

# Equally Ours: Written evidence submitted for Law Commission consultation on Hate Crime Laws



## 1. Introduction

- 1.1 Equally Ours (formerly the Equality and Diversity Forum) is the national network of organisations committed to making a reality of equality and human rights in people's lives. Our members include Age UK, Mind, Stonewall, the TUC, the Runnymede Trust, Child Poverty Action Group, the Traveller Movement, the Fawcett Society, Gender Identity Research and Education Society, Inclusion London and Disability Rights UK. Further information about our work is available at [www.equallyours.org.uk](http://www.equallyours.org.uk)
- 1.2 We believe that a good and strong society is a just and inclusive one. One where we are free from harm and can all contribute and flourish, whoever we are, whatever we believe in and whatever we do and don't have. A society that is equally ours.
- 1.3 Using a pan-equality perspective to improve law, policy and practice on hate crime is one of our strategic priorities and we facilitate the only national group that brings a combination of front-line, member-led and/or policy-focused organisations working on hate crime together regularly to identify influencing opportunities where collaborating on a cross-equality basis can help to progress change. The group includes the Equality and Human Rights Commission, Galop, Rene Cassin, UKREN, Stonewall, Inclusion London, Tell Mama, the Travellers Movement, GATE Herts, Stay Safe East, the Fawcett Society, the Muslim Council of Britain, Stop Funding Hate, and 17-24-30.
- 1.4 We address the questions that are most relevant from a pan-equalities perspective and where we can add value with a human rights-based analysis.

## 2. Our evidence base

- 2.1 This submission draws on the discussions of the hate crime strategy group. This included a series of seminars held from 2017-2019 to examine the research evidence on law and policy around hate crime from a pan-equalities perspective. Following these seminars, we produced:

- a synthesis of the research into the main causes and consequences of hate crime;
  - a position paper setting out the case for legal reform; and
  - a write up of the seminar looking at the issues raised by online hate crime.
- 2.2 We attach these as appendices to this submission and they can be accessed online here: <https://www.equallyours.org.uk/resources/hate-crime/>

### **3. Recent developments in hate crime: covid-19 and the government response to the pandemic.**

- 3.1 The coronavirus pandemic has seen a worrying rise in the levels of hate crime, particularly against disabled people, black and minority ethnic people and LGBT people. Our member organisation Inclusion London has been running a weekly survey of disabled people on the incidence and types of hate crime experienced since lockdown began. They found:
- A rise in hate crime committed by neighbours of Disabled people, including against Disabled children;
  - A rise in verbal abuse against Disabled people and instances of being spat at whilst out of the house;
  - An increase in online hate crimes – Disabled people have been told that their lives are inferior and are taking up resources from non-Disabled people.
  - Disabled people being targeted whilst out shopping if they have PAs/carers with them or require prioritisation in queues for shops.<sup>1</sup>
- 3.2 There has also been a rise in hate crime scapegoating minority groups for spreading Covid-19, with Chinese, Muslim and Traveller communities at particular risk.<sup>2</sup> The Community Security Trust have reported a rise in antisemitic hate crime during the pandemic, particularly the spread of antisemitic conspiracy theories that have spread through social media.<sup>3</sup> The LGBT Foundation has reported on Covid-19 related hate crimes targeting gay men in particular, linking back to HIV prejudice and scapegoating.
- 3.3 Public health messages and media commentaries have inadvertently fuelled such views through the use of terms like 'vulnerable', and insufficient attention has been

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<sup>1</sup> <https://www.inclusionlondon.org.uk/campaigns-and-policy/facts-and-information/hate-crime/inclusion-london-briefing-disability-hate-crime/>

<sup>2</sup> Stop Funding Hate, evidence to Equally Ours Policy Forum meeting 8.4.20

<sup>3</sup> [https://cst.org.uk/data/file/d/9/Coronavirus and the plague of antisemitism.1586276450.pdf](https://cst.org.uk/data/file/d/9/Coronavirus%20and%20the%20plague%20of%20antisemitism.1586276450.pdf)

paid to tackling the emerging forms in which hate crime is manifesting during the pandemic.

