Guidelines on Prosecuting Cases Involving Communications Sent via Social Media

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Introduction

1. “Social media” commonly refers to the use of electronic devices to create, share or exchange information, ideas, pictures and videos with others via virtual communities and networks.

2. Communications sent via social media may involve the commission of a range of existing offences against the person, public justice, sexual or public order offences. They may also involve the commission of communications offences (“the
Protective Marking – Official communications offences”) contrary to section 1 Malicious Communications Act 1988 (“section 1”) and / or section 127 Communications Act 2003 (“section 127”). These alternative possibilities are dealt with in Part A. Broader issues in social media offending of whatever form are dealt with in Part B.

3. The following proposed decisions (or decisions, where CPSD with DCCP / CCP approval, has taken them given the urgency) must be referred to the Director’s Legal Advisor for approval:

a. Any proposal to charge a communications offence where the allegation is one of gross offence, obscenity or indecency:
   i. Section 1(1)(a)(i) and 1(1)(b);
   ii. Section 127(1) save for the reference to “menacing”.

b. Any proposal to charge or NFA any communications offence (section 1 or 127) where directed towards a person of public prominence.

4. Accordingly, decisions to NFA communications offences other than those relating to persons of public prominence do not require referral to the DLA. Decisions to charge offences other than those relating to persons of public prominence, contrary to section 1(1)(a)(ii) and (iii) and section 127(1) (menacing only) and (2), do not require referral to the DLA.

5. For approval of decisions, please contact the Director’s Legal Advisor’s Team DLA.Team@cps.gov.uk. For policy enquiries, contact HQPolicy@cps.gov.uk.

**Part A: Offences - Substantive**

6. Where social media is used to facilitate a substantive offence, prosecutors should proceed under the substantive offence in question, having regard as appropriate to the Hate Crime and VAWG sections below.

7. The following are potential offences against the person, against public justice or sexual offences, with links to the relevant guidance, which prosecutors may consider:

   • Making a threat to kill, contrary to section 16 Offences Against the Person Act 1861
   • Making a threat to commit criminal damage, contrary to section 2 Criminal Damage Act 1971
   • Harassment or stalking, contrary to sections 2, 2A, 4 or 4A Protection from Harassment Act 1997
   • Controlling or coercive behaviour, contrary to section 76 Serious Crime Act 2015
   • Blackmail, contrary to section 21 Theft Act 1968
   • Juror misconduct, contrary to sections 20A-G Juries Act 1974*  
   • Contempt of court, contrary to the Contempt of Court Act 1981*  
   • Publishing material which may lead to the identification of a complainant of a sexual offence, contrary to section 5 Sexual Offences (Amendment) Act 1992*  
   • Intimidating a witness or juror, contrary to section 51 Criminal Justice and Public Order Act 1994  
   • Breach of automatic or discretionary reporting restrictions, contrary to section 49 Children and Young Persons Act 1933 and section 45 Youth Justice and Criminal Evidence Act 1999

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• Breach of a restraining order, contrary to section 5 Protection from Harassment Act 1997

*Note that these offences require Attorney General’s consent to prosecute and should be referred to the DLA Team prior to any such submission

• Disclosing private sexual images without consent (“revenge pornography”), contrary to section 33 Criminal Justice and Courts Act 2015
• Causing sexual activity without consent, or causing or inciting a child to engage in sexual activity, or sexual communication with a child contrary to sections 4, 8, 13, 15A Sexual Offences Act 2003
• Taking, distribution, possessing or publishing indecent photographs of a child, contrary to section 1 Protection of Children Act 1978

Allegations contrary to Part III Public Order Act 1986 should be referred to Special Crime and Counter Terrorism Division.

8. The act of setting up a false social networking account or website, or the creation of a false or offensive profile or alias could amount to a criminal offence, depending on the circumstances. For example:

• The former estranged partner of a victim creates a profile of the victim on a Facebook page, to attack the character of the victim, and the profile includes material that is grossly offensive, false, menacing or obscene.

• A "photoshopped" (digitally edited) image of a person is created and posted on a social media platform. Although many photoshopped images are humorous and inoffensive, others are disturbing or sinister, such as the merging of a person’s face with the nude body of another to create obscene images, which may be accompanied by offensive comment.

9. Depending on the circumstances, this may be a way in which one of the offences above are committed, or it may be a way in which a communications offence (as these include “false” communications or messages) is committed.

