[GB] New guidance on prosecuting hate crimes, including on social media

IRIS 2017-9:1/19

Lorna Woods
School of Law, University of Essex

The Director of Public Prosecutions (DPP) has stated that hate crimes are a priority area for the Crown Prosecution Service (CPS), given the increasing incidence of these crimes, especially on social media. On 21 August 2017, following a consultation, the CPS issued public statements on its approach to hate crimes (explaining the approach of the CPS and what victims and witnesses can expect), as well as revised legal guidance. These documents supplement the DPP's social media guidance ("Guidelines on prosecuting cases involving communications sent via social media").

These statements and guidance do not change the existing law (and did not require the involvement of Parliament); rather, they clarify the approach of prosecutors to this kind of offence. A broad approach has been suggested to the "flagging" of crimes involving hate to ensure that cases are not missed. Each statement emphasises that the CPS will seek to take these cases seriously, to support the victim's perception and to encourage community confidence in reporting all such offences. Once a case has been flagged as a hate crime and received by the CPS, the CPS policy is that the flag should not be removed. When considering whether to prosecute the CPS must first consider whether there is sufficient evidence to bring a successful prosecution and then whether prosecution is in the public interest.

The statements and guidance deal with racist and religious hate crime, homophobic, biphobic and transphobic hate crime, and disability hate crime and other crimes against disabled people. They thus reflect the categories set down in statute. These existing acts provide not just for the offence of racially motivated threatening/abusive behaviour (under Section 28 of the 1998 Crime and Disorder Act (CDA)), but also for the possibility of racial or religious aggravation to be taken into account when sentencing other offences (Section 145 of the 2003 Criminal Justice Act (CJA)).

Each statement has a similar format: it sets out the current law and offences available, along with guidance as to the types of offending behaviour that satisfy the elements of a hate crime, how to report it, and how these types of offences are committed through the Internet and social media. The guidance documents likewise adopt similar structures. These documents emphasise the importance of

© European Audiovisual Observatory (Council of Europe) 2026

prosecuting hate crimes and then deal with: referral to CPS; flagging crimes; case building and case reviews; a more legally framed discussion of the existing law; issues relating to victims and witnesses; and pleas and sentencing.

The CPS and the police have agreed on a definition of hate crime as: “Any criminal offence which is perceived by the victim or any other person to be motivated by: hostility or prejudice based on a person's disability or perceived disability; race or perceived race; religion or perceived religion; sexual orientation or perceived sexual orientation; or [hostility towards] a person who is transgender or perceived to be transgender.” There is no requirement that hatred be shown; the test is that of “hostility”. The CPS specifies that “hostility” could include ill-will, spite, contempt, prejudice, unfriendliness, antagonism, resentment and dislike. This is potentially a broad category, especially where the behaviour in question is assessed from the victim’s perspective rather than that of, for example, a reasonable person. The CPS notes that this formulation may be broader than the definition found in the CDA and CJA, although as noted there is a difference between the decision to flag a case, the decision to prosecute and the proving of a case in court.

Concerns have been raised about freedom of expression. There is, however, a freedom of expression defence contained in Section 29J under Parts 3 and 3 A of the 1986 Public Order Act in relation to religious hatred and in Section 29JA, sexuality-based hatred, but there is no corresponding statutory defence for a racial offence. When considering whether a prosecution is in the public interest, prosecutors are instructed to take into account freedom of expression when considering cases involving the media; the Social Media Guidelines specify that there should be a high evidential threshold for social media crimes and that the assessment of the public interest should take into account freedom of expression. Regard is, however, paid to hate crime: references that indicate hostility may elevate a communication that would otherwise not meet the high threshold to one that does. The new statements (but not the guidance documents) refer to the Social Media Guidance. In the new guidance, where a case has passed the evidential threshold it is likely that prosecution will be in the public interest. Consent will be required for some prosecutions; this is especially the case in respect of social media offences.

Crown Prosecution Service, Public statement on prosecuting racist and religious hate crime, 21 August 2017

http://www.cps.gov.uk/publications/docs/racist-religious-hate-crime-statement-2017.pdf

Crown Prosecution Service, Racist and Religious Hate Crime - Prosecution Guidance, Revised, 21 August 2017

http://www.cps.gov.uk/legal/p_to_r/racist_and_religious_crime/

© European Audiovisual Observatory (Council of Europe) 2026

Crown Prosecution Service, Guidelines on prosecuting cases involving communications sent via social media

http://www.cps.gov.uk/legal/a_to_c/communications_sent_via_social_media/

Crown Prosecution Service, Hate Crime

http://www.cps.gov.uk/victims_witnesses/hate_crime/index.html

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026