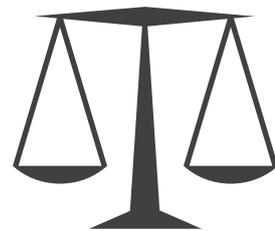


August 2017

# HATE CRIME

Public statement on prosecuting  
racist and religious hate crime

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**CPS**

Crown Prosecution Service  
[cps.gov.uk](http://cps.gov.uk)

Hate crimes often have a disproportionate impact on the victim because they are being targeted for a personal characteristic. We recognise that hate crime not only impacts the individual victim but also the wider community. Hate incidents as one-offs or a related series of events can send reverberations through communities, just as they can reinforce established patterns of prejudice and discrimination. This is why it is so important for hate crime to be prosecuted effectively.

Our policy is to:

- Identify crimes involving hostility on the basis of race or religion as early as possible
- Charge, where appropriate, aggravated offences under the Crime and Disorder Act (CDA) 1998
- Build strong cases with our partners that satisfy the tests within the [Code for Crown Prosecutors](#)
- Remind the court of the statutory sentencing framework under ss.28-32 Crime and Disorder Act 1998 (CDA 1998) or its power to increase the sentence under s.145 Criminal Justice Act (CJA 2003) where there is evidence of hostility based on membership (or presumed membership) of a racial or religious group, including minor offending
- Recognise that crimes of stirring up racial and religious hatred are, by their very nature, highly sensitive. For this reason, and to ensure a consistent approach given the small number of prosecutions, all such cases are considered by our Special Crime and Counter Terrorism Division. No charges can be brought without the consent of the Attorney General
- Support victims and witnesses to give their best evidence
- Work closely with the police, criminal justice agencies, academics, community stakeholders and other bodies to continuously refresh our understanding of racially and religiously aggravated crime and to improve our response to it
- Improve awareness of racially and religiously aggravated hate crime and the public confidence to report it
- Monitor the implementation of this policy

When deciding whether it is in the public interest to prosecute racially and religiously aggravated crimes, our prosecutors must have regard to the Code for Crown Prosecutors. The Code states that where the offence was motivated by any form of discrimination including against the victim's ethnic or national origin, or religion or belief, or whether the suspect demonstrated hostility towards the victim based on any of those characteristics, the presence of any such motivation or hostility will mean that it is more likely that a prosecution is required.

### **Racially and religiously aggravated crime**

In order to identify and flag cases involving hostility on the basis of race or religion, we have agreed with the police a shared definition. This definition is wider than the legal definition under the CDA 1998 and CJA 2003 to ensure that we capture all relevant cases:

*“Any incident/crime which is perceived by the victim or any other person, to be motivated by hostility or prejudice based on a person's race or religion or perceived race or religion.”*

It is important that relevant incidents are identified as hate crimes as early as possible. This will assist the police to obtain the best available evidence in order to support the aggravating factor at court and at sentence.

Once a case has been flagged as a hate crime and received by the CPS, it is CPS policy not to remove the flag for any reason other than administrative error. This signals the CPS commitment to treat all such crimes seriously and to accept the victim's perspective, even where we are unable to identify sufficient evidence to prosecute the case as a hate crime.

## **The legal framework for racially and religiously aggravated crime**

### **1. Specific aggravated offences and sentence uplift under s.145**

Racially and religiously aggravated offences were introduced by the CDA 1998. These specific offences cover wounding, assault, criminal damage, harassment, stalking and threatening/abusive behaviour. Monitoring had indicated that these were the most common types of crime experienced by the victims of racially and religiously aggravated violence or harassment.

To prove that an offence is racially or religiously aggravated, the prosecution has to prove the "basic" offence and racial or religious aggravation, as defined in section 28 CDA 1998.

Where an offence is not charged as a specific racially or religiously aggravated offence, it does not mean that the racial or religious element will be overlooked. The court must take into account evidence of racial or religious aggravation when sentencing. Section 145 Criminal Justice Act 2003 (CJA 2003) gives the court power to increase the sentence of any other offence that is racially or religiously aggravated. An offence will be 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 of the offence hostility based on the victim's membership (or presumed membership) 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.

The legal framework and the police/CPS definition refer to hostility, not hatred. There is no statutory definition of hostility and the everyday or dictionary definition is applied, encompassing a broad spectrum of behaviour.

For information about the nature of racially and religiously aggravated crime, see the [CPS legal guidance](#).

### **2. Stirring up hatred on the grounds of race and religion**

Parts 3 and 3A Public Order Act 1986 cover stirring up hatred on the grounds of race and religion. As with all hate crime, any initial report to the police will be assessed by applying the police/CPS

definition of what constitutes a hate incident/crime, before more detailed consideration of the evidence and charging options.

We acknowledge that people have a right to freedom of speech. It is essential in a free, democratic and tolerant society that people are able to exchange views, even when these may cause offence. However, we will balance the rights of an individual to freedom of speech and expression 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.

