Written evidence submitted by the Crown Prosecution Service

Summary

1. The Crown Prosecution Service (CPS) is committed to working with law enforcement colleagues to prosecute hate crime effectively in England and Wales. It is an aspect of our duty we take very seriously and we produce a regular (usually annual) report to review our progress and performance in relation to tackling it. We would in the first instance therefore direct the Committee to the [CPS Hate Crime Report 2014-15 and 2015-16] as an up-to-date snapshot of our activities and policies.

2. In this submission we have endeavoured to not simply repeat the points made in that document; rather we have addressed the specific issues identified by the Committee in turn.

The effectiveness of current legislation and law enforcement policies for preventing and prosecuting hate crime and its associated violence.

3. The CPS and our partners in law enforcement have made significant advances in tackling hate crime in recent years.

4. Our most recent *Hate Crime Report* evidences clear progress in terms of completed prosecutions and the overall increase in announced and recorded sentence uplifts:

   - In 2015/16 the CPS completed **15,442** hate crime prosecutions, the highest number achieved to date. This included 941 completed prosecutions for disability hate crime, up **41.3%** on the previous period.
   - The conviction rate across all strands of hate crime increased from **82.9%** in 2014/15 to **83.2%** in 2015/16.

5. Beneath these top level figures, individual strands of hate crime performed differently as might be expected. A more detailed breakdown is provided at [Annex A](#).

Hate Crime Coordinators

6. Hate Crime Coordinators (HCCs) are experienced specialists who have been appointed in each CPS Area as well as in CPS Direct. HCCs work alongside Equality and Diversity and Community Engagement Managers to agreed minimum standards relating to performance management, community and stakeholder engagement and policy implementation, and play an essential part in supporting effective hate crime prosecutions.

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1 CPS Direct is responsible for providing charging advice to the police around the country, 24 hours a day, 365 days a year.
7. The HCC network meets twice a year to discuss relevant issues arising from the Hate Crime Assurance Scheme and assist in identifying best practice, highlighting support needs, developing a consistent approach and sharing relevant updates. These meetings, the most recent of which was held in April 2016, are supplemented by monthly telephone conferences led by experienced HCCs to enable a constant dialogue across the CPS.

**Hate Crime Assurance Scheme**

8. In support of improving case work quality and data accuracy, the Hate Crime Assurance scheme was introduced on 1\textsuperscript{st} January 2015 to cover disability hostility, homophobic and transphobic crime. From May 2015, the scheme was extended to include racially and religiously aggravated cases.

9. All live cases involving disability hostility, homophobic and transphobic crime and religiously aggravated crime are checked every month, along with a sample of racially aggravated files (we prosecute a high volume of these cases each month).

10. Experienced hate crime prosecutors provide constructive feedback to lawyers in real time with the aim of increasing casework quality and data accuracy. These improvements can ultimately increase the potential for a successful outcome for the prosecution.

11. The scheme measures performance against a number of key case handling indicators, determined following a previous Criminal Justice Joint Inspection into disability hate crime cases:

- Accuracy of **flagging** a file as a hate crime
- Identification of appropriate evidence of **hostility**
- **Analysis** of the evidence of hostility in relation to sentence enhancement
- Necessary **action** planning to strengthen the case
- Sufficiency of **instructions** to prosecuting counsel
- Appropriate identification and assessment of support needs

12. In addition to live files, all appropriate finalised files are assessed in relation to the accuracy of Hearing Record Sheets (HRS) and Case Management System (CMS) recording of key stages.

**Social Media Guidelines**

13. The effectiveness of the criminal justice response to the use of social media as a platform for hate crime has come under increased scrutiny following high-profile cases involving the trolling of victims such as Caroline Criado-Perez and Luciana Berger MP.

14. In addition to the law contained in the Protection from Harassment Act 1997 as amended by the Protection of Freedoms Act 2012, the most relevant aspects of the law in relation to potential social media hate crime cases are s.1 Malicious Communications Act 1988 and s.127 Communications Act 2003. These provisions refer to communications which are grossly offensive.
15. The CPS Religiously Aggravated and Antisemitic Crime Action Plan included a commitment to:

I. Review existing guidance relating to communications sent via social media and assess whether the guidance might benefit from a more specific focus on hate crime.

II. Assess the experience of Areas in prosecuting those cases of communications sent via social media to improve our understanding of any handling issues arising.

III. Assess the value and feasibility of deploying prevention orders in respect of hate crime cases.

16. This work was completed and fed into the formal refresh of legal guidance which has now been subject to public consultation (closed 12th May 2016). Responses are currently being assessed and final, revised guidance will be published in autumn 2016.