Part A: Offences – Communications Offences

10. Where social media is not being used to commit another substantive offence, prosecutors may turn to consider the communications offences available.

Selection of Charges

11. The first question for prosecutors to consider is identifying the appropriate offence. Section 1 is an either-way offence. Upon conviction on indictment a defendant may face a maximum sentence of 2 years’ imprisonment and/or an unlimited fine. Section 127 is a summary only offence, but with a statutory provision as to time limit (see below).

12. In the case of communications which are not via a public electronic communications network (whether other electronic communications, or letters), section 1 will be the only available offence.
13. For all allegations concerning a public electronic communications network (a service provided for and funded by the public, for the benefit of the public, and thus catching the internet and mobile phone networks widely available to the public: Chambers v DPP [2012] EWHC 2157), the starting point should be section 127. It will often (but not always) be the case that section 127 will meet the requirements of section 6 of the Code for Crown Prosecutors. Absent the need to provide to the court greater powers of sentence, it is likely to be the appropriate charge for public electronic communications network offences.

14. Where section 1 is being considered, however, prosecutors should note:

• The mental element of this offence is that the suspect’s purpose, or one such purpose, is that the message should cause distress or anxiety to the recipient or to any other person to whom it is intended that the message or its contents or nature should be communicated. This is a higher standard than that for section 127. In Chambers, the Court confirmed that the section 127 offence involves proof of an intention that the message should be of a menacing character or alternatively, proof of awareness or recognition of a risk at the time of sending the message that it may create fear or apprehension in any reasonable member of the public who reads or sees it. It is submitted that this mens rea applies equally to the other elements of this offence.

• Section 1 requires the sending of a letter, electronic communication or article of any description to another person. Depending on the facts of the case, a social media communication which is merely a blog or a comment posted on a website may not suffice as sending to another. Prosecutors should consider the evidence that the communication was addressed (either by name or in terms) to a specific recipient, and how likely that the specific recipient was to receive it (did they also have a Twitter or Facebook account?) Section 127 requires only that the message or other matter is sent, and so this will cover the posting of a message, and indeed re-posting or other sharing of a communication.

15. Those who encourage communications offences, for instance by way of a coordinated attack on a person, may be liable to prosecution under the provisions of sections 44 to 46 Serious Crime Act 2007.

**Section 127 Time Limit**

16. Notwithstanding that section 127 is a summary offence, section 127(5) provides:

"An information or complaint relating to an offence under this section may be tried by a magistrates' court in England and Wales or Northern Ireland if it is laid or made—

a. before the end of the period of 3 years beginning with the day on which the offence was committed, and
b. before the end of the period of 6 months beginning with the day on which evidence comes to the knowledge of the prosecutor which the prosecutor considers sufficient to justify proceedings."

17. Subsection 7 provides that a certificate of a prosecutor as to the date on which evidence described in subsection (5)(b) or (6)(b) came to his or her knowledge is conclusive evidence of that fact. The effect of this is as follows:
a. Careful consideration should be given to when evidence came to the knowledge of the prosecutor (for this definition, see below) sufficient to justify proceedings;
b. This means evidence sufficient to satisfy the prosecutor that the Full Code Test is met;
c. The certificate issued means no evidence will be heard on the issue and thus the prosecutor does not have to give evidence about their knowledge;
d. This decision remains subject to public law principles i.e. it must remain an assessment of evidence which a reasonable prosecutor would be entitled to reach, and did reach.

18. The court in R v Woodward [2017] EWHC 1008 (Admin) considered the principles concerning a time limit similar (but not identical) to that provided for by section 127(1). Woodward concerned section 31(1) of the Animal Welfare Act 2006 which uses the phrase “prosecutor thinks” rather than “prosecutor considers”. This is unlikely to be a material difference.

19. The Court in Woodward held:

a. A prosecutorial decision cannot be avoided or delayed by sitting on information.
b. There is a distinction to be drawn between investigator and prosecutor. The latter “is the individual with responsibility for deciding whether a prosecution should go forward whose thoughts and beliefs are relevant.”
c. That person’s decision is not whether there is a prima facie case, it is an evaluative assessment of whether it is correct to commence a prosecution.

20. The following is proposed when determining whether an offence is time-barred, assuming the decision to charge is within 3 years of the commission of the alleged offence.

