



## **CBA Response to Crown Prosecution**

### **Service Consultation on Hate Crime**

**Date 3<sup>rd</sup> January 2017**

#### **Introduction**

1. The CBA represents the views and interests of practising members of the criminal Bar in England and Wales.
2. The CBA's role is to promote and maintain the highest professional standards in the practice of law; to provide professional education and training and assist with continuing professional development; to assist with consultation undertaken in connection with the criminal law or the legal profession; and to promote and represent the professional interests of its members.
3. The CBA is the largest specialist Bar association, with over 4,000 subscribing members; and represents all practitioners in the field of criminal law at the Bar. Most practitioners are in self-employed, private practice, working from sets of Chambers based in major towns and cities throughout the country. The international reputation enjoyed by our Criminal Justice System owes a great deal to the professionalism, commitment and ethical standards of our practitioners. The technical knowledge, skill and quality of advocacy all guarantee the delivery of justice in our courts, ensuring that all persons receive a fair trial and that the adversarial system, which is at the heart of criminal justice in this jurisdiction, is maintained.

4. The CBA view that it is fundamental to respond to this critical set of consultations sought by the Crown Prosecution Service upon the 3 following policy documents:
- CPS public policy statement on racially and religiously aggravated hate crime.
  - CPS policy on prosecuting crimes against Disabled People.
  - CPS public policy statement on the prosecution of offences involving hostility on the grounds of sexual orientation and gender identity.

**RESPONSE FOR CONSULTATION ON PROSECUTING  
CRIMES AGAINST DISABLED PEOPLE**

**1. Does the section on *CPS policy* address all key issues in prosecuting crimes against disabled people?**

Accessibility and equality issues

- A separate document is hoped to be provided, detailing support guide available to disabled complainants. However, the CPS are asked to consider dealing with accessibility issues within the main part of the policy guide. They need to ensure that it includes British Sign Language interpretation, contact points in the investigation process, and the availability of intermediaries.
- The emphasis of equality of treatment before the justice system, particularly in the use of intermediaries or special measures is fundamental.
- It is to be welcomed that the CPS consultation document itself has a signed and subtitled video version people with hearing difficulties. We hope and expect that all their publications will be in formats that are usable by people with a variety of disabilities.
- Access and support facilities need to be signposted clearly within the whole website, rather than as an addendum to a specific policy document on disability issues.

- Relevant signposting of the accessibility issues needs to be present at all stages of investigative process, including at police stations, witness rooms and reception areas at all courts in the UK.

#### Language of hostility

- As there is no specific offence of ‘disability hate crime,’ it may be more helpful to speak of the ‘targeting’ of disabled persons. Policy makers should recognise that disability may be one of many reasons for the targeting of complainants.

### **2. Does the section on *Situational risk and “vulnerable victims”* reflect and address disabled people’s concerns about the misuse of the term “vulnerable” as a label?**

- The concept of vulnerability has become embedded in the justice system. It may not accurately cover all forms of physical or mental disability. Disability and vulnerable are not coextensive categories. Care should be used not to stereotype all disabled people as ‘vulnerable’.
- It may be that ‘targeting,’ rather than the terminology of ‘hostility’ assists in this regard.
- The current policy document refers to disabled individuals experiencing ‘situational risks’ which may be taken advantage of by an offender. The issue inherent is that the action is by the perpetrator - in terms of seeking to take advantage, they are targeting. The focus of this does not require any form of ‘negative’ connotation or vocabulary such as ‘vulnerable.’

### **3. Does the section on *The social model of disability* explain how the CPS applies the model to its own work?**

- The social model on disability provides very general reflection of how the policy should apply, but fails to provide examples of practical ways in which it actually does or should apply.
- For example, how will individuals with particular disabilities become aware of the kind of support that is available for them to give their best evidence? It may be relevant to refer to contact points, and to outline provisions such as special measures.

**4. Question 4- Does the section on *Prosecution and sentencing* explain clearly that the CPS will apply for an increased sentence in all appropriate cases?**

- The issue in sentencing is not that an individual is ‘vulnerable,’ but rather that they have been ‘targeted’ on account of their disability.
- Section 146(2)(b)(ii) of the Criminal Justice Act 2003 provides that where an offence has been motivated ‘by hostility towards persons who have a disability or a particular disability’, the Court must treat this as an aggravating feature for sentencing purposes.
- Prosecutors should always remind the Court of its powers under Section 146 in cases to which it applies.

