Law Commission
Reforming the law

Hate Crime

Final Report Summary

This summary

This Summary is intended as an overview of the key issues that we discuss in our Hate Crime Final Report. It sets out our key proposals at the time of consultation, the responses we received and our analysis of them. In it we also set out our most important findings and final recommendations.

For those with a particular interest in the topics raised in this Summary, we encourage you to read the relevant parts of the full Final Report, which provides significantly more detail.

The full Final Report and the consultation responses we received are available on our website: https://www.lawcom.gov.uk/project/hate-crime/.

Introduction

"Hate crime" can encompass a wide variety of behaviour, including violent attacks on people because of, for instance, their race or sexual orientation; criminal damage against businesses or places of worship; or verbal abuse and harassment directed towards minority communities. It can also include "hate speech", such as the dissemination of inflammatory material designed to incite violence, inflame community tensions or instil fear among or of particular groups.

One of the most notorious examples of hate crime in England and Wales was the racially motivated murder of a black teenager – Stephen Lawrence – in London in 1993. The outcry over this killing was one of the major spurs for the introduction of racial hate crime laws in 1998, which have since expanded to include first religion in 2001, then disability and sexual orientation in 2003, and most recently transgender identity in 2012.

Murder of Stephen Lawrence

One of the most important events driving the development of hate crime legislation in England and Wales over the last thirty years was the murder of Stephen Lawrence in 1993.

Stephen, and his friend Duwayne Brooks were attacked by a group of five or six white youths while waiting for a bus in South East London. Stephen was stabbed at least twice during the attack, severing arteries and penetrating a lung. Brooks heard one of Lawrence's assailants saying "What, what, n****r?" as they approached to attack him. Five suspects had previous links to attacks on members of racial minorities in the area.

Sentencing two of Stephen's killers for murder, Mr Justice Treacy said:

"The murder of Stephen Lawrence on the night of 22nd April 1993 was a terrible and evil crime… A totally innocent 18-year-old youth on the threshold of a promising life was brutally cut down in the street in front of eye witnesses by a racist thuggish gang. This crime was committed for no other reason than racial hatred. You did not know Stephen Lawrence or Duwayne Brooks. Neither of them had done anything to harm, threaten or offend you in any way, apart from being black and making their way peaceably to the bus-stop on their way home."

The law requires that to be convicted of a hate crime, the defendant must be proven to have committed a crime (the "base offence") and also:

1. to have been "motivated by hostility" towards the group with the protected characteristic (for example, the victim's religion); or
2. to have "demonstrated hostility" towards the victim on the basis of the protected characteristic at the time of committing the offence (for example, through the use of a homophobic slur).

These are known as the "motivation limb" and "demonstration limb" of the hostility test.

There were 10,679 prosecutions and 9,263 convictions for hate crimes in England and Wales in 2020/21.[1]

In 2020/21 there were

The police use a wider definition for recording and monitoring purposes, based on the victim's perception. In the year ending March 2021, there were 124,091 hate crimes recorded by the police in England and Wales.[2] However, it is the definition used in the criminal law (requiring proof of the defendant's hostility), not the police recording definition (based on the victim's perception of the defendant's hostility or prejudice), which is the subject of this review.

In addition to general hate crime laws, there are also a number of specific "hate speech" offences. These include offences of inciting or "stirring up" hatred (for example through the dissemination of inflammatory racist material) and the offence of "racialist chanting" at a football match.

Many other countries have hate crime and hate speech laws, but there is significant variation in the characteristics that are protected, the legal tests that are applied, and the mechanism by which the law recognises the behaviour as a hate crime.

1 See Crown Prosecution Service, *CPA Annual Publication: Hate crime & crimes against older people pre-charge and prosecution outcomes by crime types* (2021) available at https://www.cps.gov.uk/sites/default/files/documents/publications/Hate-Crime-Annual-Data-Tables-Year-Ending-March-2021.xlsx.

2 Home Office, *Official Statistics: Hate crime, England and Wales, 2020 to 2021* (12 October 2021) available at https://www.gov.uk/government/statistics/hate-crime-england-and-wales-2020-to-2021/hate-crime-england-and-wales-2020-to-2021

What does the current law say?

At present, hate crime and hate speech laws in England and Wales are found in four different acts – the Public Order Act 1986 (POA 1986), the Crime and Disorder Act 1998 (CDA 1998), the Football (Offences) Act 1991 and the Sentencing Code. Hate crime and hate speech laws are complicated because they involve multiple, overlapping legal mechanisms. They are also inconsistent in their application to different protected characteristics.

Hate crime – aggravation of existing offences

There are two ways in which the law currently treats hate crimes as more serious than offences committed without proven hostility towards a protected characteristic of the victim. These are:

- **Aggravated offences**, which are separate versions of eleven existing criminal offences (including assault, public order offences, harassment, and criminal damage) which carry higher maximum penalties than the base offence to which they relate.[3]

Example: common assault versus racially aggravated common assault

The offence of common assault carries a maximum penalty of six months' imprisonment. However, if the defendant uses a racial slur during the assault that demonstrates hostility towards the victim's race, the maximum penalty increases to two years.

- **Enhanced sentencing**, which applies to other existing criminal offences, and requires the sentence to be increased, but within the existing maximum available.[4]

Example: homophobic online abuse

The offence of sending a message that is grossly offensive or of an indecent, obscene or menacing character carries a maximum penalty of six months' imprisonment.[5] If the message is found to demonstrate homophobic hostility, then the sentence must be increased to reflect this. However, as there is no aggravated version of this offence, the maximum penalty remains six months.

An important distinction between aggravated offences and enhanced sentencing is that for aggravated offences the hostility must be proven at the trial stage, as part of the finding of guilt for the offence (often before a jury), whereas for enhanced sentencing this occurs at the sentencing stage, once guilt for the offence itself has already been established.

3 Sections 28 to 32 of the Crime and Disorder Act 1998.
4 Section 66 of the Sentencing Code.
5 Communications Act 2003, s 127(1).

Another important distinction is that aggravated offences apply only in respect of racial and religious hostility. Enhanced sentencing applies for hostility on the basis of race, religion, sexual orientation, disability and transgender identity.

Hate speech offences

The vast majority of abusive speech that is targeted at protected characteristics is dealt with through general criminal offences, which then become aggravated offences or receive an enhanced sentence because the offence was motivated by or the defendant demonstrated hostility (see above). In particular:

- Public order offences of causing harassment, alarm or distress;[6] and
- Communications offences of sending a grossly offensive, indecent, obscene or menacing message.[7]

However, there are also specific offences of "stirring up" hatred in respect of race, religion and sexual orientation (there is no equivalent offence for disability or transgender identity).[8] These are serious offences that have a maximum penalty of seven years' imprisonment. They require the consent of the Attorney General before they can be prosecuted.

