

Consultation on Hate Crime Public Statements

Summary of Responses

Introduction

This is a summary of responses to the public consultation undertaken by the Crown Prosecution Service (CPS) on the following Public Statements on Hate Crime:

- *Prosecuting Crimes Against Disabled People*
- *Offences involving Hostility on the grounds of Sexual Orientation and Transgender Identity*
- *Racially and Religiously Aggravated Hate Crime*

The policy statements were published in October 2016 and consulted on for a period of 13 weeks, ending 9 January 2017.

The purpose of the consultation was to provide interested persons with an opportunity to provide comments and to ensure the final version of the policies were informed by as wide a range of views as possible.

The consultation

The consultation was published on the CPS website and publicised in a number of other ways: we sent letters from the Director of Public Prosecutions to key stakeholders; we presented the statements to CPS stakeholder groups, such as the Community Accountability Forum, and Local Scrutiny and Involvement Panels; we circulated the statements to other Government departments; and we published the consultation internally on the CPS intranet.

Method of Analysis

We received 126 responses in total:

- Prosecuting Crimes Against Disabled People: 67 responses
- Homophobic Biphobic and Transphobic Crime: 29 responses
- Racially and Religiously Aggravated Crime: 30 responses

All responses have been analysed, including any received after the consultation closed. A breakdown of the source of the responses is at Annex A,B and C.

Each response to each question was analysed separately and the main points were identified and carefully considered. Not every respondent gave specific answers to each individual question but their views were considered. However, this summary does not address every point made by respondents.

CPS Hate Crime webpage

A large number of respondents across all strands requested that the Policy contain more detail on matters already covered in the Policy, or that the Policy should address additional subjects. For example: more information was requested on increased sentences under s146 of the Criminal Justice Act 2003 and on sentencing generally; and there were a number of requests for examples of crimes against disabled people, particularly so-called “mate crime” - it was suggested that some disabled people may not be aware of or would not recognise the characteristics of mate crime, even if it were committed against them.

To meet this demand, we have created a [Hate Crime page on the CPS website](#), to provide more detail on the CPS’ approach to Hate Crime, including all three strands. At the time of publication, the main homepage has been created but sections on each strand are to follow.

We have inserted a new section in the Policy called **Hate Crime Webpage** and provided a link to the Webpage, for ease of access.

Titles

The titles of the statements have been amended to:

- *Public statement on prosecuting disability hate crime and other crimes against disabled people*
- *Public statement on prosecuting homophobic, biphobic and transphobic hate crime and*
- *Public statement on prosecuting racist and religious hate crime*

These titles better reflect the content of the statements and ensure it is clear that they relate to hate crimes.

A. Prosecuting Crimes against Disabled People

The consultation on the Policy on Crimes against Disabled People asked five questions:

1. *Does the section on CPS policy address all key issues in prosecuting crimes against disabled people?*
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?*
3. *Does the section on the social model of disability explain how the CPS applies the model to its own work?*

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

5. *Do you have any further comments on the CPS Policy on Prosecuting Crimes against Disabled People?*

General Observations

This section sets out some of the broad themes and issues that recurred in the responses we received, and provides the CPS response to each of these.

The Policy was generally welcomed. For example:

- “This policy document places the CPS in the vanguard for progressive action on disability hate crime”.
- “We commend the stance taken by the CPS in publishing these policies, which we consider will do much to improve the transparency of decision-making and will ... be likely to positively promote public confidence”.
- “The policy is well considered and significant”.
- “The policy covers most of the key aims that we expected to see”.
- “There are welcome references to “discrimination” and “prejudice”, which go beyond the problematic concept of “hostility”.
- “The attention the CPS is giving to crimes against disabled people should be applauded”.

However, many respondents expressed concern that more needed to be said about support for disabled people and implementation of the policy, which are discussed below.

Support Guide

A common concern for many respondents was that the Policy should explain what practical support is available for disabled people throughout the criminal justice process. For instance:

- Better support is required to help people to report incidents.
- Preparing victims for court, so they can be seen as a credible witness.
- The provision of special measures and intermediaries to help disabled witnesses give their best evidence in court.
- How the CPS will support and communicate with persons with a learning or cognitive disability.

As the public statement indicates, the CPS acknowledges that this is a significant issue for disabled people and one that all parties in the criminal justice system need to address. To this end, we are publishing a separate guide on support available to disabled people from the police, the CPS, the courts and other criminal justice agencies. [The Support Guide is available on our website.](#)

The consultation responses have been made available to the author of the Support Guide, to ensure that all concerns are considered.

Implementation

A number of respondents questioned whether the CPS would implement the policy in practice and what training would be provided to its staff. In particular, respondents sought assurance that CPS employees will understand and apply the social model of disability in their work. Examples of comments made are:

- “We see a need for far more national consistency in operation of the policy”.
- “While the content of the document is excellent, it will need to be transformed from paper into reality”.

As we state in the policy, we are committed to ensuring that the policy is implemented. To provide further reassurance, we intend to carry out training webinars to assist prosecutors in understanding the social model and how it applies to their work. Additionally, we will provide further information on implementation on the CPS Hate Crime Webpage.

Emphasis on particular disabilities

A recurring theme is a request that a particular type of disability or impairment should be mentioned or emphasised in the Policy, such as:

- Non-visible disabilities, such as learning disabilities and mental health problems.
- Deafness.
- LGBTQ persons with learning disabilities and autism.
- Disabilities commonly affecting older people, such as dementia.

