About the Equality and Human Rights Commission

The Equality and Human Rights Commission is a statutory body established under the Equality Act 2006. It operates independently to encourage equality and diversity, eliminate unlawful discrimination, and protect and promote human rights. It contributes to making and keeping Britain a fair society in which everyone, regardless of background, has an equal opportunity to fulfil their potential. The Commission enforces equality legislation on age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. It encourages compliance with the Human Rights Act 1998 and is accredited by the UN as an ‘A status’ National Human Rights Institution. Find out more about the Commission’s work at: [www.equalityhumanrights.com](http://www.equalityhumanrights.com)

Executive summary

There is extensive knowledge, expertise and experience in tackling hate crime across Britain. However, pockets of knowledge and good practice often exist in silos, with organisations across Britain developing their own practices in isolation from one another. We recommend a review of the most effective strategies in tackling hate crime and leadership at government level to share leading work in this area.

Public authorities and those carrying out public functions are subject to the Public Sector Equality Duty under the Equality Act 2010, which requires them to have due regard to the need to tackle prejudice and promote understanding. In this context, the Commission would like to see greater efforts from public authorities to proactively tackle hate crime.

The UN has recently made recommendations to the UK Government on what it should do to tackle hate crime. The Commission is the regulator tasked by statute with promoting compliance by the UK with its obligations under international human rights law. The Home Affairs Committee plays a crucial role in holding the Government to account for implementation of the UN’s recommendations. Given this, we have indicated here where the UN’s recommendations can, in our view, be furthered in the Committee’s inquiry. The Commission recommends:

- a full-scale review of aggravated offences and sentencing provision in England and Wales without further delay, as recommended by the Law Commission
- monitoring use of the sentencing guideline for hate crime in England and Wales to assess consistency of sentencing
- consistent data collection methods across countries, the criminal justice system and within individual agencies to allow comparative and chronological analysis
• evaluation by the police and other statutory agencies of their reporting and recording processes, in consultation with people from local communities, and steps taken to simplify them
• a review of the provision of third-party reporting, to evaluate their impact and sustainability, highlight geographical and thematic gaps and ensure they are consistent with police recording systems
• police should refer all victims of hate crimes and incidents to relevant support services. Such services should be adequately funded. All victims should be told whether their case will be investigated and/or prosecuted, including regular updates on the progress of any investigation or prosecution
• a review of the provisions of section 127 of the Communications Act 2003 and section 1 of the Malicious Communications Act 1988 to ensure offences effectively balance sanctions for hate speech with the right to freedom of expression in private electronic communications.

Background

The Equality and Human Rights Commission (the Commission) is pleased to respond to the Home Affairs Select Committee inquiry into hate crime and its violent consequences. Since our inception, we have worked to understand and tackle harassment, hostility and hatred. We hope that the lessons learnt from our work will assist the Committee in setting out recommendations for how to better prevent and tackle hate crime.

The United Kingdom has signed and ratified a number of international conventions which include obligations relating to hate crime, including the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and the United Nations Convention on the Rights of Persons with Disabilities (CRPD). As a matter of international law, the UK is bound to respect, protect and fulfil the rights contained in these conventions. In 2015, the UN High Commissioner for Human Rights also produced a series of recommendations to combat discrimination and violence against individuals based on their sexual orientation and gender identity.

In August 2016, UN CERD issued recommendations to the United Kingdom on what it should do to tackle hate crime. While these recommendations relate specifically to race, they have wider relevance for tackling hate crime related to other characteristics. The Home Affairs Committee plays a crucial role in holding the Government to account for implementation of the UN’s recommendations. Given this, the Commission, as the regulator tasked by statute with promoting human rights law, has indicated here where the Committee can take forward the UN’s recommendations in its inquiry.
Scope of this response

Hate crime is a devolved matter for the most part, with different systems in place in different UK nations. The Commission is Great Britain’s equality body and works across England, Scotland and Wales. In this review, the Commission has not made directed recommendations regarding Scotland, because the Scottish Independent Advisory Group (IAG) on Hate Crime, Prejudice and Community Cohesion’s report is due to be published in early October, setting out a comprehensive review of policy and practice in Scotland and making evidenced recommendations. Additionally, the Scottish Social Attitudes Survey discrimination module, which the Commission part-funds, is due to be published in early September. This is the longest running longitudinal study of social, political and moral attitudes in the UK.

