". The Fawcett Society conducted an informal survey to examine the type and prevalence of abuse that women receive. Sexist messages were the most common type of harassment experienced, with 70% of respondents who had received abuse on Twitter saying that they had experienced it. Around a third of women experienced "politically extremist hate messages, unwanted sexual messages or images, stalking, and

¹² Law Commission Consultation Paper No 213, [Hate Crime: The case for extending the existing offences](#), 2013

¹³ Law Commission Report No 348, [Hate Crime: Should the current offences be extended?](#), May 2014, p140

threats of violence.” Users reported experiences of other users organising abuse against them in similar proportions.

16. Melanie Jeffs, a manager at Nottingham Women’s Centre, was the victim of a wave of vicious, targeted abuse on Twitter. She received the abuse in response to publicity following her work to have misogyny recognised as a hate crime by Nottinghamshire Police. She was subjected to misogynistic taunts regarding her appearance and also received death threats.¹⁴

The Committee has resumed its inquiry and is currently taking oral and written evidence.¹⁵

The APPG on Domestic Violence

At a meeting in March 2017, the APPG on Domestic Violence looked at misogyny as a hate crime: with a particular focus on police recording practices. The then Chief Constable of Nottinghamshire Police, Sue Fish, gave an overview of how the force had implemented the practice of recording misogyny as a hate crime:

Sue explained the crucial role that training played in the implementation of the change. Training was provided to those in the control room, response teams, and neighbourhood and community support officers. The specialist trainer outlined both the research and policy rationale, and shared women’s lived experiences of misogyny. Sue stated that the training helped to place the ‘everyday’ experiences of misogyny within the spectrum of VAWG offences. In terms of impact, the policy has made a real difference in reducing sexism within the organisational culture of the police force and has reinforced their approach and standards for tackling hate crime. Feedback on the police response has also been impressive, in terms of the officers’ empathy and treatment of victims.

Sue explained that five other forces had already moved to classify misogyny as a hate crime, and stated her commitment to see the policy adopted nationally. She stated that there was clear parliamentary and central government interest in the change - and, given the clear evidence base, it was a question of when, not if, this would happen.¹⁶

There was a “clear consensus” from those present that the Nottinghamshire Police policy had been “an important step forward for tackling street harassment and abuse, and challenging wider sexism and objectification of women in society”. However, the meeting acknowledged that there were barriers to adopting the policy within police forces, “including rising demand and decreasing resources, the

¹⁴ Home Affairs Committee, [Hate crime: abuse, hate and extremism online](#), 1 May 2017, HC 609, paras 15-16

¹⁵ Home Affairs Committee website, [Hate crime and its violent consequences inquiry](#) [accessed 28 February 2018]

¹⁶ APPG on Domestic Violence, [Minutes of meeting: Tackling misogyny as a hate crime](#), 29 March 2017

increasing complexity of tackling modern crime, and reputational and public relations issues”.

There was also some concern that if the policy were to be adopted nationally, it might need to be framed as “gender based hate crime” rather than misogyny because of “a view that men should be treated equally under the law”. The APPG considered that this might be problematic:

...this would fail to address misogyny as a structural problem, and could lead to widespread reporting of misandry, when in reality it is very rare indeed for men to be victims of hate crime because of their gender specifically. It was also highlighted that, when talking about race hate crime, anti-Semitic and anti-Islamic hate crime were used to describe specific forms of the crime. Homophobic hate crime can be recognised without a need to see heterosexual people as at risk because of their sexual orientation. There was a call for further legal clarification on this point.¹⁷

Following the meeting Professor Felicity Kaganas prepared a research note which looked in more detail at the interaction between Equality Act principles and misogyny as a hate crime: see [Misogyny as a hate crime](#), July 2017.

The Women and Equalities Committee

In December 2017, the Women and Equalities Committee held an evidence session on women’s experiences of everyday sexism and sexual harassment. ACC Mark Hamilton, National Policing Lead on Hate Crime, was one of those who gave evidence. He said that the police were looking nationally at the idea of recording misogyny as a hate crime, but that if the police move forward with this it would need to be supported with legislative action:

The five reported strands all have statutory provision around sentence uplift—enhanced sentencing under the Criminal Justice Act. What we would describe as a misogyny type of offence, and I will come back to how we are thinking about dealing with it in a minute, does not exist as a statutory provision. If we were going to make it all congruent, if the police were to take certain action, we would be looking for there to be statutory provisions around sentencing that were similar to other areas of hate, if we accept that misogyny should be an additionally reported strand of hate crime. First, there is review of the strands and then, secondly, upon review of the strands, the consideration of statutory provisions so that all the strands have equal status.