#### 4. Our principles for law reform

- 4.1 **Equality:** Hate crime law needs to deliver on equality requirements and take a human-rights based approach, recognising that everyone is born equal in dignity, worth and rights. The current disparity in the law unintentionally signals that some types of hate crime are more serious than others and/or that some groups are more deserving of protection, undermining notions of fairness, and implying a 'hierarchy of hate'.
- 4.2 **Justice:** parity of approach towards different groups assists in prosecuting offences and preparing legal cases (as identity factors may only otherwise be considered at sentencing for those hate crimes addressed under the CJA – evidence of hostility may not make it into trials). It supports equitable sentencing across different groups. Parity may also be important for legal outcomes; there is a reported correlation in hate crime law implementation and pro-equality policies and lower hate crime in the United States (Walters et al., 2018, 186-7). Flagging offences across groups also supports monitoring and identification of repeat offenders.
- 4.3 **Social norming:** finally, the law sends a message about what is and is not permissible conduct, which is important as a deterrent and for shaping social norms, as well as supporting communities at risk of hate crime. Supporting parity of approach across different equality strands demonstrates the importance in society as a whole of all citizens and the unacceptability of hate crime in any form against anyone.

#### 5. Consultation questions

**Question 1. Do consultees agree that hate crime laws should, as far as practicable, be brought together in the form of a single "Hate Crime Act"?**

- 5.1 Yes, we strongly agree. Hate crime law and its application are currently contributing to inequality in two important ways.
- 5.2 First, the law does not provide equal protection to all groups protected under the Equality Act 2010 in relation to hate crime. Some groups have no protection, while the type and level of protection for those that are covered varies widely due to the history of ad hoc legal development - rather than any rational assessment of how the law should respond to such a serious issue within society.

- 5.3 Secondly, the implementation of the law leads to unequal charging decisions, prosecution and sentencing outcomes for different groups.<sup>4</sup> Improving practice will go some way to address these problems, but without levelling up of legal protections any such improvements will inevitably be limited and reflect the inconsistencies in the law.
- 5.4 Consolidating hate crime legislation into a single law where all equality strands are addressed would have the added benefit of triggering new associated professional practice guidance, which has been highlighted as an important influence in ensuring legislation is given due consideration within the police and wider criminal justice system.<sup>5</sup>
- 5.5 We strongly support consolidating hate crime legislation into a single law, and note that the efficacy of hate crime law is highly dependent on sufficient resourcing, national strategy support, adequate data collection and trusted reporting mechanisms. The consolidation of hate crime legislation into a single law should also include a duty on national and local government to resource hate crime advocacy and support, on a similar footing to domestic and sexual abuse services, else they risk being ineffective at best and harmful at worst. We caution that broadening the scope of protection without properly increasing the resourcing for protection may lead, in effect, to reducing protection to those groups already covered by the legislation. Not only would the ability to implement protection for each characteristic be reduced but a lack of implementation may lead to a sense that there are less consequences for hate.

**Question 2: We provisionally propose that the law should continue to specify protected characteristics for the purposes of hate crime laws. Do consultees agree?**

- 5.6 We agree that the law should specify protected characteristics for the purposes of hate crime laws, as this ensures the law sends a message about what is and is not permissible conduct. This is an important deterrent and contributes to shaping social norms that recognise hate crime as a particular harm, as well as supporting communities at risk of hate crime.
- 5.7 However, we do also see the merit in enabling the law to be able to respond to changes within society that often occur faster than the law can be amended. We address this at questions 38 below.