Since the Policy is intended to cover all disabilities, we do not think it beneficial to emphasise some and not others. However, the CPS Support Guide will provide an overview and signpost assistance.

It was also suggested that on-going monitoring of the policy would be aided by data that accurately indicates the incidence of crimes against people with different types of disability. Although the CPS IT systems are able to record and report disability hate crime, we cannot break down the data by disability types.

Legal Guidance

A number of respondents requested that more detail be provided on specific issues already covered in the separate CPS legal [guidance on Prosecuting cases of Disability Hate Crime](#) (LG), or in other CPS guidance. For instance:

- Detail of the CPS’ approach to applying for an increased sentence under s146 of the Criminal Justice Act 2003, including scenarios or examples.

- The CPS approach to young offenders.

The LG has been fully revised at the same time as the Policy. We provide a link to it in the Policy and therefore we do not think it necessary to repeat text from the LG in the Policy.

Outside scope

We received a number of responses that addressed issues outside the scope of the consultation or the Policy, most of which we have not included in this Summary. These include:

- Suggestions for a change of law or revision of the Sentencing Guidelines.
- Matters relating to police practice, procedures, training and investigations. However, as noted above, the Support Guide will include information support provided by the police to disabled people.
- Comments relating to the practice and training of the judiciary, particularly the approach to sentencing crimes against disabled people.
- Matters relating to a particular case or personal experience.

Where appropriate, we have passed on suggestions and responses to relevant CPS policy leads, such as those for the other Hate Crime strands, so that they may consider them in the context of those portfolios.

Revisions

In light of the responses received, we have made a number of further changes to the Guidelines, including two new sections or subsections on:

- Hate Crime Webpage.
- Case progress - Information for victims.

We have also made some revisions unrelated to responses received, simply to clarify the text or correct any inaccuracies.

Summary of Responses to Specific Questions

This section provides a summary of the key points and themes raised in response to each of the questions, and the changes made as a result of the feedback.

Question 1

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

There were 31 responses to this question.

The responses suggest that we have identified the key issues but, as discussed above, there was concern over support and implementation. Support is now added to the list of policy aims: see point 3 below.

Main changes as a result of feedback

1. A number of respondents asked what role the CPS could play in communicating successful prosecutions in order to raise the confidence of disabled people to report crimes, with one respondent commenting that “raising awareness and public confidence is paramount”. Another respondent suggested we use social media to promote our identity and our successes.

The CPS hate crime webpage will focus on improving awareness and public confidence and promoting successful outcomes. The strand specific page on disability hate crime, once published, will explain what the CPS is doing to raise awareness of disability hate crime in particular. This will be accompanied by a Hate Crime Awareness campaign, to be launched in 2017.

The CPS has a Twitter account, which it uses daily to disseminate information, news and infographics. It has over 200,000 followers.

2. We have clarified that the third bullet on our policy relates to disability hate crime.
3. One respondent suggested integrating a victim focus into our stated policy aims. We have done this by adding another bullet to the list of aims, which is to “support disabled victims and witnesses to give their best evidence”.

Question 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?

There were 31 responses to this question.

This question generated a large amount of interest and a number of conflicting views, reflecting the complexity and sensitivity of the issue.

One respondent, representing people with learning disabilities, commented that their “focus group unanimously agreed that the word ‘vulnerable’ should not be used in any context”. However, another respondent, who provides support to persons with learning disabilities, questioned whether it is appropriate for the policy to use the term “situational risk” rather than “vulnerable”: “by attempting to soften the language around ‘vulnerable victims’ we might unintentionally undermine the victim’s experiences and suffering ... a failure to recognise and accommodate vulnerability would be a serious failure of professional duty”.

Other examples of comments that questioned the use of the term “situational risk” are:

- A mental health group made the point that “at risk” is a phrase used in mental health legislation in connection with involuntary detention under the Mental Health Act, and that use of the phrase “situational risk” is likely to alienate some people with mental health issues.
- The term causes confusion.

In contrast, one respondent suggested that CPS advocates should use the term “situational risk” in court proceedings: “we do not think it is right for the CPS to claim to acknowledge and support the concerns of disabled people over the word “vulnerable” but yet continue to repeat it in court”.

Examples of comments that agreed with the CPS policy are:

- “We are pleased to say that disabled people’s concerns regarding being labelled as vulnerable have been sufficiently addressed”.
- “This is an excellent statement on so-called “vulnerability” and shows a genuine understanding of the concept.
- “We would rather be labelled as ‘vulnerable’ if it meant the offender being sentenced for a hate crime’s maximum term”.
- “The guidance is to be applauded for its clarity on vulnerability”.
- “The terminology is a really difficult conundrum but I think it is addressed very well here”.

Given the wide spectrum of views on this issue, it is clear that this aspect of the Policy could not satisfy all respondents, or all of the wider community. On reflection, we think that the section meets the twin needs of ensuring we make the best use of the law to obtain increased sentences where possible, whilst endeavouring to avoid the use of words that may cause offence to disabled people. We have therefore not made any changes to this section, apart from some minor revisions to the language.

Question 3

Does the section on the social model of disability explain how the CPS applies the model to its own work?

There were 30 responses to this question.

There was a largely positive reaction to the CPS’ commitment to apply the social model of disability to its work. For example:

- “The introduction of the social model of disability is a very positive and progressive step”.
- “We are delighted to see [the social model] being used as the foundation for [the CPS] approach to crimes against disabled people”.