These offences do not criminalise conduct expressing or inciting hostility or hatred towards specific individuals. Rather, they address conduct (such as use of words, material or behaviour) intended or likely to cause others to hate entire groups.

Stirring up antisemitic hatred: *R v Bonehill-Paine*

In November 2015, neo-Nazi Joshua Bonehill-Paine was sentenced to forty months' imprisonment for stirring up racial hatred. Bonehill-Paine had distributed posters calling for "anti-Jewification" of areas of London, and calling for a "#SummerofHate" against Jews. Bonehill-Paine tried to organise antisemitic demonstrations in Golders Green, an area of London with a large established Jewish community, displaying posters with an image of Auschwitz and the text "We've become complacent and allowed for weeds to grow in the cracks of London. It's time to clear them up with Round-Up[9] and Liberate Golders Green for future generations of White People."

Sentencing him, the judge said that the material was about as inflammatory a document as he had ever seen.[10]

6 Contrary to sections 4A and 5 of the Public Order Act 1986.
7 Contrary to section 127(1) of the Communications Act 2003 and section 1 of the Malicious Communications Act 1988.
8 Public Order Act 1986, Pts 3 and 3A.
9 This appears to refer to the brand name RoundUp, which is a type of weed killer.
10 *R v Bonehill-Paine, Sentencing Remarks of Mr Justice Spencer* (8 December 2016), available at https://www.judiciary.uk/wp-content/uploads/2016/12/spencer-j-sentencing-remarks-bonehill-paine-as-delivered-08-12-16.pdf.

The threshold for prosecution of stirring up racial hatred is high, and it is even more stringent in respect of religion and sexual orientation. As a result, typically, fewer than ten cases a year are prosecuted.[11] In 2018/19, there were 13 prosecutions for stirring up hatred, resulting in 11 convictions.[12] This was the highest annual number ever.

In 2018/19 there were

Stirring up racial hatred

The offences of stirring up racial hatred were first introduced in 1965 but the current test is in the Public Order Act 1986:

1. the conduct of the defendant (for example, the distribution of a racist pamphlet) must be "threatening, abusive or insulting"; and
2. either the defendant must intend to stir up racial hatred, or in the circumstances, racial hatred must be likely to be stirred up.[13]

Stirring up hatred on the basis of religion or sexual orientation

These offences were added after the offence of stirring up racial hatred. There are differences which make them narrower in scope:

1. the words or conduct must be threatening (not merely abusive or insulting);
2. the defendant must intend to stir up hatred (a likelihood that it might be stirred up is not enough);[14] and
3. there are express provisions protecting freedom of expression covering, for example, criticism of religious beliefs or sexual conduct.[15]

11 See Crown Prosecution Service, Hate Crime Reports, 2014-15 to 2017-18, at http://www.cps.gov.uk/publication/hate-crime-reports.
12 See Crown Prosecution Service, "Hate Crime Annual Report" (2018-19), p 47, available at https://www.cps.gov.uk/sites/default/files/documents/publications/CPS-Hate-Crime-Annual-Report-2018-2019.PDF.
13 Public Order Act 1986, ss 18 to 22. In cases where the defendant does not intend to stir up hatred, but hatred was likely to be stirred up nonetheless, there is a defence if the person did not know that the words, material or behaviour were threatening, abusive or insulting.
14 Public Order Act 1986, ss 29B to 29F.
15 Public Order Act 1986, ss 29J to 29JA.

Racialist chanting at football matches

It is also an offence under section 3(1) of the Football (Offences) Act 1991 to "engage or take part in chanting of an indecent or racialist nature at a designated football match".

The maximum available penalty for this offence is a £1000 fine, but conviction may also allow for a football banning order to be made against the offender.[16]

Chanting directed at characteristics other than race may be prosecuted as a public order offence contrary to sections 4, 4A or 5 of the POA 1986, and may also be recognised as a hate crime if the additional hostility element is proven.

The purpose of this project

In this project we were asked to look at the various hate crime and hate speech laws in England and Wales and make recommendations for reform where appropriate.

The main issues we were asked to consider are:

- **Who should be protected by hate crime laws?** In particular, should there be more consistency of protection across the existing characteristics, and should any further characteristics such as sex and gender characteristics or older age be added?
- **How should hate crime laws work?** In particular, are the current range of sentence enhancements and offences working well?

Background to this report

This summary explains our recommendations and the background of the project. The full report can be viewed here.[17]

This review is the second review of hate crime laws that we have conducted in recent years. We conducted a previous review of hate crime laws from 2012 to 2014, when the government asked the Law Commission to consider the disparity of treatment amongst the five characteristics specified in hate crime laws: race, religion, sexual orientation, disability and transgender identity. We were asked whether the reach of the criminal law should be extended to cover these communities equally.

In our 2014 report,[18] we recommended that a broader review of hate crime laws be undertaken, but in the absence of such a review, we recommended extension of the aggravated offences regime to all five of these characteristics. By contrast we found insufficient evidence to justify an equivalent extension of the stirring up hatred offences to the characteristics of disability and transgender identity at that time.

In late 2018, the government asked us to undertake this wider and deeper review, which now also considers the efficacy of the legal mechanisms, and whether any further characteristics should be added to those currently specified. In particular, we were asked to consider whether protection should be extended to hatred on grounds of sex or gender, or hatred of older people.

16 Football Spectators Act 1989, Sch 1, para m.
17 See https://www.lawcom.gov.uk/project/hate-crime/.
18 Hate Crime: Should the Current Offences be Extended? (2014) Law Com No 348.

The consultation process

In March 2019, we published a brief background paper and then held a large number of pre-consultation events across England and Wales.[19] These initial meetings, together with our own research, helped shape the consultation paper that we published in September 2020.[20] This contained 62 questions, and a number of provisional proposals for reform. There was also a summary version of the paper that contained 20 of the most important questions.

Through October, November and December 2020 we met with hundreds of stakeholders to discuss these provisional proposals. This included an online public event where we presented some of our main proposals and invited questions and comments. Over 100 participants joined us for this event, and hundreds more participated in the various other forums we conducted.

2,473 written responses were received, a high proportion of which were from individual members of the public. A significant majority of these personal responses indicated strong opposition to hate crime laws altogether, or any extension of those that currently exist. It followed that these responses generally opposed most of our proposals for reform.

By contrast, there were 173 responses on behalf of organisations; comprising law enforcement agencies, legal experts, government and local authorities, charitable and community organisations, civil society groups and religious bodies with an interest in hate crime laws. The majority of these responses were supportive of the broad direction of our proposals, and in particular the emphasis on parity of protection amongst the existing five characteristics recognised under hate crime laws. There was more variation in responses to some of the more detailed questions we asked about how the law should work, and the potential inclusion of additional characteristics in hate crime laws. For example, a wide range of views were expressed in relation to our provisional proposal to add a new characteristic of sex or gender to hate crime laws.

