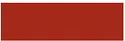




Submission to the Law Commission’s Summary Consultation on Hate Crime 2020



Introduction

- i. The Muslim Council of Britain (MCB), founded in 1997, is an inclusive umbrella body of mosques, charities, schools and Islamic associations, representing a large cross-section of Muslims in Britain today. It is pledged to work for the common good of society as a whole.
- ii. The MCB’s affiliate base reflects the diversity of Muslims in the UK, being made up of a range of ethnic, geographic and theological backgrounds.
- iii. The MCB has been actively participating in the meetings of the Crown prosecution service through local scrutiny involvement panel (LSIP) and deeply understands the need of the effective hate crime and hate speech laws which is the demand of the today’s society.
- iv. The MCB itself have received religious and racially motivated hate emails overtime, which have not been dealt efficiently by the Police and therefore, seeks to explore the constructive police response once the incident has been reported.
- v. The MCB would therefore like to submit the response to the consultation paper proposed by the Law Commission and shed light on our perspectives as an organization. Following are the best suggested answers to the questions for the proposed summary consultation paper.

Summary Consultation Question 1:

We provisionally propose that the criteria that should be considered for the addition of any further characteristics into hate crime laws should be:

- **Demonstrable need:** evidence that criminal targeting based on prejudice or hostility towards the group is prevalent.
- **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.
- **Suitability:** protection of the characteristic would fit logically within the broader offences and sentencing framework, prove workable in practice, represent an efficient use of resources, and is consistent with the rights of others.

Do consultees agree?

✓ **Yes:**

No:

Other: (please expand)

Summary Consultation Question 2:

Should the characteristic of “sex or gender” be added to the characteristics protected by hate crime laws?

✓ **Yes:**

No:

Other (please expand):

Summary Consultation Question 3:

Should the characteristic of “age” be added to the characteristics protected by hate crime laws?
Please share your views below:

- Hate crime against elderly people have always been a noticeable issue. Age is an important factor where perpetrators target elderly people due to their vulnerability. Adding age to the protected characteristic will give the confidence to the elderly people to report hate incidents. Moreover, in the same manner young children are often targeted in their own homes, foster homes and other dwellings due to their susceptibility. Although it is not clear that hate crime experienced by the older and young people results from hostility towards “age”, however, effective reporting and investigation mechanisms can diminish this particular confusion.

Summary Consultation Question 4:

Should any of the following groups be specifically protected by hate crime laws?

- sex workers
- homeless people
- alternative subcultures (for example, goths, punks, metallers, emos)
- philosophical beliefs (for example, humanism)

Please share your views below:

- Behaviours and discrimination are increasingly concerning for a number of people who would fall in different categories, including those listed in this question. Support and protection of any person, from hatred of any kind is to be welcomed. An analysis of hate crimes legislation in other countries shows focus on race, colour, religion, national origin, age, ethnicity, physical and mental disabilities, sexual orientation, gender identity. There is a risk that the widening of the definition to include the above groups under the Criminal Justice Act and related legislation may in fact have the opposite desire of these offences being taken seriously for the very real harm they cause. Consideration may be necessary to find other means to protect the abovementioned groups, for they are all worthy of protection.

Summary Consultation Question 5:

We provisionally propose that the current legal position – where the commission of a hate crime can be satisfied through proof that the defendant demonstrated hostility towards a protected characteristic of the victim – should be maintained.

Do consultees agree?

✓ **Yes:**

No:

Other (please expand):

Summary Consultation Question 6:

We invite consultees' views as to whether the current motivation test should be amended so that it asks whether the crime was motivated by hostility or prejudice towards the protected characteristic.