- “We are particularly impressed at the effort made in the disability statement to promote the social model of disability and to avoid reference to vulnerability.”

As a result, we have made no substantive changes to this section. The only change made is a minor revision to the language in the final bullet.

Suggested changes that we have not made included:

- Using a different term, such as “disability rights model”. We disagree, as the social model of disability is an accepted term in the disability and academic community. It is not for the CPS to re-name it.

Question 4

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

There were 30 responses to this question.

Generally, respondents agreed that the explanation of the CPS approach to sentencing and the s.146 uplift is clear and helpful. There was also approval for the Easy-Read version of this section, for presenting complex material in a straightforward manner.

One respondent commented that “I particularly welcome the emphasis upon an increased penalty where the victim is deemed vulnerable”.

Suggested changes that we have not made included:

- That CPS record an increase in sentence due to any of the other aggravating factors in the sentencing guidelines, other than s146 uplifts: we have no functionality on our IT systems to do this.

Main changes as a result of feedback

1. One respondent suggested that there should be greater reference to the Sentencing Council Guidelines and the offence by offence basis on which the statutory uplift under s.146 is determined.

We have now referenced this in the Policy and a more detail explanation is in the legal guidance.

2. We have clarified what a Victim Personal Statement is, and that they are optional.

Question 5

Do you have any further comments on the CPS Policy on Prosecuting Crimes against Disabled People?

There were 31 responses to this question.

A number of respondents welcomed the inclusion of the section on the “Internet and social media”, which highlights online crime. For example:

- “The focus given to this form of crime in the CPS policy is to be commended”.

Suggested changes that we have not made included:

- A change to our definition of “disability” as “any physical or mental impairment”. We have retained it but clarified that this definition is used in the Criminal Justice Act 2003.
- The addition of a section on Restorative Justice. This is covered elsewhere in CPS guidance and it is therefore not included here.

Main changes as a result of feedback

1. We have re-ordered some of the sections, as requested by some respondents. In particular, we have placed the section on “The Social Model of Disability” before the section on “Situational risk and vulnerable victims”, as the correct understanding of vulnerability flows from an appreciation of the Social Model of Disability.
2. One respondent suggested that the policy should not only be published on the internet, as many people with learning disabilities do not use or have access to the internet.

When we publish the policy on our website, we shall provide an EasyRead version. We shall also alert disability support groups so that they may provide access to the policy in appropriate formats to their clients, such as hard copies. We shall also provide brail versions of the policy on request.

3. A number of respondents suggested improvements to the EasyRead version of the policy, which we shall make, such as:
 - Examples of crimes against disabled people.
 - Express more clearly that a sentence may be increased if the offence is a disability hate crime or is otherwise aggravated because disability is a factor in the case.
4. One respondent asked for more information on how to challenge or ask for a review of a case.

We have provided a link to the relevant guidance in the section on “Victims’ Right to Review”.

5. One respondent thought that the “Working with Stakeholders section” is in a confusing place within the Policy.

We have moved it closer to the end of the policy. We have also added academics to the list of stakeholders, as suggested by another respondent.

6. One respondent requested Information on how victims of crime are kept informed of case progress.

We have added a new section on “Case progress”, providing a link to the Code of practice for victims of crime, which contains this information.

7. We have created a new sub-section on “Monitored disability hate crime” to clearly distinguish it from “disability hate crime”; and we have clarified that a case flagged on our system as a disability related incident will not result in a s.146 increased sentence unless the police provide sufficient evidence to prove the “hostility” required for a hate crime.
8. At one respondent’s request, we have clarified that when a victim withdraws a complaint we shall consider the impact on the victim of not proceeding with the case, including the risk of further harm to the victim.

B. Policy Statement on offences involving hostility on the grounds of sexual orientation and gender identity

The consultation on the policy on offences involving hostility on the grounds of sexual orientation and gender identity asked five questions:

1. Does the section on "CPS policy" address the key issues in prosecuting homophobic, biphobic and transphobic crime?
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?
3. Does the section on "Communities affected by hate crime" clearly set out the CPS understanding of the individuals and communities affected?
4. Does the section on "Offending Behaviour" clearly set out the CPS understanding of offending behaviour?
5. Do you have any further comments on the CPS Policy on offences involving hostility on the grounds of sexual orientation and gender identity?

The consultation received 28 responses.

Responses from a Christian perspective

In addition to these 28 responses, we received some 214 from a broadly Christian perspective which were fully considered but have been treated as one respondent in light of the similarities of the issues raised. There were some aspects to these responses which we have been able to take on board which are highlighted below.

- **The law on stirring up hatred is not clear:** this section has been amended to more clearly explain the law. Parliamentary debate in passing the legislation ensured that the offence was limited in scope by removing "insulting" and "abusive". The test in both stirring up hatred offences covering religion and sexual orientation is "threatening".
- **Article 10 issues are not addressed:** we have made reference to the statutory freedom of expression defence in s29J Public Order Act 1986, which makes explicit Parliament's intention to ensure adequate safeguards were present regarding free speech:
"In this Part, for the avoidance of doubt, the discussion or criticism of sexual conduct or practices or the urging of persons to refrain from or modify such conduct or practices shall not be taken of itself to be threatening or intended to stir up hatred."