**PUBLIC POLICY STATEMENT ON THE PROSECUTION OF OFFENCES  
INVOLVING HOSTILITY ON THE GROUNDS OF  
SEXUAL ORIENTATION AND GENDER IDENTITY**

**1. Does the section on “CPS policy” address the key issues in prosecuting homophobic, biphobic and transphobic crime?**

- It is notable that the CPS have subdivided the policy documentation on hate crime into 3 different sections, but then felt able to place hostility upon the basis of ‘gender identity’ and ‘sexual orientation’ within the same document. It is worth considering whether there should be one document under the umbrella heading of hate crime itself.
- Gender identity should not be conflated with sexual orientation.
- The policy document is highly generalised when stating that it will ‘improve awareness of homophobic, biphobic and transgender hate crime and the public confidence to report it,’ but fails to set out any key practical implementation steps that will take place.
- Without practical steps advocated, the CPS risks losing public confidence in its ability to deal with these issues. There will be no way to measure success on the ground of such a policy.

**2. Does the section on “Crimes involving hostility towards sexual orientation and gender identity” clearly set out the key definitions and law relevant to the prosecution of these crimes?**

- There is no reference to targeting, and this would be a better usage of terminology, rather than that of hostility.

**3. Does the section on “Communities affected by hate crime” clearly set out the CPS understanding of the individuals and communities affected?**

- The writers are asked to consider the wording and terminology used in relation to ‘gender non conforming’ and perhaps instead use alternative wording.
- The CPS has an opportunity to educate and influence policy makers on issues that affect gender identity in the criminal justice system, which have had little legislative or judicial attention up to now.
- The current policy document does not set out the barriers that transgender individuals face in terms of reporting offences to agencies such as the police, and fails to set out methods that might be available, other than reporting in person at a local police station.

**4. Does the section on “Offending Behaviour” clearly set out the CPS understanding of offending behaviour?**

- The policy document states that ‘despite what may be perceived as low level nature of such offending, the impact will often be significant and victims need recognition of the harm caused.’
- The critical issue is that a complaint made to the police, or an investigation started should not be considered any less serious because it involves a complainant who is of a certain sexual orientation, or any particular gender identity. The point is that the CPS policy applies equally to all, and that individual complainants will be treated in a sensitive and respectful fashion by all agents within the criminal justice system.

- The particular range of offences and offence types are not set out within this policy document – and this would be of use and assistance to prosecutors and the general public reading such a document.

**PUBLIC POLICY STATEMENT ON THE PROSECUTION OF RACIALLY AND  
RELIGIOUSLY AGGRAVATED OFFENCES**

**1. Does the section on *CPS policy* address the key issues in prosecuting racially and religiously aggravated crime?**

- It would assist prosecutors, police, and to increase general public knowledge if it set out all the offences within this category

**2. Does the section on *Crimes involving hostility on the basis of race or religion* clearly set out the key definitions and law relevant to the prosecution of these crimes?**

- The definitions and law relevant to the prosecution of these crimes are not set out in sufficient detail to be useful to members of the public as well as criminal justice professionals.
- Real-world examples of what takes place when a matter is not covered by the Crime and Disorder Act 1998 would be helpful. For example, a member of a race or religion whose dress clearly identifies it is targeted for a violent attack because of it, how would the CPS deal with it? A brief account of the procedures up to and including sentence would put flesh on the bones.

**3. Does the section on *Communities affected by hate crime* clearly set out the CPS understanding of the individuals and communities affected?**

- The policy document does not list all sections of society and communities who could be impacted by hate crime. It may be helpful to add the words 'but not limited to' after 'including' in the second paragraph.
- The ethos and recognition set out is to be applauded, however specific examples would assist all agents within the criminal justice system understand more clearly what racial and religious identity can in fact encompass.

**4. Does the section on "*Offending Behaviour*" clearly set out the CPS understanding of offending behaviour?**

- There is a failure to really extract the feature that targeting may be for many reasons. And that targeting on the basis of race or faith may simply be one facet of the offending motive. Even if the main motive is not on account of the religious or racial identity of the individual, the offence should be recorded and properly recognised as being a hate crime.
- There is no real reference to how crimes are recorded- and perhaps the policy document should reflect the need for recording of such crimes properly, not merely at investigative stage, but throughout the court process, even if a matter is not prosecuted within the Crime and Disorder Act 1998 framework.
- Involvement of victims in terms of their views as to the acceptability of pleas for non-racially aggravated charges is not dealt with in the policy document currently, and is critical to how communities view the impact of prosecutorial discretion in this area.

**QUESTION 5 – in relation to all 3 hate crime consultations**

For all policy documents, question 5 asks if the responder has any further comments on:

- It would assist if the policy documents briefly talk about the types and range of offences that apply in relation to hate crime.
- More could be stated about what legislation can and will be considered in terms of cyber crime- for example is it limited to Malicious Communications Act or Protection from Harassment Act.
- At present it is noted within the policy documents that internet and social media provide new platforms for offending behaviour, but such policy documents would be more useful if individuals knew what recourse prosecutors had.