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<sup>4</sup> <https://www.equallyours.org.uk/wp-content/uploads/2019/06/Hate-crime-the-case-for-legal-reform.pdf>

<sup>5</sup> <https://www.equallyours.org.uk/wp-content/uploads/2019/06/Hate-crime-the-case-for-legal-reform.pdf>

## Questions 4 – 20, related to who should have the protection of hate crime

- 5.8 Our hate crime strategy group has agreed two key aims for hate crime law reform: 'parity' and 'clarity' in the law to ensure equal treatment and levelling up of protections for different groups.
- 5.9 Our starting point is a presumption that all those currently protected by the Equality Act 2010 should have the protection of hate crime laws. People experiencing hate crime across the characteristics currently monitored through the criminal justice system (ie race, religion, gender identity, sexual orientation and disability) should all be given equal legal protection and treatment in terms of sentencing. The Equality Act 2010, however, also provides protection for a wider range of groups than those currently supported under hate crime law and includes consideration of age and sex.
- 5.10 While the Law Commission is correct in highlighting that the Equality Act is civil, and not criminal, law, to omit any protected characteristic without explicit justification unintentionally signals that some types of hate crime are more serious than others and/or that some groups are more deserving of protection, undermining notions of fairness, and implying a 'hierarchy of hate'.
- 5.11 This applies to all potential forms of hate crime outlined in the consultation document, such as aggravated offences, sentencing provision and offences of stirring up hatred, and to all platforms (written, spoken, online, etc) on which hate crime may be committed.
- 5.12 Having said that, there are examples where hate crime laws could and should go further than the definitions provided in the Equality Act 2010. For example, the definition of disability under the Equality Act retains elements of the medical model of disability and we would support a definition based more firmly in the social model.
- 5.13 We also recognise that there may be a need to treat particular protected characteristics differently in order to achieve equality – for example to provide greater detail and legal clarity or to provide for specific exemptions – but this should be a conscious and transparent decision made in dialogue with representatives of those with those particular protected characteristics.
- 5.14 In reference specifically to Question 4 we agree that the definition of race in hate crime laws should be amended to include migration and asylum status; and/or language. Our members' casework shows that this especially pertinent in the context of Brexit and Covid-19 and the rise in xenophobic / anti-immigration rhetoric and related hate incidents and crimes.

### **Questions 21 – 31: The type of offences**

- 5.15 As with questions related to who the law should protect, evidence from our members and research base show that parity and clarity are important in respect of how the law defines a hate crime.
- 5.16 As highlighted above, parity of approach towards different groups assists in prosecuting offences and preparing legal cases (as identity factors may only otherwise be considered at sentencing for those hate crimes addressed under the CJA – evidence of hostility may not make it into trials). It supports equal sentencing across different groups. Parity may also be important for legal outcomes; there is a reported correlation in hate crime law implementation and pro-equality policies and lower hate crime in the United States (Walters et al 2018, 186-7). Flagging offences across groups also supports monitoring and identification of repeat offenders.
- 5.17 We therefore believe that whatever form the prohibition on hate crime takes, the starting point should be equality across all grounds, with any departures explicitly justified in each instance. This would also provide greater clarity, with the same definitions and protections applying to all.

**Question 22. We provisionally propose that the current legal position – where the commission of a hate crime can be satisfied through proof of “demonstration” of hostility towards a relevant characteristic of the victim – be maintained. Do consultees agree?**

**and**

**Question 23. 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.**

- 5.18 We agree with the proposal to expand the basis on which motivation can be demonstrated. As the report notes, prosecution under this limb is both rare and difficult. Evidence from our hate crime group, in particular those providing support services to those facing disability hate crime, also suggests that the Commission should consider including ‘contempt’ in the definition as well as prejudice as this better reflects the nature of disability hate crime. We agree.
- 5.19 Regarding the ‘demonstration’ limb, we accept that care needs to be taken to ensure that hate crime law sends a strong message that such conduct is unacceptable. However, we do not think that limiting that limb to hostility alone does this. Expanding the second limb may well have the effect of narrowing the

definition of 'hostility' by placing behaviour that would otherwise have been understood to demonstrate hostility into the category of prejudice. This would risk both reducing the protections of the law and introducing unnecessary complexity and confusion.