Responses beyond the consultation brief

A number of responses from a Christian perspective fell outside the consultation brief. The principal issues raised in these responses were:

- **The current law is adequate and hate crime is unnecessary:** this suggests that the policy statement marked a change in law. This is not the case. Hate crime legislation was first introduced in 1930s and more recently in 1998 and 2003.
- **The concept of 'hate crime' undermines equality by giving special privilege to certain groups in society.**
The law protects people from hostility which is based on disability, race, religion, sexual orientation and transgender identity. Parliament passed these laws and it would be for Parliament to consider any proposals for change.
- **It seems to be that simply disagreeing with another point of view is regarded as 'hate' crime.**
Neither the hate crime law nor the CPS Policy suggests that it is a crime to disagree with someone.
- **There was a concern about the ability of families to raise their children according to their faith:**
The CPS cannot prosecute individuals for privately held views. Prosecutions can only be brought in line with legislation and the Code for Crown Prosecutors.
- **The policy is an attempt to stifle freedom of conscience:**
The policy does not attempt to stifle free speech but to explain how we apply the law.
- **Language in law not defined:** the language in the law around hatred and hostility is not defined. By common practice where language is not explicitly defined in legislation, key terms and words used will be given their normal everyday meaning.
- **Protected grounds are limiting:** the law defines hostility on the grounds of religion. This is an inclusive definition including all religions and none, and includes hostility towards someone who is or is perceived to be of Christian faith.
- **Major/minor offending:** The general position of the CPS is that it is more important to prosecute the perpetrator of a more serious crime than someone who may have committed a more minor crime where the former is connected to the latter. This does not allow people to commit crime with impunity; it is an undertaking to prosecute serious crime effectively wherever we can.

General Observations

This section sets out some of the broad themes and issues that recurred in the 28 responses we received, and provides the CPS response to each of these.

The policy was welcomed for its development in a number of areas. For example:

- “We welcome the policy’s recognition of the distinction between homophobic, biphobic and transphobic hate incidents and crimes.”
- “We welcome the inclusion of a concise and easy-to-read bullet point summary outlining the key issues that fall under CPS policy when prosecuting homophobic, biphobic and transphobic crime.”
- “We commend the stance taken by the CPS in publishing these policies which we consider will do much to improve the transparency of decision-making and will therefore be likely to positively promote public confidence in your Service.”
- “We are impressed by the progressive understanding of LGBT diversity demonstrated by this section”
- “We welcome the recognition that hate crime impacts on not only the individual victim but also the wider community.”
- “I particularly like “Prosecutors will apply for appropriate ancillary orders, including restraining orders and for compensation for loss, injury or damage” as I believe on-going persecution of the victim is often likely.”
- “It’s positive that the section on Offending Behaviour references the ability for people to be targeted for a combination of reasons in addition to their sexual orientation or trans identity.”
- “The Panel liked the section on Criminal Investigation, with its emphasis on a proactive approach, and building evidence of hostility.”

Coverage

Many respondents sought clarification as to whom the policy was aiming to cover:

- There was a call for the policy statement to make reference to hostility on the ground of heterosexuality. The policy covers hostility on the grounds of sexual orientation and transgender identity. The policy makes reference to heterosexuality and also highlights those aspects of hostility on the grounds of sexual orientation which are most prevalent. CPS Legal Guidance and associated policy statements reflect the Public Order Act 1986 definition of sexual orientation, which includes heterosexuality.
- Other respondents stated that hate crimes based on sexual orientation and transgender identity should not be dealt with together as they are distinct from each other. We recognise and appreciate the differences between sexual orientation and transgender identity but have kept these two disparate issues together because of the overlaps within offending behaviour. In addition, it is not necessary to know the sexual orientation or transgender identity of a victim as the law is based on the actual **or presumed** sexual orientation

and/or transgender identity of the individual victim. The prosecution will rely on evidence of hostility demonstrated by or motivating the offender.

Outside scope

A number of respondents requested that more detail be provided on specific prosecution issues or offences which are already covered in the separate CPS legal guidance on [Prosecuting Cases of Homophobic and Transphobic crime](#), or in other legal guidance. These included suggestions relating to:

- Changes to the law wider than the hate crime framework;
- Matters relating to police practice, procedures and investigation;
- Change in policy on conditional cautions in relation to hate crime;
- Include hate crime strands not covered by legislation, for example gender based offences which are covered by the CPS Violence Against Women and Girls (VAWG) framework.

Where possible, supporting information will be linked to the Public Statement. (see below).

Some respondents asked for the public statement to cover other issues, such as educating young people and working with schools to raise awareness of hate crime. We have not done so, as this statement is about the CPS approach to prosecuting hate crime. We are however, revising the hate crime schools pack resources which were developed by the CPS North West and provide useful resources for schools to tackle bullying and hate crime. More detail on the hate crime schools packs can be found [here](#).

Revisions

In light of the responses received, we have made a number of further changes to the Policy Statement, including:

- Added an introductory section covering definitions and the scope of the policy.
- Added a policy commitment relating to victims.
- Highlighted and linked the Code for Crown Prosecutors.
- Re-drafted the section on Crimes involving hostility.
- Added detail on free speech in relation to Stirring up hatred.
- Clarified the section on Offending Behaviour.
- In addition to links to relevant Legal guidance, added links to new supporting material.