21. The first question is “who is the individual with responsibility for deciding whether a prosecution should go forward?” The taking of a decision by the police to charge without reference to the CPS, or alternatively the submission by the police of a report seeking a charging decision, is likely to be strong evidence of who bears the responsibility. If neither have occurred support may come from the Director’s Guidance on Charging. The police may charge summary only offences irrespective of plea, and either way offences where a guilty plea is anticipated, save for offences with a hate crime element. In those cases, absent indication to the contrary, the Police should be treated as the decision-maker; otherwise the CPS should be treated as the decision-maker.

22. The second question is “at what point did this person consider they had sufficient evidence to justify proceedings?” It is important that prosecutors record in charging decisions, memos to the police, or otherwise, whether they have sufficient evidence or if not; what is required to reach this position (distinguishing between material essential and desirable in order to reach a decision); and by when. The decision is not a prima facie decision: it is a question of having sufficient evidence to make a decision in accordance with the Code for Crown Prosecutors.

Article 10

23. Article 10 of the European Convention on Human Rights provides the following in
(1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

(2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

24. However, Article 17 provides:

“Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.”

25. Therefore, every decision made in accordance with the Code for Crown Prosecutors in communications offences cases must be compliant with Article 10 (see section 6(1) Human Rights Act 1998) unless the prosecutor is wholly satisfied that Article 17 provides that Article 10 will not be engaged at all. Freedom of expression aimed at destroying or limiting, for instance, a person’s right to a private and family life, or their peaceful enjoyment of property, or their enjoyment of rights in a way discriminatory of them compared to others, will not engage Article 10.

Evidential Stage of the Code for Crown Prosecutors
26. As to actus reus of the section 127 offence, the message must as a matter of fact be grossly offensive, or of an indecent, obscene or menacing character. “Indecent or grossly offensive” are ordinary English words: Connolly v DPP [2007] 1 ALL ER 1012. Obscene also has, absent a statutory definition, an ordinary meaning: shocking, lewd and indecent matter, see Anderson [1972] 1 QB 304. Menacing means creating a sense of apprehension or fear: Chambers. An allegation may meet one or more of these elements; prosecutors should consider each and be clear in relation to which the prosecution case is to be put (allowing the court, as appropriate, to return a verdict reflecting the different ways in which the offences can be committed).

27. Prosecutors should only proceed with cases under section 1 or section 127 where the evidence plainly satisfies these terms such that interference with the freedom of expression is unquestionably prescribed by law, is necessary and is proportionate. Each case must be decided on its own facts and merits and with particular regard to the context of the message concerned. Context includes: who is the intended recipient? Does the message refer to their characteristics? Can the nature of the message be understood with reference to a news or historical event? Are terms which require interpretation, or explanation by the recipient, used? Was there other concurrent messaging in similar terms so that the suspect knowingly contributed to a barrage of such messages?

28. Prosecutors should only proceed if they are satisfied there is sufficient evidence that the communication in question is more than (i.e. crosses the high threshold necessary to protect freedom of expression, even unwelcome freedom of expression):

a. Offensive, shocking or disturbing; or
b. Satirical, iconoclastic or rude comment; or
c. The expression of unpopular or unfashionable opinion about serious or trivial matters, or banter or humour, even if distasteful to some or painful to those subjected to it; or
d. An uninhibited and ill thought out contribution to a casual conversation where participants expect a certain amount of repartee or “give and take”; or
e. This is with reference to “contemporary standards... the standards of an open and just multi-racial society”, assessing whether the particular message in its particular context is beyond the pale of what is tolerable in society* adopting the observations, as guidance illuminating these terms, in DPP v Collins [2006] UKHL 40, Chambers, Smith v ADVFN [2008] 1797 (QB).

29. The CPS’ policy is to prosecute hate crime fairly, firmly and robustly. Hate crimes often have a disproportionate impact on the victim because they are being targeted for a personal characteristic. Prosecutors will take into account any hate crime context as appropriate when assessing whether the high threshold is met.

Public Interest Stage of the Code for Crown Prosecutors

30. Prosecutors must be satisfied that a prosecution is required in the public interest and, where Article 10 is engaged, this means on the facts and merits of the particular case that it has convincingly been established that a prosecution is
Protective Marking – Official
necessary and proportionate. Particular care must be taken where a criminal sanction is contemplated for the way in which a person has expressed themselves on social media.