Stirring up racial hatred, defined by reference to colour, race, nationality (including citizenship) or ethnic or national origins is committed when someone says or does something which is threatening, abusive or insulting, and the person either intends to stir up racial hatred, or make it likely that racial hatred will be stirred up. It covers behaviour such as making a speech, posting material online, displaying a poster, performing a play or broadcasting on the media.

Stirring up religious hatred is committed if a person uses threatening words or behaviour, or displays any threatening written material, and intends to stir up religious hatred against a group of persons defined by reference to religious belief or lack of religious belief. It covers the same behaviour applicable to stirring up racial hatred.

Stirring up religious hatred is limited to threatening words or behaviour and we have to prove intent. Additionally, there is a freedom of expression defence contained in Section 29J, but no corresponding statutory defence for the racial offence.

Any prosecution for the offence of stirring up hatred on the grounds of race or religion requires the consent of the Attorney General. For more information see the [legal guidance on stirring up racial and religious hatred](#).

### **3. Those affected by racially and religiously aggravated crime**

S.28 CDA 1998 defines “racial group” as a group of persons defined by reference to race, colour, nationality (including citizenship) or ethnic or national origins. This is a wide definition and identifies a range of people who may potentially experience hostility on these grounds, including but not limited to people from the different countries of the UK, tourists, workers from other countries, asylum-seekers, refugees, Gypsies, Irish Travellers and Roma, and people who are UK citizens but whose national origins are from other countries.

S.28 CDA 1998 defines “religious group” as a group of persons defined by reference to religious belief or lack of religious belief. This too is a wide definition and underlines that hostility can be targeted at faith communities new or old, be sectarian in nature, be directed at converts and also those of no faith.

## **Offending Behaviour**

Hate crime can take many forms, ranging from verbal abuse to physical and sexual assault and can include encouraging others to violence, threats, criminal damage, harassment, stalking and anti-social behaviour. Incidents can be one-off events or form part of a series of repeated and targeted offending. The hostility may target individuals, groups, those associated with such groups, or property e.g. homes, places of work or worship, and community venues. Hate crime can occur anywhere.

Hostility and hatred might be based on misconceptions about the individual's characteristics. However, there is no need to confirm a victim's personal characteristics in order to prosecute a hate crime. Evidence of hostility based on the perpetrator's presumption of the victim's race or religion is sufficient.

We recognise that victims of hate crime can be repeatedly targeted. We will encourage the police to investigate any previous incidents or allegations. We will bring charges that reflect the overall picture of offending or, if possible, make a [bad character application](#) to the court to present evidence of previous conduct towards the victim or others.

We recognise that people can be targeted for a combination of reasons, including disability, sexual orientation or transgender identity, in addition to their race or religion. Prosecutors will consider the most appropriate charges and apply to courts for an appropriate increase in sentence, based upon all relevant aggravating features.

## **Reporting hate crime**

It is important that all hate crimes and incidents are reported to the police whether it's a one-off or part of a pattern of repeat offending.

It is for the police to investigate the incident, and to decide whether to refer the case to the CPS for a decision on whether to charge the suspect and, if so, with what offence.

We recognise that national and international events can serve to exacerbate underlying feelings and attitudes that can often drive hostility. The nature of offending and the language used in incidents can draw upon these events and our prosecutors are aware of the need to consider cases in the context in which they are committed.

## **Internet and social media**

Hate crime can be perpetrated online or offline, or there can be a pattern of behaviour that includes both. The internet, and social media in particular, have provided new platforms for offending behaviour and our [revised guidance on the prosecution of social media cases](#) provides more detail.

In approaching online hate crime, we will:

- Recognise that modern communications technology provides opportunities for hate crime
- Understand the internet and the changing nature of social media platforms, as well as their community standards and policies for taking down material
- Be familiar with the relevant law and referral systems
- Be alert to the need to identify originators as well as amplifiers or disseminators
- Prosecute complaints of hate crime online with the same robust and proactive approach used with offline offending, whilst recognising that children may not appreciate the potential harm and seriousness of their communications
- Consider the potential impact on a targeted individual or community
- Treat online complaints as seriously as offline complaints and encourage all to be reported to the police

As with all hate crime offences, the police will be required to seek a charging decision from us.

### **Criminal investigation**

We adopt a proactive approach and will seek further evidence where necessary from the police, to assist in the identification of evidence of hostility or an intention to stir up hatred, to support the prosecution of a specific offence or an application to increase sentence.

In some cases, we may advise the police to pursue other possible lines of enquiry. This may include looking at previously reported incidents involving the same victim, or the same suspect. It may also involve seeking information or evidence from other agencies such as specialist support groups and relevant community groups.

Hostility on the grounds of race and religion are not the same thing. Sometimes offenders demonstrate hostility on the grounds of both race and religion. In those circumstances prosecutors must carefully consider whether to charge a racially aggravated offence, a religiously aggravated offence or both, depending on the facts and circumstances of the case. According to the law, Sikhs and Jews are members of both a racial and religious group.

### **Charging decisions**

When making charging decisions relating to racially or religiously aggravated crime, as in all cases, prosecutors must apply the [Code for Crown Prosecutors](#).