Effectiveness of Current Legislation – Law Commission Project

17. In June 2013 the Law Commission consulted on whether the current hate crime offences should be extended. The terms of reference of their project were:

I. to consider extending the aggravated offences in the Crime and Disorder Act 1998 to include where hostility is demonstrated towards people on the grounds of disability, sexual orientation or gender identity;

II. to consider the case for extending the stirring up of hatred offences under POA 1986 to include stirring up of hatred on the grounds of disability or gender identity.

18. The CPS provided a full response to the consultation, but in summary made the following points in respect to the Law Commission’s proposals:

Proposal 1 – proper application of the enhanced sentencing regime under the CJA 2003

CPS Response: We agree that if the provisions of the enhanced sentencing regime under the CJA 2003 are properly applied, this would improve the response to hostility-based offences on the grounds of disability, sexual orientation and transgender identity. By using section 146 more effectively it would send out a clear message that such offending will not be tolerated. However we recognise that to date section 146 has not been used effectively.

Proposal 2 – a new guideline from the Sentencing Council

CPS Response: Yes. We would welcome a guideline from the Sentencing Council dealing exclusively with aggravation on the basis
of hostility under sections 145 and 146 of the CJA 2003. We would hope that use of the new guideline would become fully embedded in the sentencing process, especially in the magistrates’ court. Such a guideline would help ensure a proper application of the uplift principles by sentencers and a more consistent approach.

Proposal 3 – where ss.145 and 146 is applied this should be recorded on PNC

CPS Response: Yes. It would be sensible for the PNC to reflect convictions which had the presence of hate crime elements. This would be of benefit for future sentencers and for prosecutors in subsequent cases when considering such issues as bail and bad character applications. However, we recognise that such a proposal has practical considerations (especially for the police) to ensure that all such sentences are properly recorded on PNC.

Proposal 5 – the extension of the aggravated offences to include disability, sexual orientation and transgender identity

CPS Response: We would support this proposal. It sends out a strong message that will help to improve public confidence. As indicated in the Consultation Paper, there is a widely acknowledged problem of under-reporting in relation to disability, sexual orientation and transgender hate crime.

This proposal is sensible and a step forward in harmonising the approach to hate crime by having a common approach for all five protected characteristics, rather than having two covered by specific statutory offences and the other three covered by the section 146 uplift provisions.

19. The final Law Commission report was presented to Parliament in May 2014. The Government continues to consider the report carefully, which includes the recommendations that arrangements around aggravated sentencing should be improved but that the stirring up of hatred offences should not be extended. Should there not be a full review, the Commission recommended extending aggravated offences to cover hostility based on disability, sexual orientation and transgender identity as well as hostility based on race and religion. The Women and Equalities Select Committee has also made recommendations on extending legislation.

20. The CPS is currently working with the University of Sussex on a research project being conducted in response to the Law Commission’s recommendation for a full-scale review of the law. The main aim of the research study is to examine how hate crime provisions prescribed under the Crime and Disorder Act 1998 (ss 28-32) and the Criminal Justice Act 2003 (ss 145 & 146) (England and Wales) are being applied in practice. The research report will be presented to the Ministry of Justice and other relevant bodies. It is anticipated that the research will contribute to our appreciation of how the law is working and be of assistance in developing our approach to prosecuting these offences.
The barriers that prevent individuals from reporting hate crime, and measures to improve reporting rates

‘According to the CSEW, there were an estimated 222,000 hate crimes on average each year from 2012/13 to 2014/15. This represents a decrease of 56,000 since the previous period covered by the survey. At the same time, the number of hate crimes recorded by the police rose from 44,471 in 2013/14 to 52,528 in 2014/15. This increase in recorded crime is welcome as it is likely to reflect improved police practice and victim confidence in coming forward to report crimes. Nevertheless, the difference between CSEW figures and Police Recorded Crime figures shows that hate crimes continue to be significantly under-reported.’

- Action Against Hate: the UK Government’s Plan for Tackling Hate Crime (July 2016)

21. In July 2016 the Government published Action Against Hate: the UK Government’s Plan for Tackling Hate Crime. It addresses the gap between the prevalence of hate crime and the extent to which hate crimes are reported. The CPS’s contribution to the plan includes action to increase awareness and improve the confidence to report. The Plan sets out to do this by:

- Encouraging third party reporting through targeted communications and advertising of True Vision, aimed at the communities with the highest rates of under-reporting. We (the contributors to the plan) will also offer advice to reporting centres and establish a best practice standard for reporting centres.

- The police leading work with partners and disabled people’s groups to develop resources targeted to raise awareness of hate crime among carers and families of disabled people to encourage reporting.

- A commitment from the CPS to support efforts to raise awareness and increase confidence in reporting hate crimes across all communities. Guidance describing what hate crime is and what to do about it is being prepared. These short guides will help inform individuals and advisers with a view, ultimately, to increasing reporting.