31. Prosecutors therefore should, where relevant, have particular regard to:

a. The likelihood of re-offending. The spectrum ranges from a suspect making a one-off remark to a suspect engaged in a sustained campaign against a victim;
b. The suspect’s age or maturity. This may be highly relevant where a young or immature person has not fully appreciated what they wrote;
c. The circumstances of and the harm caused to the victim, including whether they were serving the public, whether this was part of a coordinated attack (“virtual mobbing”), whether they were targeted because they reported a separate criminal offence, whether they were contacted by a person convicted of a crime against them, their friends or family;
d. Whether the suspect has expressed genuine remorse;
e. Whether swift and effective action has been taken by the suspect and/or others for example, service providers, to remove the communication in question or otherwise block access to it;
f. Whether the communication was or was not intended for a wide audience, or whether that was an obvious consequence of sending the communication; particularly where the intended audience did not include the victim or target of the communication in question;
g. Whether the offence constitutes a hate crime (which may mean Article 10 is not engaged, but may also be a factor tending in favour of a prosecution in the public interest).

Evidence of Victims

32. If a case is charged, consideration should be given as to whether it is necessary to call the victim to give evidence in the prosecution. The section 1 and 127 offences are committed when a message is sent. No proof of receipt of the message is required. No proof that it caused gross offence or fear or apprehension is required. Accordingly it is not necessary to call the victim to prove these matters, not being elements of the offence, and indeed prosecutors should consider whether such evidence is admissible if it is solely mere opinion as to the nature of the message, when it is for the tribunal of law and fact to assess its character. A victim may give other relevant evidence, for instance, to explain the words used where their meaning is outside the knowledge of the tribunal, or to explain it within the context of other conduct targeted at the victim. Prosecutors should have regard to the views of a victim and to the evidence that they can give before deciding whether to require them to give evidence. If a victim is to give evidence, prosecutors should have regard to the availability of special measures in support of that evidence.

33. Whether or not a victim is to be required to give evidence, it is a reasonable line of enquiry to seek that evidence. A decision not to call a victim to give evidence should be reached having taken reasonable steps to obtain a victim statement or otherwise their account, and then considering it in the course of the decision-making above. A victim’s evidence about whether they were caused gross offence or fear or apprehension will be a relevant consideration (potentially
Protective Marking – Official highly relevant, depending on the other evidence in the case) to whether the message had that quality. If a victim is not to be called to give evidence their statement should not be served as evidence but as unused material, usually by provision to the defence of the statement itself; but at any rate with a satisfactory entry appearing on the schedule of non-sensitive unused material.

34. This does not mean that a victim’s evidence cannot be put before the court at sentence. This is a matter of being clear with the defence and the court as to the purpose to which the statement is to be put. If it cannot assist the court as to the matters it must decide at trial, it should not be adduced. But if it can assist the court at sentence then a prosecutor is entitled to draw its content, having indicated this intention to the defence, to the court’s attention.

Part B: Issues in Social Media Offending

35. This Part addresses various issues that commonly arise in social media cases and provides guidance on the approach to be taken in relation to each issue.

Violence Against Women and Girls (VAWG)

36. The Violence against Women and Girls (VAWG) Strategy provides an overarching framework to address crimes that have been identified as being committed primarily, but not exclusively, by men against women. The characteristic nature or context of VAWG offending is usually that the perpetrator exerts power and / or a controlling influence over the victim's life.

37. The approach recognises VAWG as a fundamental issue of human rights, drawing on the United Nations conventions that the UK has signed and ratified. VAWG is recognised worldwide, and by the UK Government.

38. The CPS recognises that men and boys are also victims of VAWG crimes, including most of those offences highlighted in this section. All our VAWG policies are inclusive and are applied fairly and equitably to all perpetrators and victims of crime, irrespective of their gender.

39. Prosecutors should be familiar with the legal guidance on Violence against Women and apply the principles set out in the guidance in appropriate cases. For practical assistance in dealing with casework preparation and case presentation, reference should be made to the VAWG section of the Casework Hub.

40. Prosecutors are reminded of the potential use of social media to exert power and control in VAWG offences. For example, in cases of so-called 'honour' based violence and forced marriage, threats to post personal information on social media, in order to bring shame upon someone, can be used to silence and coerce a victim.

41. Improving the safety, support and satisfaction of victims and witnesses is a key objective of the VAWG Strategy. In progressing cases, prosecutors should
be aware of the particular difficulties faced by VAWG victims and the sensitivities involved in supporting them.