It is not within the remit of this review to consider the repeal of hate crime laws – as many personal responses advocated. However, this lack of community consensus for hate crime laws is an important consideration in any calls to widen their scope and has informed the more limited approach we have taken to extension of existing laws in this report than we initially contemplated in the consultation paper.

Although the review was not related to matters such as police training and services for hate crime victims, the report considers them where relevant. It remains firm in the view that the current inconsistency in the way that hate crime laws treat different characteristics is unprincipled and causes significant injustice and confusion.

19 Law Commission, *Hate Crime: Background to our review* (March 2019), available at https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2019/07/6.5286-LC_Hate-Crime_Information-Paper_A4_FINAL_030719_WEB.pdf.

20 Hate crime laws: A consultation paper (2020) Law Commission Consultation Paper No 250, available at https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2020/10/Hate-crime-final-report.pdf.

Our recommendations

Characteristics for inclusion

The terms of reference we received from the government asked us to review the existing range of protected characteristics, identifying gaps in the scope of the protection currently offered and making recommendations to promote a consistent approach. In Chapter 3 we consider the basis on which these characteristics should be selected.

On the basis that the law will continue to specify characteristics for protection, in our consultation paper we provisionally proposed three criteria for selecting any new characteristics.

1. **Demonstrable need;**
2. **Additional harm; and**
3. **Suitability.**

After consulting on these criteria, we conclude that they are an appropriate basis on which to make selection decisions. This is because they reflect the underlying rationales for hate crime laws – in particular the additional harm hate crimes cause to the victim and the wider community – and balance these against a minimal criminalisation approach.

Recommendation

We recommend that decisions to include, or not include further groups in hate crime laws should be based on the following criteria:

1. **Demonstrable need:** evidence of the prevalence of the criminal targeting of the characteristic group based on hostility or prejudice. A balance of the following considerations should inform this determination of need:
    a. Absolute prevalence: the total amount of criminal behaviour that is targeted based on hostility or prejudice towards the characteristic.
    b. Relative prevalence: the amount of criminal behaviour that is targeted based on hostility or prejudice towards the characteristic, as compared with the size of the group who share the characteristic.
    c. Severity: the nature and degree of the criminal behaviour that is targeted towards the protected characteristic based on hostility or prejudice.
2. **Additional harm:** evidence that criminal targeting based on hostility or prejudice towards the characteristic causes additional harm to the victim, members of the targeted group, and society more widely.
3. **Suitability:** protection of the characteristic would fit logically within the broader offences and sentencing framework, prove workable in practice, represent an efficient use of criminal justice resources, and is consistent with the rights of others.

Defining existing characteristics

In Chapter 4 we consider the definitions of each of the five existing protected characteristics in hate crime laws: race, religion, sexual orientation, disability and transgender identity. We recommend amendments to the definitions of sexual orientation and transgender identity, and retention of the current definition for race, religion and disability.

Race

For the purposes of current hate crime laws, the term "racial group" means "a group of persons defined by reference to race, colour, nationality (including citizenship) or ethnic or national origins."[21]

While "language" and "migration status" are already covered within this broad definition,[22] we consider whether they should be explicitly included. Some stakeholders argued that explicit inclusion of language and migration status could improve understanding of the scope of the protection afforded by race, and community confidence in reporting. However, the proposal was not widely supported, and there was also concern that it risked upsetting an already well-settled definition. Given the lack of majority stakeholder support, the fact that the addition would not materially change the legal position regarding "language" and "migration", and the potential for interpretative uncertainty, we do not recommend its addition.

We also consider the ambiguity surrounding the protection of "caste" within hate crime laws. We note the considerable concern about this uncertainty expressed by various groups who represent and support victims of caste-based discrimination, violence and abuse. However, given the government has recently indicated a clear policy position not to include specific reference to caste in the Equality Act 2010, we do not consider it appropriate to recommend a contrary approach for hate crime laws at this time.

Recommendation

We recommend that the definition of "race" in hate crime laws be retained in its current form.

Religion

The current definition of "religious group" in hate crime laws is "[a] group defined by reference to religious belief or lack of religious belief".[23] This definition is further elaborated in case law.[24] Consultees broadly responded positively to our provisional proposal to retain the definition in its current form. Many responses stressed that the current definition should be retained because it is sufficiently broad and flexible. We consider that non-religious worldviews are distinct, and discuss the inclusion of non-religious philosophical beliefs separately in Chapter 7.

21 Crime and Disorder Act 1998, s 28(4); Sentencing Code, s 66(6)(a). See also the definition of "racial hatred" in section 17 of the Public Order Act 1986, which applies for the purposes of the offences of stirring up racial hatred under Part 3 of this Act. We discuss these in greater detail in Chapter 10.

22 Based on the broad, flexible and non-technical approach to interpretation of this provision outlined by the *House of Lords in R v Rogers* [2007] UKHL 8, [2007] 2 AC 62.

23 Crime and Disorder Act 1998, s 28(5).

24 *Hodkin* [2013] UKSC 77, [57].

Recommendation

We recommend that the definition of "religion" in hate crime laws be retained in its current form.

Sexual orientation

Sexual orientation is defined in the Public Order Act 1986 as a "group of persons defined by reference to sexual orientation (whether towards persons of the same sex, the opposite sex or both)".[25] We specifically asked consultees if this definition should be expanded to include "asexuality" – which describes having little to no sexual attraction. There was significant support for this proposition, although we acknowledge it was not universal, and some individuals and groups were firmly opposed. We remain of the view that there is a good case to include asexuality within the scope of protections afforded by the "sexual orientation" characteristic. Although the evidence base for specific targeting of asexual persons is limited, we make this recommendation on the basis that not including asexuality creates a clear gap in an otherwise very widely defined characteristic (which includes, for example, heterosexual orientation).

Recommendation

We recommend that the definition of "sexual orientation" for the purposes of hate crime laws be amended to include protection of persons who are or are assumed to be "asexual".

Transgender identity

Hostility towards "transgender identity" is covered by subsection 66(1)(e) of the Sentencing Code. The Code further outlines that:

> References to being transgender include references to being transsexual, or undergoing, proposing to undergo or having undergone a process or part of a process of gender reassignment.[26]

In our consultation paper we proposed the inclusion of people who are or are assumed to be transgender, non-binary, intersex and those who cross-dress into the current definition. This proved to be one of the most controversial aspects of our paper and reflects a wider controversy surrounding the legal recognition of transgender persons. Having reflected on these concerns, we remain of the view that there is a need to clarify the scope of the groups protected within this category, and now propose the term "transgender or gender diverse identity". This definition should include people who are transgender or transsexual men or women, people who are gender diverse (for example, people who identify as non-binary), and people who otherwise do not conform with conventional male or female gender expectations (for example people who cross-dress).