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

1. The five different characteristics protected as ‘strands’ under current hate crime legislation are race, religion, sexual orientation, disability and transgender. These are not equally protected in law in either England and Wales or Scotland. There is no single piece of legislation criminalising hate crime in the UK. During the late 1990s and early 2000s the UK Government introduced new laws covering hate crime offences, most notably the Crime and Disorder Act 1998 (CDA). The CDA does not use the term ‘hate crime’, but instead proscribes racially and religiously aggravated offences including: assaults, criminal damage, harassment, stalking and several public order offences (sections 28 to 32). Section 28 of the Act (England and Wales only) states:

   (1) An offence is racially or religiously aggravated for the purposes of sections 29 to 32 below if –

   (a) at the time of committing the offence, or immediately before or after doing so, the offender demonstrates towards the victim of the offence hostility based on the victim’s membership (or presumed membership) of a racial or religious group; or

   (b) the offence is motivated (wholly or partly) by hostility towards members of a racial or religious group based on their membership of that group.

2. The Criminal Justice Act 2003 (England and Wales) additionally provides for sentencing provisions that allow for enhanced penalties where there is evidence that proves the perpetrator demonstrated hostility towards the victim based on the victim’s (presumed) race or religion (section 145), disability, sexual orientation
or based on the victim being (or presumed to be) transgender (section 146), or
the offence was (partly) motivated by hostility towards persons who have those
protected characteristics.xiii

3. The lack of uniform protection for different characteristics is problematic for
efforts to tackle hate crime because it sends the message to the public that some
groups are more worthy of protection than others and it undermines the clarity of
the law for those that are required to apply it, such as the police.xiv

4. There is also a problem in relation to sentencing for some hate crime. In England
some crimes in part or in whole aggravated by hostility towards disability have
been given unduly lenient sentences.xv Section 36 of the Crime and Justice Act
1988 empowers the Attorney General to refer unduly lenient sentences for
specified offences to the Court of Appeal, including sentences for racially or
religiously aggravated offences under sections 29 to 32 of the Crime and
Disorder Act 1998.xvi This power of referral does not cover all offences to which
the hostility-based enhanced sentencing provisions of sections 145 and 146 CJA
2003 apply. This means it may not be possible for a sentence for these crimes to
be reviewed if a judge fails to impose sentence uplift.

5. The Commission recommends that the UK Government implements Concluding
Observation 16(a) of UN CERD to ‘investigate all reported acts of racist hate
crimes, prosecute and punish the perpetrators with sanctions commensurate with
the gravity of the offence, and provide effective remedies to victims’.xvii Actions
should include:

- a full-scale review of aggravated offences and sentencing provision in England
  and Wales to be undertaken without further delay, as recommended by the Law
  Commissionxviii

- monitoring the use of the sentencing guideline for hate crime in England and
  Wales to assess consistency of sentencing.

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

**Statistical trends**

6. Home Office statistics on the number of hate crimes recorded by the police in
England and Wales in 2014/15 show an increase of 18% (52,528) compared to
2013/14 (44,471). The Office for National Statistics (ONS) has indicated that
greater awareness of hate crime and improved compliance with recording
standards among the police is likely to be a factor in this increase.xix Race
remains the most commonly recorded motivation for hate crime at 82% of
recorded motivations.xx In Wales, just over three-quarters of the 1,810 hate
crimes reported to the Welsh police forces were racially motivated, with Black people being most likely to be the victim.\textsuperscript{xxi}

7. A spike in racism and hate crime in England and Wales following the EU referendum vote suggests that, in some areas, a minority of people with racist attitudes have used the result to legitimise racism and hate crime. In contrast, there were far lower levels of post-referendum hate crime in Scotland.\textsuperscript{xxii}

8. In July 2016, the UK Government’s Hate Crime Action Plan\textsuperscript{xxiii} and Crown Prosecution Service Performance Report on hate crime were published,\textsuperscript{xxiv} which refer to improvements in the reporting and recording of hate crime.

\textit{Improving the recording, measurement and analysis of hate crime}

9. The conceptual and practical difficulties in defining hate crime make estimating how many incidents occur each year a difficult task.\textsuperscript{xxv} The complexities in deciphering what incidents should be recognised as hate crime are further complicated by the fact that many perpetrators will have mixed motivations and hold intersecting prejudices.

10. It is often only the most extreme manifestations of hate-motivated violence that capture the attention of the media. However, hate-motivated victimisation often involves ‘low-level’ and escalating acts of harassment, verbal abuse, and general forms of intimidation. Recent studies have also shown that many hate crime incidents form part of an ongoing process of victimisation that are repeated over protracted periods of time, sometimes escalating into threatening and abusive behaviour and to physical violence.\textsuperscript{xxvi} These incidents are not always captured by official statistics (police recorded hate crime) or within victim surveys such as the Crime Survey for England and Wales, meaning that large data on hate crime does not necessarily capture the frequently routine nature of hate-motivated victimisation.