42. Key characteristics of VAWG offending that may impact on case handling include:

• The perpetrator and victim are often known to one another and often there is a controlling relationship.
• Levels of violence often escalate e.g. from harassment to murder.
• The victim may have additional issues to consider before even reporting an offence to the police e.g. financial dependency; joint children.
• Offences may range from abuse by a single perpetrator to being part of international organised crime.
• There may be delays in reporting due to fear, intimidation and trauma.
• There may be an increased likelihood of repeat victimisation and victim intimidation.
• There is potential for retractions and non-attendance at court.

Cyber-enabled VAWG Offences

43. The landscape in which VAWG Crimes are perpetrated is changing. The use of the internet, social media platforms, emails, text messages, smartphone apps (for example, WhatsApp; Snapchat), spyware and GPS (Global Positioning System) tracking software to commit VAWG offences is rising. Online activity is used to humiliate, control and threaten victims, as well as to plan and orchestrate acts of violence.

44. Some of this activity is known as "cyberstalking". There is no legal definition of cyberstalking, nor is there any specific legislation to address the behaviour. Generally, cyberstalking is described as a threatening behaviour or unwanted advances directed at another, using forms of online communications. Cyberstalking and online harassment are often combined with other forms of 'traditional' stalking or harassment, such as being followed or receiving unsolicited phone calls or letters. Examples of cyberstalking may include:

• Threatening or obscene emails or text messages.
• Spamming, where the offender sends the victim multiple junk emails.
• Live chat harassment or 'flaming', a form of online verbal abuse.
• "Baiting" or humiliating peers online by labelling them as sexually promiscuous.
• Leaving improper messages on online forums or message boards.
• Unwanted indirect contact with a person that may be threatening or menacing such as posting images of that person's children or workplace on a social media site, without any reference to the person's name or account.
• Posting photoshopped images of persons on social media platforms (see section on False profiles for further details).
• Hacking into social media accounts and then monitoring and controlling the accounts.
• Sending electronic viruses.
• Sending unsolicited email.
• Cyber identity theft.

45. For further information Prosecutors should refer to the section on The impact
Protective Marking – Official
and dynamics of domestic abuse in the Domestic Abuse Guidelines for
prosecutors.

46. Whether any of these cyber activities amount to an offence will depend on
the context and particular circumstances of the action in question and the
offences available. The guidance on Harassment and stalking, Controlling and
Coercive behaviour and Disclosing private sexual images without consent may
be relevant to cyberstalking.

Social Media VAWG Offences

47. Although many VAWG social media offences may be sufficiently serious to
be prosecuted as a substantive offence, there may be some instances when a
prosecution may be brought as a communications offence i.e. communications
that are grossly offensive, indecent, obscene or false.

48. For instance, communications that contain images or videos of women with
very serious injuries, or of women being raped, or of women being subjected to
sadistic acts of violence, accompanied by text that suggests that such assaults /
rape / acts are acceptable or desirable may well, depending on the context and
circumstances, be considered grossly offensive.

Non-social Media VAWG Offences

49. Domestic abuse is likely to become increasingly frequent and more serious
the longer it continues. Therefore cases may involve evidence of social media
offending, such as harassment, cyberstalking, or controlling or coercive behaviour
through texts and emails, followed by an escalation to more serious non-social
media offending, such as physical assaults. Prosecutors will need to assess
whether it is appropriate
to charge both types of offending, or whether the overall criminality is
sufficiently addressed by charges reflecting only the more serious offending.
Where only the more serious offending is charged, it may be possible to
adduce in evidence the social media activity, such as controlling behaviour,
as background context.

Flagging

50. All domestic abuse cases should be identified on CMS and all cases should
be flagged as "vulnerable / intimidated victim".

Hate Crime

51. The CPS approach to hate crime is underpinned by a number of UN treaties
and conventions to which the UK is a party, and UN declarations on hate crime,
which
the UK supports. These include the International Convention on the Elimination of
All Forms of Racial Discrimination (1965), the Convention on the Rights of
Persons with Disabilities (2006), the Universal Declaration of Human Rights
52. The CPS views all hate crime seriously, as it can have a profound and lasting impact on individual victims, undermining their sense of safety and security in the community. By dealing robustly with hate crime, we aim to improve confidence in the criminal justice system and to increase reporting of hate crime.