Please share your views below:

- The fact that an individual's motive lies peculiarly within his or her knowledge undermines the ability of prosecutors and plaintiffs to prove racist motive in hate crimes cases.
- Prosecutors also have a difficult time proving motive because multiple motives may impel an individual to action, and more particularly to criminal conduct, at any given time. Discerning which motive caused an individual to commit a criminal act may be genuinely problematic. Existing hate crimes statutes incorrectly assume that prosecutors can distinguish the accuser’s racist motive from his or her other possible motives.
- Motivation test should therefore be amended because even though evidence of the defendant’s conduct on other occasions can be used to show motivation, it remains challenging for the prosecution to prove what was in the defendant’s mind. Existing legislation and high burden of proof leads to the failure to tackle hate crime effectively.¹

¹ <https://www.independent.co.uk/news/uk/crime/hate-crime-attacks-jews-muslims-gay-prosecutions-police-falling-a9257256.html>

Summary Consultation Question 7:

We provisionally propose that both specified aggravated offences and statutory enhanced sentencing should be retained in the law of England and Wales.

Do consultees agree?

✓ **Yes:**

No:

Other (please expand):

Summary Consultation Question 8:

We provisionally propose that aggravated offences should apply to all five of the current characteristics equally, and any further characteristics that are added.

Do consultees agree?

✓ **Yes:**

No:

Other (please expand):

Summary Consultation Question 9:

We provisionally propose that aggravated versions of communications offences with an increased maximum penalty be introduced in reformed hate crime laws.

Do consultees agree?

✓ **Yes:**

No:

Other (please expand):

Summary Consultation Question 10:

Do you think aggravated versions of any other offences should be created? Why/ Why not?

Please share your views below:

Summary Consultation Question 11:

Do you think that a wider group of characteristics should be protected through the process of sentencing?

If yes, should this be achieved by:

- A residual characteristic in statutory enhanced sentencing; or
- Sentencing guidelines?

Please share your views below:

Summary Consultation Question 12:

We provisionally propose that intentionally stirring up hatred should be treated differently to the use of words or behaviour likely to stir up hatred. Specifically, where it can be shown that the speaker intended to stir up hatred, it should not be necessary to demonstrate that the words used were threatening, abusive, or insulting.

Do consultees agree?

Yes:

✓ **No:**

Other (please expand):

Summary Consultation Question 13:

Where it cannot be shown that the defendant intended to stir up hatred, we provisionally propose that the offences should cover only “threatening or abusive” (but not “insulting”) words or behaviour likely to stir up hatred.

Do consultees agree?

Yes:

✓ **No:**

Other (please expand):

- There is a very fine line between “threatening or abusive” and “insulting” and this should be included. There is no such distinction in racial offences and this must be applied equally to the other characteristics. Quite often Islamophobic hate speech

could be considered to be threatening, insulting or abusive or all three to the victim. The purpose of the legislation to prevent such acts from occurring this could weaken the impact of the legislation.

- As an organisation the MCB has received numerous correspondences full of hate speech but the police have not seen fit to take action against a single person on the basis that there is little that can be done. It cannot be right that individuals are allowed to send such material without accountability for the distress and fear they cause and which without doubt, is intended to stir up hatred.

Summary Consultation Question 14:

We provisionally propose to:

- replace the separate offences dealing with different forms of dissemination of inflammatory material (in sections 19 to 22 and 29C to 29F of the Public Order Act 1986) with a single offence of disseminating inflammatory material;
- align the defences available to innocent disseminators of inflammatory material to ensure consistency.

Do consultees agree?

Yes:

✓ **No:**

Other (please expand):

Summary Consultation Question 15:

Under what circumstances, if any, should online platforms such as social media companies be criminally liable for dissemination of unlawful material that they host?

Please share your views below:

- Social media companies could not “hide behind the claim of being merely a ‘platform’” with no role in regulating the content of their sites.” There is increasing concern about harmful content and activity on social media. This includes cyber bullying, the intimidation of public figures, disinformation, material promoting violence and self-harm, and age inappropriate content. Therefore it is important to show duty of care in the abovementioned areas respectively and held criminally liable for hosting unlawful material which spreads hates and prejudice.
- In the past, the social media platform of Facebook has been held liable on many occasions to instigate the atrocities against the indigenous population. For instance, when Myanmar was held accountable for charges of genocide against the Rohingya

people, Facebook acknowledged that it was used to “foment division and incite offline violence” in Myanmar.² Moreover, Facebook has apologised for its role in the deadly communal unrest that shook Sri Lanka two years ago after an investigation found that hate speech and rumours spread on the platform may have led to violence against Muslims.³

- Concerns were raised that politicians and affiliated figures have repeatedly used Facebook as a platform to stir up hatred and suspicion against Muslims in India.⁴

If “actual knowledge” is retained as a requirement for platform liability, should this be the standard applied in other cases of dissemination of inflammatory material where no intention to stir up hatred can be shown?