Coming back to your question of whether we should be doing it, there is a really good debate going on among policing staff at the minute, led very bravely by Sue Fish, the former Chief Constable of Nottinghamshire, who has done some fantastic work on misogyny-based hate crime. Where we are with that now is Sue is presenting her evidence to us and we are planning to put papers

¹⁷ Ibid

through our EDHR [Equality, Diversity and Human Rights] Committee and then on to Chiefs' Council about the consideration of misogyny as a sixth strand of hate crime, or, if it is not a sixth strand of hate crime, what we are going to do about it. Another six chief constables are also reporting on it at the minute and others are waiting to see how it works out.

My slight concern would be that the police move on their own. Even if we decided that we were going to report on this nationally for 12 months and work out a system to do that, there are complications about trying to fit either misogyny-based or gender-based hate crime in with the other five.

There is structural stuff that we are going to have to work on because it does not fit entirely neatly at the minute. The question then would be: so what? To report on it is one thing, but it is whether or not the criminal justice system end to end then wants to respond to it. That is a bigger debate than me, but the police at the minute, through my portfolio, are going to try to take this forward from our perspective.¹⁸

He added:

...we need a review of hate crime categories and the consideration of whether gender or a single gender—female—should be a category of hate crime. Start the national reporting on that, and then any statutory instruments around it are all connected considerations, and the time is right to consider it.¹⁹

The Fawcett Society

In January 2017 the Fawcett Society launched a [Sex Discrimination Law Review](#), which involved an expert panel reviewing a number of sex discrimination issues including hate crime. The Panel published its final report in January 2018, which made the following specific recommendations on hate crime:

Hate crime against women and girls is a cause and consequence of gender inequality and should be treated as unlawful. It is important that the hate crime in question is misogyny hate crime, not gender hate crime, recognising the direction of the power imbalance within society. This would be consistent with the one-directional nature of transgender or disability hate crime.

Some police forces, including Nottinghamshire and North Yorkshire, have already begun recording misogyny hate crime and hate incidents. All police forces should be required to recognise misogyny as a hate crime for recording purposes – and police computer systems should be developed to ensure that they are able to record intersectional experiences of hate crime, which they are currently unable to do. But this alone is not sufficient. Enhanced sentencing for offences motivated by hostility towards people based on other protected characteristics recognises that

¹⁸ Women and Equalities Committee, [Oral evidence: Women's everyday experience of sexism and sexual harassment, HC 592](#), 6 December 2017, Q15

¹⁹ Ibid, Q43

those offences are especially harmful to individuals and society. This is certainly the case for misogyny, and so it should be introduced as a hate crime for enhanced sentencing purposes, and included in decisions about the wider hate crime framework.²⁰

The report goes on to set out the aims behind requiring the police to record misogyny as a hate crime:

The hate element of the incident or crime constitutes a flag or “qualifier” on the incident log, but does not change the offence or incident itself. This change was accompanied by training for all police staff, carried out by the Women’s Centre. The work has also been used by other local organisations, such as Equation, who have used misogyny hate crime as a way to add weight to their existing domestic violence prevention work in schools.

The intention of recording incidents in this way is that the police will be able to raise awareness of the seriousness of these incidences and encourage women to report them. This will enable them to gather better intelligence, to disrupt activities and perpetrators, improve risk management and support the women affected. The long-term aim is to nudge people towards a culture shift and to reframe misogynist behaviour as socially undesirable.²¹

During an interview on the Andrew Marr Show, Home Secretary Amber Rudd said that the Government would not be moving ahead with the Fawcett Society’s calls to make misogyny a hate crime at the moment, but that she would keep “a careful eye” on their proposals.²²

²⁰ Fawcett Society, [Sex Discrimination Law Review: Final Report](#), January 2018, pp8-9