11. A further issue remains with reported incidents not being considered as hate crimes. For example, this can happen when the police consider a person’s perceived ‘vulnerability’ (for example because it is assumed that a blind person will not be able to give an accurate description) as the cause rather than an act of hostility based on disability in the case of a disabled victim. Lack of ‘flagging’ a hate incident can also happen where there are large numbers of incidents and perpetration is difficult to pinpoint such as online acts of hostility. Until we capture the scale of hate incidents, we cannot effectively tackle them. We welcome the UK Government’s recent initiative to begin to break down data to better identify
anti-Muslim hate crime trends and patterns. However, disaggregated data is not available for other groups such as Gypsies and Travellers. Police forces across England are not currently mandated to include Gypsies and Irish Travellers in their ethnic monitoring systems, despite both these groups being classified as ethnic minorities in the ONS 2011 National Census. This has been common practice in Scotland for some years. Recent research found that of the 48 territorial and special police services in the UK, only nine (19%) included a code for Gypsies and Travellers in their ethnic monitoring systems, with three of these services only conducting partial/limited monitoring and two stating plans to discontinue these codes as part of the process of introducing a new regional system of recording data.

12. There is a lack of robust long-term studies examining the effectiveness of rehabilitation programmes to prevent re-offending, and this makes it difficult to identify what works. The Commission was one of the first agencies to look at this issue in relation to hate crime but more work is needed in this area.

13. The Commission recommends that the UK Government implements the Concluding Observation of UN CERD to take immediate action to ‘systematically collect disaggregated data on hate crimes’. Actions should include ensuring consistency of data collection methods across countries, the criminal justice system and within individual agencies to allow comparative and chronological analysis.

The barriers that prevent individuals from reporting hate crime, and measures to improve reporting rates

14. The Commission welcomes recent commitments made by the UK and Welsh Governments to improving reporting rates for hate crimes.

15. Research shows that:

- victims of hate crime are still reluctant to report incidents to the police and those that do are less likely to be satisfied with police responses compared with victims of crime generally

- victims who have prior negative encounters with the police become far less likely to report subsequent incidents

- victims often feel that officers will not believe them or that they will not be treated respectfully
other barriers include a fear of reprisal, the inconvenience of reporting hate crime, and also that having reported the incident to other authorities, the victim felt it unnecessary to report to the police. xxxvii

16. Measures to promote reporting rates include:

- online reporting portals, such as the True Vision police-funded website xxxviii
- development of services for specific groups, for instance, commissioning hotlines for people with learning disabilities, such as the Stop Hate Learning Disability Crime Line xxxix
- the development of ‘champions and ambassadors’, for example Cleveland Police Consultative Council has trained members of the community who work with disabled people (‘hate crime champions’) to help them recognise hate crime and report it on behalf of victims. The reporting of incidents has more than doubled since the training was rolled out. xl

17. A number of local authorities and third sector organisations have established third-party reporting centres that offer victims an alternative ‘safe’ place to report incidents in order to solve some of the problems associated with under-reporting and under-recording. The findings from the Commission’s 2015 lesbian, gay, bisexual and transgender (LGB&T) Hate Crime Reporting project suggest that many victims are unlikely to share their experiences of targeted hostility because of the perceived amount of time and emotional stamina required to report a hate incident and because these factors were often underappreciated by statutory and voluntary organisations. Many participants also spoke of being unfamiliar with and confused by existing reporting mechanisms. However, there is little evidence to evaluate how effective these centres are at increasing reporting, nor how sustainable they are in the current economic climate. xli

18. One of the biggest causes of frustration hate crime victims tell us about is a lack of follow-up once an incident has been reported. In the Commission’s 2015 LGB&T Hate Crime Reporting project, participants often remarked on how they would be better equipped to deal with the consequences of an incident not resulting in an arrest if the actions of the police and the process of investigation were explained to them. Not being kept updated about the progress of their case, or about the reasons for it not being pursued, left many victims feeling reluctant to invest the time and effort into reporting again. xlii

19. The Commission recommends that the UK Government implements the Concluding Observation of UN CERD to ‘adopt concrete measures, in consultation with affected groups, to increase the reporting of racist hate crimes
by ensuring that the reporting mechanism is transparent and accessible, and that victims have trust in the police and the justice system.

