Written evidence submitted by the Magistrates' Association

The MA note the terms of references of the inquiry as inviting written evidence on, but not restricting it to:

1. The effectiveness of current legislation and law enforcement policies for preventing and prosecuting hate crime and its associated violence.
2. The barriers that prevent individuals from reporting hate crime, and measures to improve reporting rates.
3. 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.
4. The role of the voluntary sector, community representatives, and other frontline organisations in challenging attitudes that underpin hate crime.
5. Statistical trends in hate crime and how the recording, measurement and analysis of hate crime can be improved.
6. The type, extent and effectiveness of the support that is available to victims and their families and how it might be improved.

The MA would not comment on whether current powers are sufficient, this being a matter for parliament. However, the MA note that magistrates are likely to come across hate crime related offences in the following two ways:

a) Where a defendant is charged with a specific racially or religiously aggravated offence under the Crime and Disorder Act 1998. This allows for the offences of wounding, assault, damage, harassment and threatening/abusive behaviour to be specifically charged as racially or religiously aggravated. The aggravated offences carry higher maximum penalties than the basic offence equivalents. Some of them also become either way offences in the aggravated form, which will impact on decisions as to mode of trial. In order to convict for a racially or religiously aggravated, proof is required of both the ‘basic’ offence (i.e. of a wounding, an assault, damage, harassment and/or threatening/abusive behaviour) and the fact that it was aggravated.

b) Where the defendant is not charged with a specific aggravated offence, but hate crime is present as an “aggravating factor” (i.e. the offence is aggravated hostility based on race, religion, sexual orientation, transgender identity or disability). Sections 145 and 146 of the Criminal Justice Act 2003 impose a general duty on criminal courts, when sentencing an offender, to treat more seriously any offence which can be shown to be aggravated in relation to these factors. Aside from these statutory aggravating factors, the court can also properly consider it a non-statutory aggravating factor if the offence was motivated by hostility towards a minority group, or a member or members of it.

The MA believes the current legislation gives sentencers the discretion to respond to hate crime effectively by aggravating a sentence as appropriate. The discretion in sentencing is one reason why the MA suggests that hate crime should generally be dealt with by the courts rather than an out of court disposal. The court process also ensures the victims of hate crime have an opportunity to be heard and are able to observe justice being dispensed. This is a vital part of procedural fairness which is linked to ensuring the legitimacy of the criminal justice system.
However, in order to respond appropriately to such incidents, it is essential that the court has access to thorough and accurate information in relation to the hate crime aspect in question.

In order to ensure the bench are adequately informed, the MA emphasises that Victim Impact Statements (VIS) are helpful to magistrates in understanding the impact of a hate crime and a victim’s particular vulnerabilities. As such, the MA would encourage the effective production and use of such statements in court. The MA also understands that the availability of appropriate victim support throughout the reporting process is very important in ensuring victims are able to engage positively with the criminal justice process. It is particularly important that victims are aware that any VIS will be heard in open court and taken into account by sentencers. The MA would encourage efforts to ensure that victims of hate crime are fully aware of the support available to them, such that they feel confident in coming forward and in their voice being heard.

The MA acknowledges that one of the challenges in responding to hate crime is encouraging victims to report it, and subsequently ensuring any hate crime elements are correctly identified by the police and Crown Prosecution Service. The MA would like to note the Criminal Justice Joint Inspection report published in 2013 which highlighted particular challenges in relation to disability hate crime. Although the follow-up report of 2015 indicated the positive steps taken on this issues, there is clearly still work to be done to ensure disability hate crime is understood by all of those working in the criminal justice system.

The MA would welcome further work into raising awareness of hate crime to ensure hate crimes are reported and taken forward in the appropriate way.