

Baroness Vere
Sent by email

9 January 2018

Dear Baroness Vere

Thank you for your letter dated 13 December following the Oral Question in the House of Lords on 6 December.

The shared CPS and police **flagging** definition for hate crime is:

"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 flagging definition for hate crime was agreed between the CPS and the NPCC (ACPO as it was then) in 2007. I can confirm that this is wider than the definition set out in legislation. This is to ensure that we capture all relevant cases.

We have adopted the recommended definition in the Macpherson report published in 1999 as a result of the inquiry into the murder of Stephen Lawrence. The Macpherson Report found a lack of confidence within communities that hate crime was being treated seriously by the police and Criminal Justice System, and recommended that the definition of a racist incident should be, 'any incident which is perceived to be racist by the victim or any other person'.

The report also provides further detail on the need for a wider definition which captures both incidents and crimes, recommending that 'the term "racist incident" must be understood to include crimes and non-crimes in policing terms. Both must be reported, recorded and investigated with equal commitment'.

The Macpherson report recommended that 'this definition should be universally adopted by the Police, local Government and other relevant agencies'.

It is important to put the victim's perception at the heart of the definition. This gives a clear signal that, once flagged as a hate crime, thorough investigation will follow. The definition seeks to encourage reporting and to increase confidence in the Criminal Justice System.

The recommendations of the Macpherson report were welcomed by the Government at the time and the current Government remains in support of this position. The CPS has worked with police to implement the recommended definition across all strands of hate crime. The CPS takes tackling hate crime seriously and recognises the need to increase public confidence to report. The flagging definition is important in achieving this aim.

In order for a crime to be charged and prosecuted as a hate crime however, the CPS uses the legal definitions contained in the Crime and Disorder Act 1998 (CDA 1998) and the Criminal Justice Act 2003 (CJA 2003). The CDA 1998 creates a number of specific racially or religiously aggravated offences. For other offences, the CJA 2003 places a duty on the courts to increase the sentence where the defendant has been convicted of an offence where they have demonstrated hostility towards the victim based upon the victim's protected characteristic or have been motivated by such hostility.

This means that not every incident that the victim or another person has perceived to be a hate crime will actually be a hate crime in law. As with any case passed to the CPS by police, we will only charge where there is sufficient evidence to provide a realistic prospect of conviction and where it is in the public interest to do so.

The CPS legal guidance recognises the potential impact of prosecutions on Article 10 of the European Convention on Human Rights (the right to freedom of expression). The guidance recognises that speech which is well-received and popular is protected, as is speech which is offensive, shocking or disturbing. It is essential in a free, democratic and tolerant society that people are able to exchange views, even when offence may be caused. However, when making prosecution decisions the CPS must balance the rights of an individual to freedom of speech and expression against the duty of the state to act proportionately and to protect the rights of others.

Yours sincerely,



ALISON SAUNDERS
DIRECTOR OF PUBLIC PROSECUTIONS