53. Hate crime covers offences and sentences that are aggravated by reason of the victim's race, religion, disability, sexual orientation or transgender identity.

Social Media Hate Crime Offences

54. The high threshold at the evidential stage and the public interest and ECHR considerations set out above apply to social media communications offence hate crime cases, as they do to other cases. However, as stated above in the section on "The Public Interest", prosecutors should also consider in particular paragraph 4.12(c) of the Code for Crown Prosecutors, which states that:

"Prosecutors must also have regard to whether the offence was motivated by any form of discrimination against the victim's ethnic or national origin, gender, disability, age, religion or belief, sexual orientation or gender identity; or the suspect demonstrated hostility towards the victim based on any of those characteristics. The presence of any such motivation or hostility will mean that it is more likely that prosecution is required."

55. When assessing communications that appear to be motivated by such discrimination or demonstrate such hostility, prosecutors should be alert to any additional reference or context to the communication in question. Such references or context may sometimes elevate a communication that would otherwise not meet the high threshold to one that, in all the circumstances, can be considered grossly offensive. For instance, a reference within the communication to a recent tragic event, involving many deaths of persons who share any of the protected characteristics.

56. Hate crime messages may sometimes use language that prosecutors are not familiar with, but which may cause gross offence to those to whom it relates. Prosecutors should ensure that they fully understand the meaning and context of particular language or slurs used, so that they can properly assess the degree to which it may cause offence. To do so, further information may be sought from a complainant or from relevant community groups.

57. Both domestic and European case law have addressed the issue of Article 10 and racist / religious hate crime speech:

• DPP v Collins confirmed that it is consistent with Article 10 to prosecute a person for using the telecommunications system to leave racist messages. Effect must be given to Article 17 of the convention, which prohibits the abuse of any Convention rights, as held in Norwood v the UK (2004) 40 EHRR SE 111.
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- The European Commission has held that extreme racist speech is outside the protection of Article 10 because of its potential to undermine public order and the rights of the targeted minority: Kuhnen v Germany 56 RR 205.

- The ECtHR has confirmed that Holocaust denial or revision is removed from the protection of Article 10 by Article 17: see Lehideux and Isorni v France [2000] 30 EHRR 665; and M'Bala M'Bala v France (application no. 25239/13), which ruled that a blatant display of hatred and anti-Semitism disguised as an artistic production (comic performance), even if satirical or provocative, was not protected by Article 10.

**Sentencing Uplift**

58. Sections 145 and 146 of the Criminal Justice Act 2003 provide for an increased sentence for hate crime offending. The provisions apply to communications offences where the defendant demonstrates hostility to the victim based on the victim's protected characteristic (race, religion, disability, sexual orientation or transgender identity). See further the legal guidance on Prosecuting cases of disability hate crime, Prosecuting cases of homophobic and transphobic hate crime and Prosecuting cases of Racist and religious crime.

**Flagging**

59. Hate crime cases should be identified at an early stage and flagged on CMS. See the relevant hate crime legal guidance for the CPS definition of hate crimes, which are dependent on the perception or belief of the victim or another person. Where the definition is satisfied, offences should be flagged as hate crimes, regardless whether they are charged as such.

**Ancillary Orders**

60. Prosecutors must consider ancillary orders upon conviction (and in the case of restraining orders, upon acquittal) following conviction of substantive offences, in order to prevent re-offending by the most serious and persistent offenders. These may include:

- Criminal Behaviour Orders
- Restraining Orders

61. The police should also be invited to consider Prevention Orders and Domestic Violence Protection Notices and Orders.

62. Case law relating to Sexual Harm Prevention Orders provides useful guidance on the key principles to consider when imposing requirements relating to internet use and access. In particular, terms which are necessary and proportionate should be carefully drafted. R v Smith [2011] EWCA Crim 1772, a case involving the predecessor to SHPOs and computer-based prohibitions, will assist prosecutors in their considerations.
Victim Personal Statements

63. A Victim Personal Statement (VPS) gives victims an opportunity to describe the wider effects of the crime upon them, express their concerns and indicate whether or not they require any support. In social media cases, prosecutors should request a VPS if one has not already been made. Provisions relating to the making of a VPS and its use in criminal proceedings are set out in the Code of Practice for Victims of Crime (Victims' Code), and prosecutors should also refer to the legal guidance on Victim Personal Statements. Making a VPS is optional and most VPSs will be in addition to the usual witness statement. A thorough VPS will assist the sentencing court to assess any harm that the offence has caused, including the effect of the offence on the victim, such as distress and anxiety.