Actions should include:

- the police and other statutory agencies should evaluate their reporting and recording processes in consultation with people from local communities, and take steps to simplify them

- the UK Government should conduct a review of the provision of third-party reporting, to evaluate their impact and sustainability, highlight geographical and thematic gaps and ensure they are consistent with police recording systems

- police should refer all victims of hate crimes and incidents to relevant support services. Such services should be adequately funded. All victims should be told whether their case will be investigated and/or prosecuted, including regular updates on the progress of any investigation or prosecution.

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

20. The Commission’s research found that cyber hate is a growing phenomenon which, reporting figures suggest, vastly outnumbers offline hate crime. For example, 74% of all anti-Muslim hostility reported to the charity Tell MAMA, a third-party reporting platform for anti-Muslim attacks and other incidents, occurred online, compared with 26% which involved offline incidents. The emerging challenge of capturing and tackling the large number of online hate incidents (‘cyber’ hate) estimated to occur each day is a challenge for the law and law enforcement agencies.

21. The boundary between the expression of intolerant or offensive views and hate speech is not always an easy one to draw. However, a number of factors are likely to be relevant, including the intention of the person making the statement, the context in which they are making it, the intended audience, and the particular words used.

22. Any restrictions on freedom of expression must always be clearly set out in law, necessary in a democratic society for a legitimate aim, and proportionate. Subject to these conditions, freedom of expression may be limited in certain circumstances, including in order to protect others from violence, hatred and discrimination. In particular, freedom of expression does not protect statements that unlawfully discriminate against or harass, or incite violence or hatred against, other persons and groups, particularly by reference to their race, religious belief, gender or sexual orientation.
23. Case law\textsuperscript{iii} is establishing responsibility for online hateful content, but regulation is still patchy. Further research is also needed to understand what, if any, causal connection there is between exposure to hate material, violent material, propaganda, and the perpetration of hate crimes.\textsuperscript{iii}

24. The Commission notes the concerns raised by UN CERD in relation to online hate speech and its concluding observation that the UK Government should ‘adopt comprehensive measures to combat racist hate speech and xenophobic political discourse, including on the Internet, particularly with regard to the application of appropriate sanctions’.\textsuperscript{iii}

25. In light of that recommendation, but also taking into consideration the importance of safeguarding freedom of expression in private as well as public discourse, the Commission recommends a review of the provisions of section 127 of the Communications Act 2003 and section 1 of the Malicious Communications Act 1988 which in great part pre-date the advent of social media as a mainstream medium for general communication.


\textsuperscript{iii} Sentencing Council, Approach to sentencing. Available at: https://www.sentencingcouncil.org.uk/explanatory-material/item/hate-crime/3-approach-to-sentencing/ [Accessed 9 September 2016].


\textsuperscript{viii} ICERD includes an obligation to ‘declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof’ (Article 4). UN Human Rights Office of the High Commissioner, \textit{International Convention on the Elimination of All Forms of Racial Discrimination}, Adopted and opened for signature and ratification by General Assembly resolution 2106 (XX) of 21 December 1965 entry into force 4 January 1969, in accordance with Article 19. Available at: http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx [Accessed 5 September 2016].

\textsuperscript{ix} CRPD includes obligations with relevance to the prevention, prohibition and punishment of hate
crime in Article 16 on freedom from exploitation, violence and abuse, and Article 17 on protecting the integrity of the person. In particular, parties to the Convention are obligated ‘to take all legislative, administrative, social, education and other measures to protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse.’” (Article 16(1)). In addition, states parties must also ensure that instances of violence and abuse are investigated and prosecuted (Article 16(5)).

The High Commissioner recommends that States address violence by: (a) Enacting hate crime laws that establish homophobia and transphobia as aggravating factors for purposes of sentencing; (b) Conducting prompt, thorough investigations of incidents of hate motivated violence against and torture of LGBT persons, holding perpetrators to account, and providing redress to victims; (c) Collecting and publishing data on the number and types of incidents, while providing for the security of those reporting; (d) Prohibiting incitement of hatred and violence on the grounds of sexual orientation and gender identity, and holding to account those responsible for related hate speech; (e) Training law enforcement personnel and judges in gender-sensitive approaches to addressing violations related to sexual orientation and gender identity; (f) Ensuring that police and prison officers are trained to protect the safety of LGBT detainees, and holding to account State officials involved or complicit in incidents of violence; (g) Banning ‘conversion’ therapy, involuntary treatment, forced sterilization and forced genital and anal examinations; (h) Prohibiting medically unnecessary procedures on intersex children; (i) Ensuring that no one fleeing persecution on grounds of sexual orientation or gender identity is returned to a territory where his or her life or freedom would be threatened, that asylum laws and policies recognize that persecution on account of sexual orientation or gender identity may be a valid basis for an asylum claim; and eliminating intrusive, inappropriate questioning on asylum applicants’ sexual histories, and sensitizing refugee and asylum personnel. UN Human Rights Council, Discrimination and violence against individuals based on their sexual orientation and gender identity: Report of the Office of the United Nations High Commissioner for Human Rights, 4 May 2015. Available at: http://www.un.org/en/ga/search/view_doc.asp?symbol=A/HRC/29/23&referer=/english/&Lang=E [Accessed 15 September 2016].