We have also made some revisions unrelated to responses received, either because of further matters that have come to our attention or simply to clarify the text or correct any inaccuracies. One example is to ensure that the policy makes clear that biphobic hostility is covered by existing legislation.

Summary of Responses to Specific Questions

This section provides a summary of the key points and themes raised in response to each of the questions, and the changes made as a result of the feedback.

Question 1

Does the section on "CPS policy" address the key issues in prosecuting homophobic, biphobic and transphobic crime?

There were 28 responses to this question.

Suggested changes that we have not made included:

Issues relating to freedom of speech should be added to this opening section. We do not agree as the free speech defence is highlighted in the public statement in the section on Stirring up Hatred.

Specific changes as a result of feedback

1. A number of respondents suggested that a point should be added to cover support to victims and witnesses. We agree and have added a reference to this in the section 'CPS Policy'.
2. We have added a specific reference to intersex.
3. A link will be included in all policy statements to the Sentencing Council's website.
4. We have clarified the position on sentence uplift as stated in the Criminal Justice Act 2003 to show that a sentence uplift is not an automatic step within the sentencing; rather it is a power held by the Court.
5. We have amended the statement to ensure consistency in referencing biphobia and biphobic hate crimes

Question 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 were 26 responses to this question.

Suggested changes that we have not made included:

The addition of specific examples of what is acceptable as freedom of speech and what constitutes stirring up hatred. We have not done this, as we do not think it appropriate to define what constitutes an offence beyond the wording of the legislation and what the courts have said. Each case will turn on its own facts. We have however included links to the legal guidance, which contains more detailed information on these offences.

Specific changes as a result of feedback

1. We have amended the statement to accurately state that the law in relation to stirring up hatred on the grounds of sexual orientation only covers 'threatening' behaviour it does not cover 'abusive or insulting' behaviour.
2. We have amended a typographical error to show that the Gender Recognition Act came into force in 2004 not 2014.
3. Following feedback from a number of respondents, the section dealing with "crimes involving hostility..." has been amended and is now titled "Monitored homophobic, biphobic and transphobic crime" and clarifies the flagging definition with the legal framework covered in the next section. The legal framework section now makes it clear that an offence motivated by hostility may be wholly motivated or only motivated in part by hostility.
4. The section has been amended to include the perception of any other person as well as that of the victim.
5. We have made it clearer that stirring up is a separate offence under the Public Order Act 1986.
6. We have clarified the use of the subjective definition of hate crime for flagging and investigation purposes but the need to provide objective evidence of hostility in order to prosecute a crime and satisfy the requirements of the legal framework.

Question 3

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

There were 25 responses to this question.

Suggested changes that we have not made included:

- A number of respondents suggested that we should include definitions of the terms used in relation to gender identity or provide a glossary. We do not

agree that this would be useful and the policy statement could become out of date quickly. The statement outlines our general approach and is not intended to include this level of detail.

Specific changes as a result of feedback

1. We have amended the title of the section to ‘those affected by homophobic, biphobic and transphobic crime’ to reflect the terms and definitions used within the law and have included it as the fourth point in the section on the legal framework.
2. The reference to the public interest test has been amended to more accurately reflect the wording in the Code for Crown Prosecutors.
3. In recognition of the fact that offending behaviour can be drawn out and involve a series of episodes, this section has been amended to acknowledge that hate crime as a series of related incidents can have a devastating impact on both individuals and communities.
4. Reference to intersex has been included as has the term ‘gender fluid’.
A number of respondents noted that this section did not cover the LGBT community. They also suggested that we include more detail on the differences and variations within the LGBT community and show that transgender people are often victims of both homophobic abuse and transphobic abuse. We agree and have amended the section to reflect this.

Question 4

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

There were 26 responses to this question.

Suggested changes that we have not made included:

- Making reference to sentence uplifts in accordance with s.146 of the Criminal Justice Act (2003). We do not agree that this should be referenced in this section and it is covered elsewhere in the policy statement.
- One respondent highlighted that the content of the section may stigmatise LGBT people as prone to engaging in illegal acts such as sex in public places or chemsex parties. This reference has been left in the statement but qualifying language added. The initial inclusion of this text arose out of conversations with community stakeholders; the text is intended to acknowledge the difficulties faced by some and to provide reassurance to those who may continue to suffer criminal behaviour and feel unable to challenge it.

Specific changes as a result of feedback

1. We have added a paragraph on the CPS policy for case flagging, which indicates the importance of the victim's perspective. This has been added to the section 'Monitored homophobic, biphobic and transphobic crime'.
2. One respondent suggested that as social media platforms are constantly evolving and changing, we should revise the statement to reflect this. We agree and have made this amendment.
3. We have amended the statement to include more information on what offending behaviour can look like and where it can occur.
4. Respondents noted the need for the policy to relate to younger people. We agree and have added references to the need to be aware of all relevant circumstances in relation to young offenders and of all appropriate support for young victims. This has been added to the section 'Those affected by homophobic, biphobic and transphobic crime'
5. One respondent highlighted the fact that hate crime can occur in a range of everyday locations including the home, places of work, places of worship, public transport, community venues etc. We agree. A reference to these everyday locations has been added to the Statement.

Question 5

Do you have any further comments on the CPS Policy on offences involving hostility on the grounds of sexual orientation and gender identity?

There were 22 responses to this question.