However, following strong representations about the harmful effect of any conflation of transgender identity with those who are intersex, we do not recommend the inclusion of those who are intersex within the scope of the definition of transgender or gender diverse identity.

25 Public Order Act 1986, s 29AB.
26 Sentencing Code, s 66(6)(e).

Recommendation

We recommend that the term "transgender identity" in hate crime laws be replaced with the term "transgender or gender diverse identity".

The definition of "transgender or gender diverse identity" should include people who are transgender or transsexual men or women, and people who are gender diverse; for example, people who are non-binary, and people who otherwise do not conform with male or female gender expectations; for example people who cross-dress.

Disability

Disability is very broadly defined in hate crime laws as "any physical or mental impairment".[27] Overall, there was strong support to retain the current definition. There were a few arguments made for improvements such as use of the term "visible difference". However, while we recognise that "disability" does not perfectly describe the experience of all the victims that it protects, it has the advantage of being simple, flexible, and well-understood. For this reason and for consistency we recommend that the term "disability" and its current definition be retained.

Recommendation

We recommend that the definition of "disability" in hate crime laws be retained in its current form.

Association with a member of a protected group

A final issue we dealt with in the context of the current characteristics is the inconsistency in the scope of the protection afforded by each definition. The law is clear that "association" with members of a racial or religious group is included. For example, if an offender assaults a white person, while motivated by hostility towards their association with a group of black friends, this would be considered a racially motivated hate crime. However, no such clarification exists in relation to sexual orientation, disability and transgender identity. Although we did not ask a specific question about this, we did ask a range of questions relating to parity of protection across the currently protected groups. In our 2014 report, we also recommended the adoption of a consistent approach in this regard, and we reiterate this in our new report.[28]

Recommendation

We recommend that, consistent with the current approach to race and religion, the scope of protection for disability, sexual orientation and transgender or gender diverse identity be extended to "association" with these characteristics.

27 Sentencing Code, s 66(6)(d).
28 Hate Crime: Should the Current Offences be Extended? (2014) Law Com No 348, p 159.

Recognising sex or gender in hate crime laws

As part of our review we were asked to consider whether crimes motivated by, or demonstrating, hatred based on sex and gender characteristics should be hate crimes. The possible use of hate crime laws to tackle violence and hostility against women has gained prominence throughout the UK in recent years through initiatives such as Nottinghamshire Police piloting the recording of "misogyny hate crime".

In our consultation paper we provisionally proposed the addition of the protected characteristic of sex or gender to hate crime laws. We made this proposal on the basis of evidence that crimes based on hostility or prejudice towards women were prevalent and harmful.

However, we also recognised that crimes connected with sex or gender characteristics raise unique issues that are not present to the same extent in relation to the existing five protected characteristics. In particular, we considered two contexts to be particularly problematic:

1. **Sexual offences:** These offences are already difficult to prosecute, and adding an extra layer of proof and complexity could worsen this. We also considered that it was not necessarily helpful to distinguish between sexual offences which had a proven additional element of "misogyny", and those which did not. We expressed concern that this could create hierarchies of victims of these offences and reinforce certain rape myths.
2. **Domestic abuse:** We queried whether hate crime is a useful way to describe or categorise this offending, which tends to be characterised by coercion and control in the context of an intimate relationship. Further, as with sexual offences, we noted that it might be unhelpful for the law to distinguish between domestic abuse with a proven additional element of sex or gender-based hostility, and instances where this particular aspect could not be proven.

We therefore asked consultees whether hate crime laws were suitable for offences particularly associated with violence against women and girls (VAWG), such as sexual offences and domestic abuse, and also certain other specific offences such as forced marriage and female genital mutilation, and whether those offences should be excluded from the scope of sex or gender-based hate crime laws.

Many personal consultation responses indicated fundamental opposition to the inclusion of sex or gender in hate crime laws. However, we remain convinced that there is a real problem of crime that is directed against women on the basis of hostility or prejudice towards their sex or gender.

Amongst those who were more supportive in principle of the addition of this category to hate crime laws, many agreed with us that certain VAWG offences were not suitable for inclusion within a broader hate crime framework. Rape Crisis England and Wales went further, arguing that that entire framework of hate crime laws was fundamentally unsuited to dealing with the complexities of VAWG offending, and responding to the needs of survivors.

Reflecting on the responses we received, we considered three possible groups of reform options:

- **Option 1:** full recognition of sex or gender in aggravated offences and enhanced sentencing on the same basis as other recognised characteristics.
- **Option 2:** partial recognition of sex or gender in aggravated offences and enhanced sentencing, with various different possible exclusions to reflect the problematic interaction of hate crime laws in the context of VAWG offences.
- **Option 3:** no recognition of sex or gender for the purposes of aggravated offences and enhanced sentencing (reflecting the status quo).

We find that option 1 – full recognition without exception – is not a viable course, because it does not address the very real concerns we have identified about the harmful consequences of applying hate crime laws in relation to sexual offences and domestic abuse.

We also find that none of the partial recognition (option 2) models are viable as they involve unsatisfactory compromises, in particular:

- They would introduce new hierarchies in the law, by treating sex or gender differently to other protected characteristics.
- The exceptions they entail would increase the complexity of the law in this area, and thereby make its application by law enforcement agencies less certain.
- By excluding two of the criminal contexts that are most harmful to women (sexual offences and domestic abuse) – albeit for sound policy reasons – they would render the remaining laws somewhat tokenistic.

In our consultation paper we thought it might be possible to overcome the challenges involved in excluding certain VAWG contexts, and that there would still be value in including "sex or gender" within hate crime laws for the remaining criminal contexts. However, following further reflection and analysis, and with the benefit of detailed and thoughtful consultation responses, we now believe that all the possible models to do so create more problems than they solve. Rather than trying to adapt the hate crime framework to a context that it struggles to fit, it would be preferable for the law and law enforcement agencies to focus on specific reforms that squarely address the failings in the current criminal justice response to VAWG.

We therefore recommend that the characteristic of "sex or gender" not be added for the purposes of aggravated offences and enhanced sentencing (option 3).

Recommendation

We recommend that sex or gender should not be added as a protected characteristic for the purposes of aggravated offences and enhanced sentencing.