- 5.20 As the report highlights, the courts will retain the ability to decide on the level of sentencing to reflect the severity of the conduct, and we believe this will be able to mitigate any concerns about overly broadening the scope of hate crime law. We therefore believe that both limbs should cover "hostility, prejudice or contempt".
- 5.21 As a separate point, we believe that the law should enable patterns of hate incidents to be treated as hate crime. This was a significant issue in the murder of Bijan Ebrahimi for example, which was both a racist and disablist murder; and in the case of the prolonged series of incidents against Francesca Hardwick and her mother Fiona Pilkington. Equally Ours' members have many such situations with current clients, and this is a common pattern across all hate crime committed by neighbours. The law needs to state this explicitly and to be strengthened. E.g., more than 2 hate incidents are to be recorded and investigated as a hate crime.

**Question 30: We invite consultees' views on whether any property or fraud offences should be included within the specified aggravated offences.**

- 5.22 Based on discussions of the Equally Ours Hate Crime Strategy Group, we believe types of offences should include both crimes against the person and some types of crimes against property. For instance, racist graffiti or targeted vandalism against a disabled person's vehicle or equipment should be included within the specific aggravated offences. While the current laws stipulate this to an extent, there is a lack of recognition that such offences are a hate crime.

**Question 32. We invite consultees' views on whether a provision requiring satisfaction of the legal test in respect of "one or more" protected characteristics would be a workable and fair approach to facilitate recognition of intersectionality in the context of aggravated offences.**

- 5.23 We strongly agree with this proposal, which we believe to be not only workable and fair but essential to enabling the law to tackle the realities of hate crime in practice.



**Question 38. We invite consultees' views on whether a more flexible approach to characteristic protection would be appropriate for the purposes of enhanced sentencing.**

**Further, we invite consultees' views on whether this might be best achieved by: • a residual category; • a set of criteria for judges to consider; • sentencing guidance; or • a combination of approaches.**

5.24 We agree that a reformed law should have the flexibility suggested. This would help respond to the realities of hate crime and social developments over time, which to date have led to a confusing patchwork of protection.

5.25 We do not have specific views on the best way to achieve this, but it must ensure that the flexibility is exercised in a manner consistent with human rights standards and that sufficient guidance is available on the situations in which it is likely to become relevant and how it will be applied when it is.

**Question 62 We invite consultees' views on whether they would support the introduction of a Hate Crime Commissioner.**

5.26 We agree that a Hate Crime Commissioner should be introduced. As the report rightly identifies, such a role could help with better coordination across public services and play an important role in ensuring those subjected to hate crimes are heard. For the role to fulfil this potential we believe the following would be necessary:

- A statutory footing that ensures independence and the ability to challenge the Government;
- Sufficient budget to resource the work effectively;
- A requirement for involvement of affected groups in determining the strategic priorities and ways of working of the Commissioner;
- Strong working relationships with third party victim support agencies, in particular specialist support agencies, and with specialist research and policy organisations; and
- Memoranda of Understanding established with other agencies, such as the Equality and Human Rights Commission and the Victims Commissioner, to ensure that in avoiding duplication no-one slips through the cracks.



## Signed by:

### Members

Age UK  
brap  
British Institute of Human Rights  
Children's Rights Alliance for England (CRAE)  
Disability Rights UK  
Discrimination Law Association  
End Violence Against Women Campaign  
Equality Trust  
Fair Play South West  
Fawcett Society  
Friends, Families and Travellers  
Gender Identity Research and Education Society (GIRES)  
Humanists UK  
Law Centres Network  
Mind  
National Alliance of Women's Organisations (NAWO)  
Press for Change  
Race on the Agenda (ROTA)  
Royal National Institute of Blind People  
Runnymede Trust  
Security Women  
Sign Health  
Scope  
Trades Union Congress (TUC)  
Traveller Movement  
UKREN (UK Race in Europe Network) UNISON  
Women's Budget Group  
Women's Resource Centre

## **Associates**

Inclusion London

## **Non-Members**

GATE Herts

Stay Safe East

GATE Gypsies and Travellers Essex