Please share your views below:

- To stipulate this as a requirement would effectively create a loop hole and a threshold of evidence for the prosecution to establish, which in the majority of cases, history has taught us, is virtually impossible to establish. This has led, to date, the failure to bring many prosecutions and essentially a failure to protect members of the public from this hatred. We would strongly advocate against this.

Summary Consultation Question 16:

We provisionally propose that:

- the current protections for discussion of religion and sexual orientation should apply to the new offence of stirring up hatred;
- Similar protections be given in respect of transgender identity, sex/gender and disability.

Do you agree and if so what should these cover?

Yes:

No:

✓ **Other (please expand):**

- If by reference to “current protections” is reference to conduct which stirs up hatred on the grounds of religion or sexual orientation to protect freedom of expression

² https://time.com/5880118/myanmar-rohingya-genocide-facebook-gambia/?amp=true&twitter_impression=true

³ <https://www.aljazeera.com/news/2020/05/13/sri-lanka-facebook-apologises-for-role-in-2018-anti-muslim-riots/>

⁴ <https://www.theguardian.com/world/2020/sep/01/facebook-faces-grilling-by-mps-in-india-over-anti-muslim-hate-speech>

including “antipathy, dislike, ridicule, insult or abuse” then we would urge you to review this. No such exemptions exist in relation to racial hatred therefore why such exemptions are allowed to abuse based on religion or sexual orientation. It makes no sense to have this disparity to language which is offensive, hateful, can have huge impact on the victims. Law Commission is urged to reconsider this disparity which has existed for far too long and to remedy this unjustifiable difference.

Football Offences:

Summary Consultation Question 17:

We provisionally propose that racist chanting at football matches should remain a distinct criminal offence.

Do consultees agree?

✓ **Yes:**

No:

Other (please expand):

Summary Consultation Question 18:

We provisionally propose that the offence in section 3 of the Football (Offences) Act 1991 should be extended to cover chanting based on sexual orientation.

Do consultees agree?

✓ **Yes:**

No:

Other (please expand):

We also seek consultees’ evidence on the prevalence of discriminatory chanting targeting characteristics other than race and sexual orientation, and would welcome views on whether the offence should be extended to cover all protected characteristics.

Please share your views below:

- The primary aim of the Act is based on particular historic events along with the current risks associated with chanting at football matches, discriminatory chanting should be extended to all protected characteristics.

Summary Consultation Question 19:

Should the offence under section 3 of the Football (Offences) Act 1991 be extended to cover gestures and missile throwing?

Please share your views below:

- The gestures and missile throwing should be extended under the offence of the Football (Offences) Act 1991 as they constitute they symbolise prejudice and hostility which may represent as a perceived threat.

Should the offence under section 3 of the Football (Offences) Act 1991 be extended to cover journeys to and from a designated football match?

Please share your views below:

- Yes: Journeys should be covered under section 3 of the Act due to the following reasons:
- Although under section 1(a) of the Act, the designated match include anything on the ground; it covers the time of two hours before the start and one hour after the ending of the match respectively.
- The journey however should be included to avoid discriminatory chanting which can bother the players and eventually affects their performance.

Summary Consultation Question 20:

Should a Hate Crime Commissioner be introduced in England and Wales?

Please share your views below:

- Hate crime commissioner should be introduced in England Wales to help to implement more effective non-criminal responses to prevent and mitigate the harmful effects of hate crime in the community.
- The powers of such a commissioner are going to be critical if it is to serve any purpose.