Instead, we consider that more targeted options outside of the hate crime framework – such as a possible offence of public sexual harassment – should be considered to address some of the specific concerns that have driven calls for misogyny to be included within hate crime laws. Simply adding sex or gender to hate crime laws is unlikely to capture much public sexual harassment. Unwanted sexual advances, for instance, may not reach the threshold for prosecution

under the Public Order Act 1986.[29] Even if they did, while such conduct might undoubtedly create a hostile environment for women, it is unlikely that it would meet the legal test of hostility under hate crime laws. A specific offence, however, might be crafted in a way that captures the degrading and sexualised nature of the behaviour that frequently occurs in both online and offline contexts.

Recommendation

We recommend that government undertake a review of the need for a specific offence of public sexual harassment, and what form any such offence should take.

Such an offence could complement our other law reform work including recent recommendations to criminalise cyberflashing[30] and rape threats[31], our current work on intimate image abuse[32] and our upcoming project on the use of evidence in rape and sexual offence trials.[33]

In reaching this conclusion we emphasise that we are not suggesting that crimes involving hostility against women (or men) are any less serious than crimes involving hostility towards one of the existing protected characteristics.

Ultimately, we conclude that adding "sex or gender" to the existing regime of aggravated offences and enhanced sentencing is the wrong solution to a very real problem. We recognise that many people may disagree with our conclusion and find it difficult to understand given the prevalence of sex and gender-based violence and abuse. We have made our recommendations in this regard on the strength of the evidence and policy considerations before us.

The considerations which have led us to reject extension of hate crime laws to sex and gender do not apply in relation to stirring up hatred. In response to the growing threat of "incel" ideology, and its potential to lead to serious criminal offending, we recommend the creation of an offence of stirring up hatred on the basis of sex or gender.[34] This is one context where existing hate speech offences may be usefully adapted to address extreme misogynistic content.

29 The offences in sections 4 and 4A require that conduct be "threatening, abusive or insulting" and intended or likely to provoke or put a person in fear of unlawful violence, or intended to cause harassment, alarm or distress. The offence in section 5 requires that conduct be "threatening or abusive" and within the sight or hearing of a person likely to be caused harassment, alarm or distress.

30 The unsolicited sending of sexual images using digital technology. Modernising Communication Offences: A Final Report (2021) Law Com No 399, Chapter 6. In Recommendation 8 at para 6.133, we recommended two alternative additional fault elements, requiring the prosecution to prove either: that the defendant intended to cause alarm, distress or humiliation; or that the defendant acted for the purpose of obtaining sexual gratification and was reckless as to whether the victim would be caused alarm, distress or humiliation.

31 Modernising Communication Offences: A Final Report (2021) Law Com No 399, para 3.135, Recommendation 5. See also Reform of Offences Against the Person, Final Report (November 2015) Law Com No 361 at paras 8.11 to 8.12, available at http://lawcom.gov.uk/app/uploads/2015/11/51950-LC-HC555_Web.pdf.

32 Intimate image abuse: A consultation paper (2021) Law Com Consultation Paper No 253, available at: https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2021/02/Intimate-image-abuse-consultation-paper.pdf.

33 HM Government, The end to end rape review report on findings and actions, June 2021, [114].

34 In Chapter 10 of the report, discussed below.

Recommendation

We recommend that the stirring up offences be extended to cover hatred on grounds of sex or gender.

Recognition of age in hate crime laws

In Chapter 6 we consider the inclusion of age as a hate crime characteristic. In our consultation analysis we evaluated the inclusion of age against the criteria set out in Chapter 3 – demonstrable need, additional harm and suitability.

As part of our consultation we asked whether "age" should be added as a characteristic and whether this should be limited to "older people" or include people of all ages. Several consultees provided persuasive evidence of criminal targeting of older people, and evidence that this targeting causes significant additional harm to the victim and members of the wider group. However, consultees were of the view that a large proportion of crimes against older people are in fact motivated by criminal opportunism due to the victim's perceived or actual vulnerability, rather than hostility towards the victim's age.

Although we recognise the real concerns that exist in relation to the criminal abuse and exploitation of older people, we found a lack of evidence that these crimes involve hostility or prejudice towards the age of the victims. Therefore, only a small proportion of this offending would likely fall within the scope of hate crime laws. Moreover, given that a large proportion of offending targeted at older people constitutes exploitation of their perceived or actual vulnerability, many consultees were of the view that hate crime is not the appropriate way to characterise this offending. We therefore recommend that older age should not be recognised as a protected characteristic in hate crime laws.

Only a few consultees were explicitly in support of including younger people within any age-based hate crime protection. These consultees were of the view that younger people are subject to abuse and discrimination, such that the demonstrable need criterion is satisfied. However, many were mindful that this could risk disrupting the support specialist agencies are able to give to victims of child abuse. For these reasons we recommend that any age-based hate crime protection should not be extended to younger people.

Recommendation

We recommend that age should not be added as a protected characteristic in hate crime laws.

Recognition of other groups and characteristics

In Chapter 7 we consider the inclusion of a number of other possible groups and characteristics in hate crime laws: sex workers, people experiencing homelessness, alternative subcultures and philosophical beliefs. In respect of each we consider the consultation responses we received against the criteria for inclusion set out in Chapter 3. We ultimately conclude that none clearly satisfies all of the selection criteria, though the arguments in respect of homelessness are particularly finely balanced.

Sex workers

Most of the personal consultation responses we received were opposed to the inclusion of sex workers in hate crime laws, while organisational responses were more mixed. Those in favour argued that sex workers satisfy the three criteria as they are disproportionately targeted for crime on the basis of hostility or prejudice towards their status as sex workers, and experience additional harms as a result. Arguments against recognising sex workers were that it is not an identity characteristic, recognition would normalise prostitution, a criminal justice-based response would not be a suitable way to approach the difficulties sex workers face, and specific protection is unnecessary if "sex or gender" is added to hate crime laws. Although we conclude that the demonstrable need and additional harm criteria are satisfied, the addition of sex workers was not viewed as suitable by a majority of consultees, and it was unclear whether it was a priority for sex workers themselves. We therefore do not recommend the addition of sex workers to hate crime laws.

Alternative subcultures

The term "alternative subcultures" broadly refers to a set of group-specific values and tastes that typically involve distinctive style/clothing, make-up, body art and music preferences. Goths, emos, punks and metallers are examples of alternative subcultures. Following the murder of Sophie Lancaster in 2007, which was connected to her goth identity, there have been calls for the inclusion of alternative subcultures in hate crime laws. We accept that crimes involving hostility to these identities cause additional harm to victims. However, due to limited available evidence of the prevalence of this offending, we are not persuaded that the demonstrable need criterion has been satisfied. We also have concerns about the difficulty in defining the notion of "alternative subcultures" in a sufficiently precise and contained way, and the potential for groups such as paedophiles or extremist groups to be inadvertently caught by a broad definition. We therefore do not recommend that alternative subcultures be recognised in hate crime laws.