Community Impact Statements

64. A Community Impact Statement (CIS) is a short document illustrating the concerns and priorities of a specific community over a set time period. The statement will illustrate the harm and impact on the community arising from particular types of offences or anti-social behaviour, or from a specific offence or incident. A community does not have to be determined by geographic areas. A community can be defined as a group of people who interact and share certain characteristics, experiences or backgrounds, and/or are located in proximity to each other. This includes people who share particular characteristics connected to their heritage, belief system or physical being that define their day-to-day lives; for example, ethnic groups, religious groups, people with disabilities, children, older people.

65. A CIS may be used by the CPS to inform charging decisions and by the courts to inform sentencing decisions. Note that one of the public interest factors to consider under paragraph 4.12(e) of the Code is the impact of the offending on the community. Prosecutors should be alert to check with the police whether there is a CIS available in cases in which a CIS may be relevant. For further information refer to the legal guidance on Community Impact Statements.

Reporting and Preventing Abuse on Social Media

66. Persons who are subject to abuse on social media may wish to report the abuse to the police and/or to the social media platform.

67. A number of platforms have developed tools to make reporting easier, to secure potential evidence and to prevent unwanted communications, including those that do not amount to a criminal offence. These include:

- A report link, so that particular or multiple communications can be reported directly to the platform. Social media sites may then decide to remove content and disable or suspend accounts, although it is not technically possible for a platform to guarantee a user will not return once their account is closed. Note that if a matter is reported to the police, the police should make a data retention request to the platform, so that evidence is secured for any investigation.
Taking screenshots of the offending material, which can be saved on or off (for example, cloud storage or a USB drive) the device.

- Tools to block or mute the person who has uploaded abusive content, so that they can no longer see posts or have a conversation with the victim.
- Tools to unsubscribe or “un-follow” accounts that produce or share offensive material.
- Login alerts, which prompt the platform provider to send a notification if someone tries to log into an account from a new place.
- Privacy settings, to control who can see posts and information from profiles, such as phone numbers and email address.
- Further cyber security advice can be found on the Government’s website Cyber Streetwise and on the Government supported website Get Safe Online.

**Jurisdiction**

68. The general rule is that an offence will only be triable in the jurisdiction in which the offence takes place, unless there is a specific provision to ground jurisdiction, for instance where specific statutes enable the UK to exercise extra-territorial jurisdiction. For more detail on jurisdictional issues, see the legal guidance on Jurisdiction.

69. In cross-border cases involving England and Wales and other jurisdictions (including non-EU countries), an offence must have a "substantial connection with this jurisdiction" for courts in England and Wales to have jurisdiction. It follows that, where a substantial number of the activities constituting a crime takes place within England and Wales, the courts of England and Wales have jurisdiction unless it can be argued, on a reasonable view, that the conduct ought to be dealt with by the courts of another country. See R v Smith (Wallace Duncan) (No.4) [2004] EWCA Crim 631.

70. There are a number of authorities on websites hosted in other jurisdictions:

- R v Waddon, unreported, 6 April 2000, a case relating to the publication of an obscene article, the Court of Appeal held that the content of American websites could come under the jurisdiction of England and Wales when downloaded there: images published on a website abroad were further published when downloaded in England and Wales.
- R v Perrin [2002] EWCA Crim 747: In assessing whether the publication by an American company of a web page breached the Obscene Publications Act 1959 s.2(1), it was not necessary for the court to show that the major steps in relation to publication took place within this jurisdiction.
- R v Sheppard [2010] EWCA Crim 65: where an offender had produced racially inflammatory material and posted it on a website hosted by a remote server in the United States, he could be tried in England and Wales because a substantial measure of his activities had taken place there, as required by the test laid down in R v Smith (Wallace Duncan).

**Handling Arrangements**

71. Referrals to the DLA should be sent to DLA.Team@cps.gov.uk and address:
Protective Marking – Official
• The deadline for when a response is required and the reasons for that deadline.
• The MG3 containing the reviewing lawyer's charging advice.
• A clear indication of whether all the relevant evidence is on CMS.
• The details of the point of contact/reviewing lawyer and the URN.
• Details of any identified or potential media interest.