- A commitment from the CPS to develop a hate crime communications strategy which will improve publicity about successful convictions for all strands of hate crime, offering reassurance to communities that hate crime is taken seriously.

22. In support of this work, the CPS is currently committed to refreshing all policy and legal guidance relating to hate crime over the course of 2015/16. This work is being undertaken with the support of National Scrutiny Panels. These panels are composed of experienced practitioners and campaigners from a community perspective as well as academics, government and agency officials and provide a forum for discussion of defined topics relating to a designated strand of hate crime.
23. We have developed a support programme for prosecutors across most strands of hate crime and are currently developing a package on racially and religiously aggravated crime. This is being designed as face-to-face training for prosecutors to accompany the rollout of new guidance, with the aim of sustaining improvements in the quality of casework and positive outcomes.

24. CPS Areas support Local Scrutiny and Involvement Panels. Each panel – comprising a range of contributors with experience and expertise in relation to hate crime together with CPS personnel – reviews completed cases to identify learning points and good practice. Their input and expertise are invaluable and have contributed to, amongst other achievements, greater accuracy of case flagging on the CPS digital case management system, recognition of the value of Victim Personal Statements and accuracy of evidential assessments in racially and religiously aggravated offences.

The role of social media companies and other online platforms in helping to identify online sources of hate crime and to prevent online hate incidents from escalating.

25. No specific CPS comment.

The role of the voluntary sector, community representatives and other frontline organisations in challenging attitudes that underpin hate crime.

26. No specific CPS comment.

Statistical trends in hate crime and how the recording, measurement and analysis of hate crime can be improved.

27. The table below shows that the conviction rate across the combined strands of hate crime has continued its upward trend across the past six years. It also shows that the fall in volume of completed prosecutions in 2012/13 has been reversed over recent years and now stands at its highest ever level.

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Completed hate crime prosecutions by outcome
28. The CPS remains committed to the continuous improvement of data quality. Since 2014/15 the CPS has identified ways in which its data might be improved and has undertaken a series of detailed assessments to ensure accuracy. The CPS has previously published a hate crime report each year but the need for a comprehensive data quality review in 2015 meant that the 2014/15 report could not be published in 2015. The review confirmed the accuracy of hate crime data but, given the delay, the 2014/15 report was added to the 2015/16 data to create a two-year report. Annual reports will be reinstated for 2016/17 data.

29. In addition, and as part of its on-going commitment to improving the quality of data used in both internal and external reports, the CPS has introduced a revised method of reporting the outcomes of charging decisions. This method is used in the report and provides a more accurate figure for the percentage of defendant cases which proceeded to prosecution. For this reason, there may be some slight differences in the data reported from that in previous years. As a way of making the data more accessible to the public, the report now refers to conviction rates rather than attrition rates as used in earlier years.

30. As part of the Common Platform initiative, the CPS is looking at ways to integrate relevant data along with appropriate links and prompts to enhance the handling of hate crime prosecutions across investigation, prosecution, court and probation. The NPCC are assisting with this process and exploring the means to improve police data sharing.

The type, extent and effectiveness of the support that is available to victims and their families and how it might be improved.

31. There has been considerable attention paid to the needs of victims and witnesses in recent years as exemplified by the Victims’ Code, which outlines the minimum standard of service that victims can expect from the criminal justice system. The commitment to continue to ensure that witnesses are appropriately supported throughout the prosecution process continues and a number of actions are planned or in train to assist. These are not specific to hate crime but apply across all offence types. Hate crime prosecutions are however disproportionately affected by victim issues, resulting in unsuccessful outcomes.

32. Victims and Witnesses attending court may have a variety of support needs. This can be for a range of reasons, such as due to fear of intimidation or preferences in how they are communicated with. All of the support available aims to help the victim give the court as good account of what happened to them as possible.

33. A central support to disabled victims and the victims of hate crime is provided by “Special Measures” allowed for under the Youth Justice and Criminal Evidence Act 1999. They can be granted by the Court to support vulnerable and intimidated witnesses to help them give their best evidence. The Committee will likely be familiar with them, but if not the CPS’s Guidance on Special Measures provides a useful source of information on what is available and in which circumstances.

34. Vulnerable witnesses may apply for a Registered Intermediary to facilitate communication between the police, the court and prosecution and/or defence teams.
35. Section 46 of the Youth Justice and Criminal Evidence Act 1999, allows the CPS to apply for an order preventing the reporting of certain details of witnesses in the media that may lead to their identification. The court must be satisfied that the quality of evidence or level of cooperation given by a witness is likely to be diminished by reason of fear and distress about being identified by the public as a witness, and that it is in the interests of justice and the public interest to allow the application. Such applications may sometimes be appropriate in respect of the victims of hate crime.