People experiencing homelessness

There was more support for recognising homeless people in hate crime laws, than for recognising sex workers, alternative subcultures or philosophical beliefs. Though data sources are limited, it does seem clear that people experiencing homelessness – and particularly rough sleepers – experience highly disproportionate levels of violence and abuse, and the targeting of victims in these circumstances can cause additional harm to victims. However, as there is currently very limited consideration of homelessness in the context of hate crime, we lack clear evidence that the inclusion of this group would be of benefit in practical terms. For this reason, we do not recommend the inclusion of this group

in hate crime laws. We invite police forces to consider the potential for monitoring of hate crimes against this group so that the issue can be better understood.

Philosophical beliefs

"Philosophical beliefs" are currently protected under the Equality Act 2010 for the purposes of anti-discrimination laws. Although some evidence of demonstrable need for protection of this category was provided by certain groups – for example Humanists UK provided evidence of threats they had received – most evidence was anecdotal, and evidence for the wider category of "philosophical beliefs" is sporadic and inconclusive. Some political beliefs have been found to fall within the definition of philosophical beliefs, and we acknowledge a concerning trend of threats and violence towards political figures – including the murder of two MPs in recent years. However, these incidents have been dealt with through existing terrorism laws, and we are not persuaded that hate crime protection on the basis of philosophical belief would usefully add to the criminal justice response in these cases.

The breadth of the notion of "philosophical beliefs" also raises significant suitability concerns. The experience with the Equality Act 2010 has been that the scope of the protection can be difficult to define with sufficient certainty and precision, and these concerns are amplified in the context of the criminal law, where certainty and predictability of the law is particularly important. We are also concerned that inclusion of such a nebulous category – which encompasses a very diverse range of beliefs and practices – may jeopardise the free exchange of ideas, and have a chilling effect on freedom of expression. Therefore, we do not recommend that philosophical beliefs should be recognised as a protected characteristic in hate crime laws.

Recommendation

We do not recommend the inclusion of sex workers, people experiencing homelessness, philosophical beliefs or alternative subcultures in hate crime laws.

Aggravated offences and enhanced sentencing

In Chapter 8 we consider the form that hate crime laws should take. In the consultation paper we proposed the retention of the dual model of aggravated offences and enhanced sentencing. We set out the advantages and disadvantages of the aggravated offences and enhanced sentencing models. Advantages of aggravated offences include the fair labelling of the offence, higher maximum penalties reflecting the additional harm and wrongdoing, and the incentive for police and prosecutors to build a case more squarely around the proof of hostility. Disadvantages we noted include the arguably disproportionately higher maximum penalties in some cases, and the increased time and cost associated with prosecuting aggravated offences. In respect of enhanced sentencing we recognised that it is the more common approach internationally, is more flexible in its application and is potentially less costly; however, it is seen as a less effective response by many victims.

We also consider an alternative hybrid approach proposed by the authors of a Sussex University report, which resembles current hate crime laws in Scotland.[35] This approach requires the hostility element of the offending to be included on the indictment. It would therefore require the prosecution to

35 See Hate crime laws: A consultation paper (2020) Law Commission Consultation Paper No 250, [16.157] to [16.179].

prove hostility as an element of the offence before the jury or a bench of lay magistrates (with the base offence available as an alternative). However, unlike aggravated offences (and more like enhanced sentencing) it would apply across all offences, and not increase the maximum penalty available.

There was no clear consensus from the consultation responses on which model is preferred. Some individuals and organisations saw the opportunity to improve what they saw as an overly complex model, while others indicated that they were content with the current model. Given the existing model has been in place for over 20 years, and there was no clear preference for an alternative approach, we recommend that the current dual approach of aggravated offences and enhanced sentencing be retained.

Recommendation

We recommend that the current dual approach of aggravated offences and enhanced sentencing be retained.

Parity of protection

In the interests of fairness and consistency in the law, we recommended in our earlier report and proposed in the consultation paper that the characteristics protected by aggravated offences should be extended to include sexual orientation, transgender identity and disability.[36] There was very strong support for a consistent approach amongst organisational stakeholders. The current hierarchy of protection is seen as unfair and sends a distinctly negative message to victims of hate crimes on the basis of disability, sexual orientation and transgender identity. We therefore recommend parity of protection for aggravated offences across all five characteristics.

Recommendation

We recommend that the aggravated offences which currently exist for race and religion should be extended to all other existing characteristics in hate crime laws: sexual orientation, disability and transgender identity.

Creation of additional aggravated offences

In chapter 8, we consider the case for creating aggravated versions of any further offences beyond the eleven that are currently specified in the Crime and Disorder Act 1998. We have taken a conservative approach to this question given the concern expressed by many consultees about the further expansion of hate crime laws. We note that there are some strong arguments for the creation of aggravated versions of (predominantly online) "communications offences" contrary to section 127 of the Communications Act 2003 and the Malicious Communications Act 1988. However, there was also significant stakeholder opposition to such new aggravated offences. Our recently recommended reforms to these offences, which the government is planning to introduce through its Online Safety Bill, may reduce the need for aggravated versions.[37]

We accept the arguments of the CPS that aggravated versions of offences are not necessary where the existing maximum penalty is already a life penalty. We also consider there to be a lack of a compelling evidence base for aggravated versions of fraud or property offences, while the creation of aggravated versions of sexual offences may create further obstacles to the prosecution of these already challenging to

36 Hate Crime: Should the Current Offences be Extended? (2014) Law Com No 348.
37 See further Modernising Communication Offences: A Final Report (2021) Law Com No 399.

prosecute offences. Finally, we note that there is a reasonable argument for the creation of aggravated versions of the offences of threats to kill and threats with an offensive weapon, but ultimately conclude the existing maximum penalties of the base forms of these offences are sufficient.

Offences involving hostility towards more than one protected characteristic

Charging of aggravated offences in circumstances where there is evidence of hostility towards more than one characteristic can create practical challenges for prosecutors. In our consultation paper we asked whether in the case of a single base offence (such as assault) it was sufficient for proof of the aggravated version of the offence that the jury be satisfied that the legal test had been met in respect of "one or more" protected characteristics. There were a range of views expressed on this question.

We consider whether the "one or more" approach would infringe the defendant's right to a fair trial or the rule against duplicity and conclude it would not. We also consider the principle of fair labelling and conclude that the sentencing judge should make a clear finding as to which characteristics have been proven for the purposes of sentencing and recording on the defendant's criminal record.

Recommendation

We recommend that a conviction for an aggravated offence should be possible where the prosecution proves that the offence was motivated by or the defendant demonstrated hostility towards "one or more" protected characteristics.