In relation to racially and religiously aggravated offences charged under sections 29–32 of the Crime and Disorder Act 1998, a letter explaining the reasons for our decision will be sent to the victim when a decision is made to proceed with the basic offence, rather than the aggravated form.

## **Bail**

If there is a risk of danger or threats or repeat offences, we will seek to protect victims and witnesses by applying to the court to remand the defendant in custody where appropriate, or by asking the court to impose conditions on bail where possible (for example, not to approach any named person or to keep away from a certain area).

## **Prosecution and sentencing**

In prosecutions involving racially or religiously aggravated hostility, we will build cases that present evidence of these aggravating factors where possible.

We will remind the court of its power to increase the sentence where the offence is aggravated by hostility on the basis of race or religion. [The Sentencing Council guidelines](#) provide detail on the way the increase in sentence is determined.

We shall draw the court's attention to a [Victim Personal Statement](#) (VPS), which gives victims an opportunity to describe the effects of the crime upon them, express their concerns and indicate whether or not they require any support. Making a VPS is entirely optional. Victims are entitled to choose whether they would like to read their VPS aloud in court, whether they would like someone else to read it aloud or whether it should be played back, if recorded, for them. A [Community Impact Statement](#) may also be made to show the impact of offending on the wider community, including the relevant racial or religious community.

We have a responsibility to assist the court in sentencing. Prosecutors will apply for appropriate additional or ancillary orders, including restraining orders and compensation for loss, injury or damage. We will always have regard to the victim's needs, including the question of their future protection.

The court has a duty to give reasons for, and explain the effect of, the sentence that it imposes.

## **Withdrawal**

Sometimes, a victim will ask the police not to proceed any further with the case, or will ask to withdraw the complaint. We will consider the impact on the victim of not proceeding, including the risk of further harm to the victim, however this does not necessarily mean that the case will automatically be stopped. Applying the Code for Crown Prosecutors, we will prosecute all cases where there is sufficient evidence; it is in the public interest to do so and there are no factors that prevent us from doing so.

## **Case progress – information for victims**

Information on how victims of crime are kept informed of case progress can be found in the [Code of Practice for Victims of Crime](#).

## **Victims' Right to Review**

For qualifying decisions, if a victim requests a review of our decision not to bring proceedings, or to end all proceedings, we will look again at the decision to establish if it was correct. For information on how to ask for a review of a decision see [The Victims' Right to Review Guidance](#).

## **Support**

It is important to note that the majority of racially and religiously aggravated prosecutions result in a guilty plea from defendants, reducing the need for victims and witnesses to give evidence in court. However where victims and witnesses are required to give evidence, we are committed to supporting them to give their best evidence.

Victims of hate crime are also entitled to enhanced support services. Victims who are intimidated can be supported by applications to the court for [Special Measures](#). Special Measures are a series of provisions that help 'vulnerable' and 'intimidated' witnesses give their best evidence in court and help to relieve some of the stress associated with giving evidence. Special measures can include the use of screens in court so the victim or witness does not have to see the defendant, or giving evidence from a separate courtroom via a video link. These measures can help reduce stress and anxiety. Automatic reporting restrictions apply to persons under the age of 18 in cases in the Youth Court and to victims of rape and other serious sexual offences, irrespective of age. [Reporting restrictions](#) can also be applied for in other circumstances, if specific criteria are satisfied, to protect the identity of the victim.

More information can be found on the [Victims and Witnesses section of the CPS website](#).

## **Equality Duty**

We are a public authority for the purposes of equality legislation. This policy and our related legal guidance form a key part of our efforts to meet our obligations under the Public Sector Equality Duty to eliminate unlawful discrimination, harassment and victimisation of people on the basis of race, religion or belief or lack thereof and to promote equality and good relations.

## **Working with stakeholders**

We work locally and nationally with the police and other partners who have a role in addressing hate crime, as well as with individuals, community groups and academics with experience and expertise in relation to hate crime. This ensures that we are able to continuously refresh our understanding of the nature of racially and religiously aggravated offending and can improve our response to it.

## **Monitoring and Implementation**

We will monitor our performance through our Hate Crime Assurance Scheme, under the oversight of our hate crime governance structures. We will also receive feedback on our performance through our local and national panels that provide scrutiny of CPS cases, decisions and policies.

Our Hate Crime Annual Report provides transparent accountability in respect to our performance.

It should be noted that the CPS can only monitor the work of the CPS.

### **Hate Crime Webpage**

We have created a [hate crime page on the CPS website](#), to provide more detail on the CPS approach to hate crime. The webpage includes the following information on racially and religiously aggravated offences:

- The legal context of racially and religiously aggravated crime
- What happens if a victim withdraws or no longer wishes to give evidence
- Sentencing
- Implementation of the CPS Policy

## **About the Crown Prosecution Service**

The CPS is responsible for prosecuting most cases heard in the criminal courts in England and Wales. It is led by the Director of Public Prosecutions and acts independently on criminal cases investigated by the police and other agencies. The CPS is responsible for deciding the appropriate charge in more serious or complex cases and provides information, assistance and support to victims and witnesses.

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