Suggested changes that we have not made included:

- Including case studies and data: while we acknowledge the usefulness of case studies and data, these are both available in the annual hate crime report. This level of detail is not suitable for a public statement and would quickly become out of date.
- Moving the section on ancillary orders from the 'Prosecution and Sentencing' section to the 'Support' section. We disagree; the ancillary orders are included in the sentencing section to reflect the prosecutors' role in assisting the court at sentence. We think it is best placed in this section.
- The addition of a section on 'the victim's journey' with a focus on special measures and support. We agree that this is important but this is covered in detail in the victim and witness section on the hate crime website and in the victim's code. We have tried to avoid repetition in this statement but have included an acknowledgement of the need to support victims and witnesses in

the opening section of the statement. Links to Victim and Witness material will be added.

Specific changes as a result of feedback

1. We have added reference to our work with other partners with a role in addressing hate crime and to academics in the 'Working with Stakeholders' section.
2. In response to concerns over implementation, we will ensure this is covered on the CPS hate crime webpage.
3. A link will be included to the social media guidelines.

C. Policy Statement on Racially and Religiously Aggravated Hate Crimes

The consultation on the policy on racially and religiously aggravated crime asked five questions:

1. Does the section on "CPS policy" address the key issues in prosecuting racially and religiously aggravated crime?
2. Does the section on "Crimes involving hostility on the basis of race and religion" clearly set out the key definitions and law relevant to the prosecution of these crimes?
3. Does the section on "Communities affected by hate crime" clearly set out the CPS understanding of the individuals and communities affected?
4. Does the section on "Offending Behaviour" clearly set out the CPS understanding of offending behaviour?
5. Do you have any further comments on the CPS Policy on offences involving hostility on racially and religiously aggravated crime?

General Observations

This section sets out some of the broad themes and issues that recurred in the responses we received, and provides the CPS response to each of these.

The policy was welcomed for development in a number of areas. For example:

- "I congratulate you on holding a broad consultation and believe that the transparency of policies and guidance is an important feature of our response to challenges such as hate crime. It is also important in making sure that victims know how serious and committed we are to taking action to prevent and punish these terrible crimes."
- "We warmly support all efforts by UK law enforcement authorities to combat racially and religiously aggravated crime and to use existing relevant legislation and common law offences to that end."
- "We welcome the recognition of the wider community impact of racist and religiously motivated hate incidents and crimes, and the exploration of what kind of communities may be affected".
- "We welcome the recognition of the many forms hate crime can take and reference to repeat offences and intersectional issues."
- "We welcome the recognition of trends, patterns and spikes of incidents, globally and domestically and the impact it can have on heightened risk."
- "We welcome the approach to proactively prosecute and present evidence of racial or religious aggravation and to remind the court of its duty to apply an uplift to sentences in relevant cases."
- "Yes I believe that there is a clear understanding of impacts that hate crime has on individuals and communities. I agree that it is important to recognise

that these types of crime can affect wider communities and not just a small number of individuals;”

- “CPS now understands the nature of criminal antisemitic abuse, the means by which it is promoted and transmitted, and the effect on its victims much better.”
- “We are pleased to see the inclusion of the ‘Internet and Social Media’ section, and we endorse what it seeks to achieve.”

Coverage

Aim of all three policies was to provide a brief summary and cover policy and links to LG

A number of respondents identified the need for more detail on the legal framework in relation to the Crime and Disorder Act 1998 aggravated offences as well as the Public Order Act 1986 offences of stirring up hatred on the grounds of race and religion. The revised text has now rectified this.

Other respondents felt that we should add more detail in relation to the law. Although we have added some text on the law, more detailed explanations are provided in the relevant legal guidance. We have provided links to the guidance.

Whilst it was acknowledged that the law covered hostility on the grounds of faith and no faith under both the Crime and Disorder Act 1998 and the Criminal Justice Act 2003, there was a request to clarify the definition of religion under the Public Order Act 1986 offence of stirring up hatred on the grounds of faith. We have done this, clarifying that the offence can be committed in relation to a group of persons who lack religious belief.

Definitions / Out of Scope

One respondent highlighted the use of different definitions in the policy statement and in the recent government Hate Crime Action Plan. The cross-Government action plan provides a broad reference to the approach on hate crime. The CPS policy cites both the formally agreed definition between the police and the CPS and the definition used in legislation. The cross-Government action plan was produced by the Home Office and DCLG and lies outside the scope of the CPS policy.

The need for training across the courts and the police was raised but was clearly out of scope of the CPS policy statement.

Revisions

In light of the responses received, we have made a number of further changes to the Policy Statement, including:

- Added a policy commitment relating to victims.

- Highlighted and linked the Code for Crown Prosecutors.
- Clarified the section on Crimes involving hostility.
- Added the free speech sections from the Stirring up hatred legislation.
- Clarified the section on Offending Behaviour.
- In addition to links to relevant Legal guidance added links to new supporting material.

We have also made some revisions unrelated to responses received, either because of further matters that have come to our attention or simply to clarify the text or correct any inaccuracies.

Summary of Responses to Specific Questions

This section provides a summary of the key points and themes raised in response to each of the questions, and the changes made as a result of the feedback.

Question 1

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

There were 29 responses to this question.

Suggested changes that we have not made included:

- The suggestion that a link between this and the other forms of hate crime needs to be explicitly acknowledged in the section on CPS policy was rejected, as the issue is covered later on the document under "Offending Behaviour."