36. In 2014/15, the proportion of unsuccessful cases due to victim issues (where a victim retracts, unexpectedly fails to attend court or their evidence does not support the case) increased across all strands from 27.5% (593) in 2013/14 to 31.3% (789). In 2015/16, the proportion fell slightly to 31.0% which is still significantly higher than the corresponding data when considering all crimes prosecuted by the CPS (21.3%). In response to this, local action plans have been agreed with police forces seeking to identify, early in the proceedings, victims who may find it difficult to support a prosecution to conclusion, with a view to putting in place requisite support measures.

37. Additional action to be taken by the CPS includes:

- a joint review with the police of Witness Care Units;
- new guidance for prosecutors – ‘Speaking to Witnesses at Court’;
- a further Victim and Witness Satisfaction Survey to ensure that we are providing the best possible service to victims;
- improving the use of Victim Personal Statements to ensure that the voice of victims is heard at court, and
- a statement of support for disabled people as victims of or witnesses to any crime. This will set out publicly the service standards that all disabled people who are victims or witnesses can expect when they seek a prosecution and attend court.

Alison Saunders  
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August 2016
Annex A

2014/15 to 2015/16 – Performance Data by Individual Strand

Sentence uplift: an explanatory note

Sentence uplift data relates to the proportion of all successful flagged hate crime prosecutions where a sentence uplift has been both announced in court and recorded on the CPS file.

However, when considering this proportion, it is important to remember that it is CPS policy not to remove the flag from a case file unless it has been added by administrative error.

This means that there may be some cases that have been properly flagged but it is considered that there is insufficient evidence to prove the aggravating feature required for the uplift and, although the prosecution overall was successful, it was not possible to ask for the uplift.

There may also be some cases where an application for an uplift is presented to the court by the prosecution after conviction for an offence but the court makes a judicial decision that the provisions do not apply.

As a result, it cannot be expected that a sentencing uplift will follow in each successful case that has been flagged as a hate crime. Whilst we therefore hope to see further improvement in the proportion of successfully concluded cases where an uplift is announced and recorded, we do not anticipate this figure will ever reach 100%.

Racially aggravated crime

- Of the 12,130 racially aggravated cases prosecuted in 2014/15, 10,123 (83.5%) were successful and 74.5% of all successful outcomes involved guilty pleas. In 2015/16, the 12,295 completed prosecutions produced 10,337 (84.1%) successful outcomes and 74.3% involved guilty pleas.

- The proportion of successfully completed racially aggravated prosecutions with an announced and recorded sentence uplift was 12.1% in 2014/15, a figure which increased to 35.0% in 2015/16.

Religiously aggravated crime

- In 2014/15, 665 cases involving religiously aggravated hostility were prosecuted with an 83.8% conviction rate. 73.8% involved guilty pleas. In 2015/16, this figure increased to 737 of which 79.1% were successful. 68.9% of convictions involved guilty pleas.
The proportion of successfully completed religiously aggravated prosecutions with an announced and recorded sentence uplift was 9.3% in 2014/15, a figure which increased to 31.9% in 2015/16.

Homophobic crime

There were 1,240 completed prosecutions under the homophobic crime flag on the CPS digital case management system in 2014/15 and 1,384 the following year.

The conviction rates for each year were 81.4% (or 1,009 successful outcomes) and 83.2% (or 1,151 successful outcomes) respectively. Guilty pleas featured in successful outcomes in 87.6% of prosecutions in 2014/15 and 78.2% in 2015/16.

The proportion of successfully completed homophobic hate crime prosecutions with an announced and recorded sentence uplift was 13.3% in 2014/15, a figure which increased to 38.0% in 2015/16.

Transphobic crime

There were 37 completed prosecutions under the transphobic crime flag on the CPS digital case management system in 2014/15 and 85 the following year.

The conviction rates for transphobic cases each year were 75.7% (or 28 successful outcomes) and 80.0% (or 68 successful outcomes) respectively. Guilty pleas featured in successful outcomes in 73.0% of prosecutions in 2014/15 and 68.2% in 2015/16.

The proportion of successfully completed transphobic hate crime prosecutions with an announced and recorded sentence uplift was 21.4% in 2014/15, a figure which increased to 35.3% in 2015/16.

Disability hate crime

In 2015/16, the CPS completed 941 prosecutions for disability hate crime, an increase of 41.3% on the previous year when it completed 666 cases.

The number of convictions rose from 503 in 2014/15 to 707 in 2015/16, an increase of 40.6%.

The overall conviction rate for disability hate crime fell slightly from 75.5% in 2014/15 to 75.1% in 2015/16.

Sentence uplifts increased from 5.4% of cases in 2014/15 to 11.9% of cases in 2015/16, the highest proportion achieved to date.