http://www.cps.gov.uk/legal/s_to_u/unduly_lenient_sentences/

The offences that can be referred to the Court of Appeal for undue leniency are specified in the Criminal Justice Act 1988 (Reviews of Sentencing) Order 2006, as amended. Only sentences imposed in the Crown Court can be referred (s. 36(1)(a) CJA 1988).

UN Committee on the Elimination of All Forms of Racial Discrimination, Concluding observations


xx For further information, see Equality and Human Rights Commission (2016), Healing a divided Britain, pp. 45-48. Available at: https://www.equalityhumanrights.com/en/publication-download/healing-divided-britain-need-comprehensive-race-equality-strategy [Accessed 30 August 2016]. More broadly in Scotland, racially motivated crime remains the most commonly reported hate crime recorded by the police, 3,712 charges reported in 2015-16, but this is the lowest number reported since 2003-04. Other Scottish Government surveys showed ‘ethnic group’ to be the most common reason that people gave for why they thought they had experienced harassment. Ten per cent of adult respondents to the Scottish Crime and Justice Survey said they had been insulted, pestered or intimidated, and of those who had experienced some form of harassment in the last 12 months, 8% felt they were harassed because of their ethnic origin or race. Scottish Government, Scottish Crime and Justice Survey 2012/13, 2014. Available at: http://www.gov.scot/Publications/2014/03/9823/downloads [Accessed 17 March 2016]; Scottish Government, Scotland’s People Annual Report: Results from 2014 Scottish Household Survey, August 2015. Available at: http://www.gov.scot/Publications/2015/08/3720/downloads [Accessed 17 March 2016].


xxv For example, the Crime Survey for England and Wales does not ask about hate crime directly, as the concept is not well understood by the public and is likely to lead to under-reporting. Instead, victims are asked about their perception of the offender’s motivation for the incident, which is an indirect measure as it represents the victim’s perceptions of the offender’s motivation for the crime. This may result in some over-reporting since it is possible that some crimes considered as hate crimes may reflect an assumption on the victim’s behalf that the crime was motivated by the offender’s attitude. Conversely, a victim might be unaware that they were targeted due to a personal characteristic covered by the hate crime strands. Coleman and Sykes (2016), Crime and disabled people: Measures of disability-related harassment, 2016 update. Equality and Human Rights Commission Research Report, pp. 14-15. Available at: http://www.equalityhumanrights.com/sites/default/files/research-report-103-crime-and-disabled-people.pdf [Accessed 09 September 2016].


UN CERD, Concluding observations, para 16(b).


The UK Government’s Hate Crime Action Plan 2016-2020 highlights ‘encouraging the use of third-party reporting and working with groups who may under-report, such as disabled people, Muslim women, the Charedi community, transgender people, Gypsy, Traveller and Roma communities, and new refugee communities, and work with the Crown Prosecution Service (CPS) to ensure that perpetrators are punished, and to publicise successful prosecutions to encourage people to have the confidence that when they report hate crime, action will be taken’. Home Office, Action against Hate: the UK government’s plan for tackling hate crime, July 2016. Available at: https://www.gov.uk/government/publications/hate-crime-action-plan-2016 [Accessed 30 August 2016].


British Deaf Association Scotland and the Scottish Government Equality Unit (2015), Access and Inclusion: A respondent was questioned and resulted in the reports not being taken seriously.


barriers-and-solutions [Accessed 30 August 2016].
xliii UN CERD, Concluding observations, para 16(c).
xlix Even if the offending material is published on a website hosted overseas, it may be possible for a criminal offence to be prosecuted if a substantial measure of the activity that constitutes the offence, such as composing, editing and uploading material to an overseas server, takes place in England, Wales or Scotland, where the offence applies.