However, the court should make a clear determination as to the characteristics that have formed the basis for sentencing, and these should be specified on the Police National Computer.

A more flexible approach to characteristics for enhanced sentencing

In our consultation paper we asked consultees if a more flexible approach to characteristic protection would be appropriate for the purposes of enhanced sentencing. Consultees were also asked if this would be best achieved by a residual category, a set of criteria for judges, sentencing guidance or a combination of approaches. Following the strong opposition expressed by many individuals, and only weak support from some individuals and organisational stakeholders, we do not consider a more flexible statutory approach to characteristic recognition for enhanced sentencing to be a desirable reform. In particular, consultees argued that it would create new hierarchies of characteristics, guidance would be difficult to formulate, and such an approach could dilute the recognition of characteristics targeted most intensely. We therefore do not recommend this option.

The legal test for aggravated offences and enhanced sentencing

In Chapter 9 we consider the legal test to be applied in respect of hate crime laws, which requires proof of hostility. The case to retain the same legal test for both aggravated offences and enhanced sentencing is compelling. Different tests would significantly increase the complexity of the law and reduce its efficacy. Consultees who engaged directly with this issue agreed with our proposal to retain a consistent approach.

The demonstration limb of the hostility test requires the identification of a victim as well as proof that such hostility was demonstrated towards the victim's group at the time of committing the offence. This limb is more controversial than the motivation limb, but in our consultation paper we proposed that this test be retained. Although there were differing views on this question in consultation responses, we ultimately conclude that the demonstration limb should be retained, as it is an important and established element of hate crime laws across the United Kingdom.

The motivation limb of the hostility test requires evidence of the subjective mental state of the offender. In our consultation paper, we considered the expansion of the motivation limb to include offences motivated by "hostility or prejudice" because of the concerns surrounding the difficulty of proving hostility in crimes targeting disabled persons, where "hostility" takes on much subtler forms. Although the majority of personal responses were opposed to this, we consider the shortcomings of the hostility test in relation to disability hate crime to provide a compelling basis for reform. Disability stakeholders argued powerfully that instances of exploitation and abuse of disabled people – founded on a contemptuous disregard for the victim's dignity and autonomy – were not adequately recognised within the existing hostility test. In response to this failure, we recommend that the motivation limb be revised to include "hostility or prejudice" towards the victim's membership of the protected group. This will not radically alter the balance in the current law. Most prosecutions will continue to rely on the demonstration limb which will remain unchanged. However, adding "prejudice" to the motivation limb will assist in recognising certain forms of criminal exploitation of disabled victims as forms of hate crime.

Bijan Ebrahimi – a murder connected to disability prejudice

In 2013, Bijan Ebrahimi, a disabled Iranian man, was found murdered outside his flat in Bristol. An inquiry by the Independent Police Complaints Commission found that he had been the target of harassment by his neighbours for many years, including unfounded rumours that he was a paedophile.

One of Mr Ebrahimi's neighbours, convinced that he had been filming local children (he had in fact been filming the anti-social behaviour to which he was subject) beat Mr Ebrahimi to death and, with another neighbour, doused his body in white spirit and set it alight.

Mr Ebrahimi's murder was undoubtedly a product of the hostile environment in which he lived, which in turn seems to have been a product of his race and disability. However, his murderer was not sentenced on the basis that the offence was motivated by hostility towards him on account of his race or disability. "Prejudicial targeting", which often characterises crimes directed at disabled people, is not currently recognised as constituting hate crime.

A subsequent report into the incident by Safer Bristol found:

"Although this review process has uncovered no evidence to indicate that any of Bijan Ebrahimi's victimisation was motivated by his disability, it is important to acknowledge that he was a disabled man wrongly labelled by some local members of the community as a paedophile. There have been a number of recent cases documented in which disabled men have been similarly labelled, targeted and even murdered because of such labels".[38]

Recommendations

We recommend that the legal test for the application of hate crime laws should be the same for aggravated offences and enhanced sentencing.

We recommend that the demonstration limb of the legal test for aggravated offences and enhanced sentencing be retained.

We recommend that the motivation limb of the legal test for aggravated offences and enhanced sentencing should be met when the offence was motivated (wholly or partly) by hostility or prejudice towards members of a group sharing a protected characteristic, based on their membership of that group.

38 Safer Bristol Partnership, *Multi-Agency Learning Review Following the Murder of Bijan Ebrahimi* (January 2014, updated November 2017) available at https://www.bristol.gov.uk/documents/20182/35136/Multi-agency+learning+review+following+the+murder+of+Bijan+Ebrahimi

Offences of stirring up hatred

The offences of stirring up racial hatred, religious hatred and hatred on grounds of sexual orientation are some of the most controversial aspects of hate crime laws. In Chapter 10 we consider possible reforms to these offences to make them more consistent and effective, and also to ensure they do not unreasonably interfere with the right to freedom of expression.

Extension of offences to all five characteristics

At present, Parts III and IIIA of the Public Order Act 1986 only cover offences of stirring up hatred against groups defined by their race, religion and sexual orientation. As part of our consultation we received evidence of material that stirs up hatred against trans and gender diverse people. Although evidence of material which stirs up hatred against disabled people was more limited, we recommend for parity that the offences should cover all five characteristics that are currently covered under hate crime laws.

Recommendation

We recommend that the stirring up hatred offences should cover the five characteristics currently protected by hate crime laws equally, subject to recommendations on protections for freedom of expression.

Additionally, as discussed at pages 15-16, we also recommend that the stirring up offences should be extended to cover hatred on the grounds of sex or gender (by which we mean here hatred towards women or towards men). While there is limited evidence of material which could be prosecuted in respect of hatred towards men, we recommend that the test should operate bidirectionally to provide consistency of protection.

Rather than having differing tests for different characteristics, as at present, we recommend that there should be a single test for the stirring up offences applying to all forms of hatred. Under this test a person would be guilty of stirring up hatred if they used words or behaviour intended to stir up relevant hatred; or used threatening or abusive words or behaviour likely to stir up relevant hatred. In the second group of cases, the prosecution would have to prove that the person knew, or ought to have known, that the words or conduct were threatening or abusive, and either knew or ought to have known that they were likely to stir up relevant hatred.

Recommendation

We recommend that there be a single test applying to all forms of hatred. Under this test a person would be guilty of stirring up hatred if they used words or behaviour intended to stir up relevant hatred; or used threatening or abusive words or behaviour likely to stir up relevant hatred.

For the “likely to” limb of this test, the prosecution would have to prove that the person knew, or ought to have known, that the words or conduct were threatening or abusive, and knew, or ought to have known, that they were likely to stir up relevant hatred.