Specific changes as a result of feedback

1. Suggestions were made in relation to the explanation of the sentence uplift. We have added text to clarify both the law and the process of seeking an increase in sentence.
2. In response to comments regarding the law on 'stirring up hatred', references are now included to both Parts III and IIIA Public Order act 1986 for clarity and for consistency with the preceding overview of the CDA aggravated offences and s.145 CJA sentence uplift provisions.
3. The wording with regards to stirring up hatred has been amended to better reflect the wording in the Public Order Act 1986; and reference is made to s.29J, which protects freedom of expression.
4. A link has been included in all policy statements to the Sentencing Council's website.
5. References to all the specific racially and religiously aggravated offences under CDA 1998 have been included in the policy.

Question 2

Does the section on “Crimes involving hostility on the grounds of race or religion” clearly set out the key definitions and law relevant to the prosecution of these crimes?

There were 24 responses to this question.

Suggested changes that we have not made included:

- A suggestion was made that homophobic comment was perhaps acceptable in the context of religion. We do not accept this. The policy statement includes an amended section dealing with the law on stirring up hatred, which covers the statutory protection of freedom of expression.
- Suggestions were made that we should add more detail in relation to the law. Although we have added some text on the law, more detailed explanations are provided in the relevant legal guidance. We have provided links to the guidance.

Specific changes as a result of feedback

1. References to the ‘two definitions’ for the reporting and prosecution of hate crime have been removed, to provide greater clarity.
2. The section now explains that the law on stirring up racial hatred covers words or behaviour intended to stir up racial hatred, or where, in all of the circumstances, racial hatred is likely to be stirred up.
3. The text has been amended to include reference to the dictionary definitions of hostility.

Question 3

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

There were 22 responses to this question.

Suggested changes that we have not made included:

- The suggestion that the policy statement should do more to support prosecutors was rejected on the basis that Legal Guidance provides that level of support along with operational guidance and training.
- We did not accept the need to include reference to presumed membership of a racial or religious group or association with members of the group in question, as this point is already covered elsewhere in the statement.
- It was suggested that the policy should include more detailed reference to the experience of particular religious groups. Since the Policy is intended to cover all religions, we do not think it beneficial to emphasise some and not others

The Policy does make clear that the focus of a hate crime prosecution remains on the hostility demonstrated or which at least in part motivates the offending behaviour. Intra-community hostility is also covered by reference to sectarianism and to converts.

Specific changes as a result of feedback

1. The text has been amended to clarify that religious hatred under the Public Order Act 1986 covers hatred against both those with a religious belief or a lack of religious belief.
2. The statement now provides illustrations of those persons who might be impacted by hate crimes. This point is included under the section 'The legal framework for racially and religiously aggravated crime'.

Question 4

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

There were 23 responses to this question.

Suggested changes that we have not made included:

- It was suggested that we should explain how the CPS will keep up to date with social media platforms. We do not consider that this level of detail is required in the Policy Statement.
- The suggestion to list other offences outside of those specific offences in 29-31 of CDA 1998 and the stirring up offences is not accepted as we have already made clear in the policy that s145 CJA 2003 covers all other offences.
- One respondent requested more detail in relation to the phenomenon of reporting spikes. Although the Policy does address spikes in offending, the policy is not intended to provide detailed analysis of such phenomena. One suggestion related to the fact that racial abuse is grossly offensive and should be prosecuted as such online and offline. The term “grossly offensive” has a particular meaning within the communications legislation, which is used for prosecuting some offences carried out via social media. The meaning of “grossly offensive” in this context is explained in more detail in the social media guidelines, which are linked to the policy statement.

Specific changes as a result of feedback

1. Links to case material on the Hate Crime Webpage will be added to the text.

2. We have clarified the CPS' experience in prosecuting these cases.
3. The section has been amended to include reference to everyday locations which are often the places for hate crime offending.
4. The text has been amended to reflect the CPS practice of accurate recording of hate crime at as early a point as possible.
5. The section now clarifies that the law includes offending behaviour which is motivated in part by hostility.
6. Reference is made to CPS policies relating to the need to inform the victim in writing to explain any decision to drop or significantly alter charges. Specifically, in relation to racially and religiously aggravated offences, this will involve the offer of a meeting with the victim.

Question 5

Do you have any further comments on the CPS Policy on offences involving hostility on race or religion?

There were 22 responses to this question.

Suggested changes that we have not made included:

- Support needs available before, during and after court appearance are largely led by other agencies and the policy statement is not the best place to cover all such arrangements. Relevant links will however be added to the text.

Specific changes as a result of feedback

1. Links are included to relevant guidance on victim support.
2. The policy now makes clear that prosecutions will only proceed where the public interest is met and continues to be met in light of any changed circumstances.
3. The section on working with stakeholders is amended to include reference to the value of working with academics.
4. Additional links are provided to existing CPS material covering hate crime, what it is, and how to report. This information is aimed at both individuals and first line service providers who may be the first to hear about a hate crime.

Next Steps

The interim Policy Statements have now been replaced by the final Policy Statements, which comes into effect on 21 August 2017, and are published with this Summary:

[Public statement on prosecuting racist and religious hate crime](#)

[Public statement on prosecuting homophobic, biphobic and transphobic hate crime](#)

[Public statement on prosecuting disability hate crime and other crimes against disabled people](#)

We are also publishing revised versions of the following Legal Guidance in light of the Policy Statements:

[Legal Guidance on Prosecuting Disability Hate Crime](#)

[Legal Guidance on Prosecuting Cases of Homophobic, Biphobic and Transphobic Crime](#)

[Legal Guidance on Prosecuting Racially and Religiously Aggravated Crime](#)

Conclusion

We are very grateful to everyone who responded to the consultation. We are content that the responses and analysis have led us to make changes that have resulted in clearer, improved guidelines.