²¹ Ibid, p67

²² BBC iPlayer, [The Andrew Marr Show](#), 4 February 2018 (at 57 minutes) (available to view until 6 March 2018)

2. News and blogs

Green Party

[Cross party calls for misogyny to be a hate crime](#)

6 February 2018

Fawcett Society

[We have to start calling out misogyny for what it is: a hate crime](#)

Sam Smethers 23 January 2018

Rights Info

[Why should misogyny be classed as a hate crime?](#)

Eithne Dodd 22 January 2018

North Yorkshire Police

[North Yorkshire Police announce misogyny now recognised as hate crime](#)

April 2017

The Debrief

[Misogyny could soon be classified as a hate crime](#)

Vicky Spratt 12 September 2016

Greater Manchester Police

[GMP begins to record alternative sub-culture hate crimes](#)

5 April 2013

2.1 Press and media

Independent

[Amber Rudd urged to change law to treat misogyny as a hate crime](#)

6 February 2018

BBC iPlayer

[The Andrew Marr Show](#)

4 February 2018 (at 57 minutes) (available to view until 6 March 2018)

Herald (Scotland)

[Scotland looks at making misogyny a hate crime](#)

30 January 2018

Guardian

[Make misogyny a hate crime and 'upskirting' illegal, UK report recommends](#)

23 January 2018

Telegraph

[Sexist criminals could get longer sentences under proposals to make misogyny a type of hate crime](#)

6 December 2017

Huffington Post

[Police chiefs debate possibility of making misogyny a hate crime](#)

6 December 2017

Evening Standard

[Green Party to descend on Home Office and demand Government categorises misogyny as a hate crime](#)

22 November 2017

Grazia

[Should misogyny be a hate crime?](#)

14 September 2016

Guardian

[Police in England and Wales consider making misogyny a hate crime](#)

10 September 2016

BBC News

[Nottinghamshire Police records misogyny as a hate crime](#)

13 July 2016

3. Parliamentary Business

[Women's Suffrage Centenary](#)

HC Deb 6 February 2018 c1365-84

[Role of Women in Public Life](#)

HL Deb 5 February 2018 c1801-43

[Tackling sex discrimination](#)

Primary sponsor: Neil Coyle:

That this House welcomes the Fawcett Society's review of sex discrimination law in the UK, and its recommendations to make misogyny a hate crime; acknowledges the level of concern in broader society at gender inequality; recognises the insufficient tackling of hate crimes against women; and calls for police authorities to treat hate crime motivated hostility on the basis of gender as an aggravated offence.

23 January 2018 | Early day motion | 852

[Harassment in Public Life](#) [Ministerial statement]

HC Deb 18 December 2017 c787-805

[Topical Questions](#)

Asked by: Melanie Onn

What discussions has the Minister had with colleagues in the Ministry of Justice about adding misogyny to the list of hate crimes?

Answered by: Dominic Raab | Ministry of Justice

We keep all public order offences under constant review. If the hon. Lady would like to make a submission in relation to that, I would be happy to look at it.

HC Deb 12 October 2017 c445

[Online Abuse](#)

HC Deb 7 July 2016 c1063-108

4. Further reading

Home Affairs Committee, [Hate crime and its violent consequences](#), HC 683 Q173, 175-9, 181, 6 February 2018

Women and Equalities Committee, [Women's everyday experience of sexism and sexual harassment](#), HC 592 Q15, 43, 6 December 2017

Home Affairs Committee, [Hate crime: abuse, hate and extremism online](#), HC 609, 1 May 2017

All-Party Parliamentary Group on Domestic Violence, [Tackling misogyny as a hate crime: minutes of meeting](#), 29 March 2017

Crown Prosecution Service, [Hate crime annual report 2016-17](#), October 2017

HM Government, [Hate crime action plan 2016](#), 12 October 2016

Law Commission, [Hate crime](#)

Law Commission, [Hate crime: should the current offences be extended?](#) Cm 8865; Law Com No 348, May 2014

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

College of Policing, [Hate crime operational guidance](#), May 2014

Fawcett Society, [Sex discrimination law review](#)

Fawcett Society, [Sex discrimination law review: report](#), January 2018

True Vision, [What is hate crime?](#)

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