Freedom of expression protections

We consider the role of the "freedom of expression" clauses in sections 29J and 29JA of the Public Order Act 1986. These clauses provide tangible details about the limits of the reach of the criminal law in respect of stirring up hatred on the basis of religion and sexual orientation, covering, for example, criticism of religious beliefs or sexual conduct (no such clauses exist in respect of race).

We conclude that these clauses help to clarify the extent of the law and avoid a chilling effect. We therefore recommend that freedom of expression clauses should be retained in respect of religion and sexual orientation.

We also recommend that there should be

1. new protections for expression targeted at cultural practices, individual countries and their governments, and discussion of immigration, citizenship and asylum; and
2. protection for gender critical views, and the use of language which expresses them.

We do not make recommendations about freedom of expression provisions in respect of disability and sex or gender, because of the low number of responses we received which considered the possible content of such provisions. The government may wish to consider the need for such provisions if stirring up offences are created for disability and sex or gender.

Recommendations

We recommend that freedom of expression provisions should be retained in respect of religion and sexual orientation.

We recommend that in extending the stirring up offences to cover hatred towards transgender or gender diverse people, a new protection should be introduced for gender critical views – that is, the view that sex is binary and immutable – and the use of language which expresses this.

We recommend that the existing protection for discussion and criticism of religious practices should be extended to cover cultural practices.

We recommend that a new protection should be introduced for discussion, criticism or expressions of antipathy, dislike, ridicule, insult or abuse of countries and their governments; and for discussion and criticism of policy relating to immigration, citizenship and asylum.

Protection for private conversations

At present, offences of stirring up hatred by the use of words or behaviour exclude conduct that takes place in a "dwelling" and cannot be seen or heard outside that or another dwelling. We consider this exception to be poorly targeted. For example, the exception would protect a public meeting in a private house, but not a private conversation in a family's car or holiday accommodation. However, we are conscious of the strength of feeling in response to our provisional proposal simply to remove the exception. Instead, we recommend that this exception be replaced with an exception for "private conversation".

A protection based on "private conversation" accords best with the types of communication respondents were most keen to see protected. We believe that this would provide greater clarity than trying to enumerate in legislation what activities are "public" and/or "private".

Recommendation

We recommend that the dwelling exception be replaced with an exception for "private conversation".

A new defence for reporters

In the light of a substantial number of responses concerned with the potential application of the stirring up offences to journalists who merely report inflammatory comments by others, we have concluded that there should be a defence of "neutral reportage" available to those who are not shown to have intended to stir up hatred.

Recommendation

We recommend that there should be a "neutral reportage" defence to the "likely to" limb of the stirring up offences.

Consent to prosecution

Given the seriousness of the offences, and the potential for vexatious complaints, we think that consent to prosecution should continue to be required. However, given that those complaints may be politically motivated, it is preferable that the Director of Public Prosecutions rather than the Attorney General should be involved in the process. Therefore, we recommend that any prosecution for stirring up hatred should require the personal consent of the Director of Public Prosecutions.

Recommendation

We recommend that any prosecution for stirring up hatred should require the personal consent of the Director of Public Prosecutions.

Racialist chanting at football matches

In chapter 11 we conclude that there is a need to retain the offence of racialist chanting at a football match. The majority of stakeholders supported retaining this offence. Racist behaviour connected to football remains a serious problem, as demonstrated by events surrounding the Euro 2020 competition in summer 2021. Therefore, we recommend that the offence in section 3 of the Football (Offences) Act 1991 should be retained in its present form.

We considered whether to expand the scope of the offence to targeting someone because of association and perceived characteristics. There was a mixed response to this in consultation, and ultimately, we conclude that the current test captures racialist chanting targeting association with a racial group and presumed membership of a racial group.

We also considered whether to extend the offence to other characteristics. There was less support for this in relation to sexual orientation, religion, transgender identity and disability. However, there is clear evidence of homophobic chanting. Whilst these behaviours should be a priority for football and law enforcement authorities, we conclude that creating bespoke additional chanting offences is not the best approach, given that such conduct is already covered by public order offences, and the maximum penalties for these offences are more stringent.[39] Indeed, in Chapter 8 we recommend the creation of aggravated versions of these public order offences to cover hostility on the basis of sexual orientation, disability and transgender or gender diverse identity (in addition to those that already exist for race and religion). This will ensure parity of protection that is not limited to the context of football, but covers all sporting events, and indeed public contexts more generally.

Recommendation

We recommend that the offence in section 3 of the Football (Offences) Act 1991 should be retained in its present form.

A Commissioner for Countering Hate Crime

In Chapter 12 we consider the creation of a Hate Crime Commissioner role as many of the greatest concerns raised with us were related to the implementation of the law in practice. We asked consultees whether they would support a Hate Crime Commissioner role as a complement to our other proposals. Responses to this question were mixed, with personal responses largely opposed (particularly from respondents who were opposed to hate crime laws generally) and organisations largely in favour of the creation of a Commissioner. More specific concerns included the cost involved, and duplication of existing efforts.

Despite the concerns outlined, we consider that a Commissioner would provide a valuable focal point to support the efforts to counter the harm caused by hate crimes – including through preventative and restorative approaches. However, it is beyond the scope of this review to recommend such a role. We therefore merely invite the government to consider establishing a Commissioner for countering hate crime.

Recommendation

We invite the government to consider establishing a Commissioner for countering hate crime.

39 Public Order Act 1986, sections 4, 4A and 5.

A Hate Crime Act

We also consider in Chapter 12 the consolidation of the offences contained in various hate crime provisions into a single act. At present, hate crime laws in England and Wales are spread across four different Acts, namely – the Crime and Disorder Act 1998; the Sentencing Code; the Public Order Act 1986 and the Football (Offences) Act 1991. Noting that a similar approach had been taken in Scotland with the Hate Crime and Public Order (Scotland) Act 2021, we suggest that bringing together some of these provisions into a single statute may help make the law clearer and more intelligible.

We accept that the enhanced sentencing provisions in section 66 of the Sentencing Code and the football-specific hate crime offences should stay in their current location for consistency and coherency reasons. However, we recommend that the substantive aggravated offences under the Crime and Disorder Act 1998 and the Public Order Act 1986 could helpfully be grouped together. A single act could also be used to establish the office of the Hate Crime Commissioner and its powers, if the government were to pursue this course.

Recommendation

We recommend that a single act be used to bring together existing hate crime laws and incorporate the various reforms that we recommend in this report. Specifically, we recommend:

- moving the aggravated offences currently in the Crime and Disorder Act 1998 and the stirring up hatred offences in parts 3 and 3A of the Public Order Act 1986 to the new act; and
- using the act as a vehicle for amendments to the enhanced sentencing regime in the Sentencing Code.