Annex A

Source of the Responses

A. Crimes against Disabled Persons

ACADEMIC	Jane Healy	Middlesex University
	Seamus Taylor CBE	Maynooth University
	Jemma Tyson	University of Portsmouth
	Dr Mark Walters	University of Sussex
CPS	Mrs Sally Eluned Aitken	Hate Crime Scrutiny Panel Member
	Gill Riley	CIP Panel Member
	David Chrimes	CPS Disabled Staff Network
	Jude Watson	CPS VAWG
	Caroline Airs	Disabled people events
INDIVIDUAL	Anton Brooks	
	Mrs B M Wiles	
	Catherine Poulton	
	David Gillon	
	Elizabeth Bridcut	
LEGAL	Leigh Webber	LCCSA
	The Rt Hon Lord Justice Fulford	Royal Courts of Justice
	Aaron Dolan	Criminal Bar Association
	Robert Bourns	The Law Society
ORGANISATION	Miriam Binder	Disabled People Against Cuts
	Jill Davies	Mental Health Foundation
	Andie Gbedemah	#ImWithSam campaign
	Bella Travis	Mencap
	Stephen Brookes MBE	Disability Hate Crime Network
	Billy Davis	Hft
	Henrietta Doyle	Inclusion London
	Penny Parker	Equal Lives
	Miss Sally Keys	The Lawnmowers Independent Theatre Company
	Deko Aden	Walsingham Support
	Ian Atkinson	Gateshead Access Panel
	Pete Morgan	PASAUK
	30 individuals from	Dimensions UK

	workshops	
PUBLIC SECTOR	PS 08401 Kathryn Crompton	Greater Manchester Police
	Tom Rice	Lexden Hospital
	Rosamund Ridley	Office of Cumbria Police and Crime Commissioner
	Nathan Hazlehurst	City of Wolverhampton Council
	Jon Carling	Office of Durham Police and Crime Commissioner
	David Dove	Durham Police

Annex B

Source of the responses

Homophobic, Biphobic and Transphobic Crime

ACADEMIC	Dr Mark Walters	University of Sussex
	Dr Susann Wiedlitzka	University of Sussex
CPS	Geoff Carr	OPSU
	Caroline Airs	CPS North East Panel
	Jude Watson	CPS VAWG team
	Alison Plant	OPSU
INDIVIDUAL	Cherry Austin	
	Anton Brookes	
	Catherine Poulton	
	Jean Molloy	
	Mark Dykes	
	P. V. Ward	
LEGAL	Leigh Webber	LCCSA
	Adrian Fulford SPJ	Royal Courts of Justice
	Aaron Dollar	Criminal Bar Association
ORGANISATION	Di Cunningham	Pride in Football
	Nick Antjoule	Galop
	Gill Riley	Neighbourhood Watch
	Christl Hughes	GIRES
	Jackie Driver	EHRC
	Rachel Hodges	LGB&T Partnership
	Tom Morrison	Stonewall
	Vicky Worthington	LGBT Consortium
PUBLIC SECTOR	Jon Carling	Office of the Durham PCC
	PS 08401 Kathryn Crompton	Greater Manchester Police
	Tracy Lack	Health Watch Nottingham
	Nathan Hazelhurst	City of Wolverhampton Council
	Pete Morgan	Practitioner Alliance for safeguarding Adults
	David Dove	Durham Constabulary

Annex C

Source of the responses: Racially and Religiously Aggravated Crime

GOVERNMENT	Rt Hon Elizabeth Truss MP	Secretary of State for Justice and Lord Chancellor
ACADEMIC	Dr Abenaa Owusu-Bempah	City of London University
	Dr Mark Walters	University of Sussex
	Dr Susann Wiedlitzka	University of Sussex
CPS	Geoff Carr	OPSU
	Jude Watson	VAWG Team
	Alison Plant	OPSU
	Caroline Airs	In consultation with Refugee Forum North East and North East Racial Equality Forum
		National Black Crown Prosecutors Association
INDIVIDUAL	Alexander Baron	
	D Shayler	
	Andrew Todd	
	Leigh Webber	
LEGAL	Aaron Dolan	The Criminal Bar Association
	Stephanie Dilloway	Youth Justice board
	Adrian Fulford SPR	Royal Courts of Justice
ORGANISATION	Jane Jones	Dorset Race Equality Council
	Jackie Driver	EHRC
	Gill Riley	
	Esther Maynard	Race Equality Matters
	Jonathan Turner	UK Lawyers for Israel
	Joanna Gregson	The Traveller Movement
	Shay Clipson	National Alliance of Gypsy, Traveller and Roma Women
	Stephen Silverman	Campaign Against Antisemitism
	Michael Whine	Community Security Trust
PUBLIC SECTOR	PS 08401 Kathryn Crompton	Greater Manchester Police
	Jon Carling	Office of the Durham PCC
	Pete Morgan	Practitioner Alliance for Adult Safeguarding
	David Dove	Durham Constabulary

	Nathan Hazelhurst	City of Wolverhampton Council
--	-------------------	----------------------------------