



RESPONSE TO CONSULTATION BY THE LAW COMMISSION ON HATE CRIME LAWS

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UKLFI Charitable Trust is a Charitable Incorporated Organisation registered in England and Wales (Charity no. 1169041)

Introduction

1. UKLFI Charitable Trust is a Charity whose objects include advancing legal education regarding the causes and effects of antisemitism, in particular antisemitism which manifests itself with regard to the State of Israel; and providing legal support and other help to victims of antisemitism.
2. We have assisted a considerable number of victims of antisemitic acts, including incidents that appeared to us to be hate crimes. We have also addressed legal issues relating to antisemitism in our educational programme.
3. We welcome the care which the Law Commission has taken in its analysis and preparation of its consultation paper. However, we are able to contribute some additional insights as a result of our specialist experience, which we hope the Law Commission will address before finalising its recommendations. Since these raise points that have not been fully discussed in the consultation paper, we propose to make some general remarks before we address the specific questions.

The particular seriousness of hatred against Jews

4. Strong hostility towards Jews is held by a significant number of people and is deeply entrenched in some parts of society in the UK as well as other countries. Jews are also by far more likely to suffer hate crimes than any other group in England and Wales. Figures cited at §11.8 of the Consultation Paper show that more religious hate crimes against Muslims are recorded in absolute terms than against any other group, but taking into account their share of the population (which is about 1/10 that of Muslims) Jews are three times more likely to be victims of recorded hate crimes than Muslims. We do not know whether there were additional hate crimes against Jews as members of an ethnic group that were not recorded as hate crimes against Jews as a religious group. If there were, this disparity between Jews and other groups would be even greater.
5. In addition, many Jews are conscious of the overwhelming genocide committed against their people even in apparently advanced European countries in relatively modern times. They do not rule out altogether the possibility of a further genocide and they certainly see the possibility of hatred of Jews leading to sporadic murders and other violence against them in the UK, as have occurred in a number of European countries in recent years. As a result, hate crimes against Jews are especially alarming for them. In the terms used in the consultation paper, hate crimes against Jews are liable to cause particularly serious harm.
6. While we do not wish to understate the harm caused by other hate crimes, we do suggest that the prevalence and entrenchment of hatred of Jews and the seriousness of the harm caused by hate crimes against Jews justify particularly careful consideration.

New forms of hatred of Jews

7. While classic forms of hatred of Jews have continued, there has been a vigorous growth in recent years of new forms of hatred of Jews relating to the existence of the State of Israel or disguised as opposition to the State of Israel. In our view, this also requires particular consideration.
8. For many Jews, the restoration and development of the State of Israel are a central part of their religious belief, both as a precept and as part of a divine plan. In addition, many Jews hold a philosophical belief that the State of Israel should exist, and we consider that this belief satisfies all the criteria identified in §14.163 of the consultation paper for recognition as a protected philosophical belief. We note that a belief in Scottish independence has been held to qualify as a protected belief (§14.168, citing *McEleny v Ministry of Defence* [2017] ET (Scotland) 4105347/2017). In our view, the case for protecting the belief that the State of Israel should exist, i.e. Zionism, is much stronger, reflecting as it does both the entitlement of the Jewish people to self-determination and their need of a national home for their security.
9. It is also highly desirable to protect the belief that the State of Israel should exist, because hatred of Jews as an ethnicity or religion is now often disguised as hatred of persons supporting the existence of the State of Israel . Recognition of Zionism as a protected belief would ensure that criminal liability for stirring up such hatred is not evaded and that crimes motivated by such hatred or where such hatred is demonstrated are properly treated as hate crimes.
10. Protection of this philosophical belief is strongly justified under the criteria proposed in §10.89 of the consultation paper. There is a demonstrable need in view of the seriousness of hatred against Jews mentioned above and the practice of disguising it as hatred of Zionists. There is also additional harm, as mentioned above, and it fits logically into the existing framework as a belief with both religious and philosophical dimensions. Recognition of these factors strengthens the case for protecting philosophical beliefs generally.

Need to consider meaning of words to addressees and targets

11. We have found a tendency of police, prosecutors and sometimes judges to interpret words as they would be understood to the average English person. In our view this can be incorrect. What matters is how the words are understood by the persons to whom they are addressed and whose hatred may be stirred up, and by the targets of the hatred who are liable to be intimidated.
12. In some cases, the language may even be likened to a dog whistle, which is audible to a dog but not to a human – i.e. the hateful meaning is conveyed to a particular group or section of society, but not noticed by average members of

society. In this case, it is pointless to consider what the language means to an average member of society, just as it would be pointless to ask a human whether he heard the dog whistle.

13. However, we have noticed a tendency of police, prosecutors and even judges to assess what the language means to an average person. For example, in some circles “Zio” is used as a derogatory term for a Jew, yet highly offensive statements about “Zios” to such audiences have been treated merely as political statements referring to supporters of Israel.
14. In our view it would be helpful to amend the legislation to clarify that in determining the meaning and effect of words used, particular regard should be had to how they are understood by persons to whom they are addressed and by persons to whom they refer.

Deterrence

15. We are surprised that the consultation paper does not appear to take into account the potential value of more severe punishment of hate crimes as a direct deterrent to overcome the motivation of the crime by the hatred. It considers at §3.11 the indirect deterrent of sending a message that the hatred is wrong, but this message is of limited effect on the bigoted. A more important factor in deterring hate crime is a prospect of punishment sufficient to override the drive of the perpetrator’s hatred.
16. Based on our experience, this consideration is very relevant to hate crimes against Jews, but it may well apply also to other hate crimes. Some hate crime offenders persist in offending in the expectation that, even if they are charged and convicted, the punishment will not be too serious, particularly for a first offence – and if the sanction is only financial, like-minded people will contribute.
17. For example, those seeking to force Israeli businesses to close, motivated by and demonstrating hatred for Israelis, persist in acts of criminal damage, harassment, assault, aggravated trespass and public nuisance, in the belief that prosecution is unlikely and, even if it occurs, that the punishment will be minor.
18. In a number of cases, this calculation has proved correct. Businesses have been forced to close, and those who have repeatedly committed criminal offences have got away with no or negligible punishment. Some Israeli businessmen have expressed surprise that laws are not enforced against such conduct in the UK, in contrast to their experience in other European countries where their companies have operations.
19. The likelihood of prosecution is also a key factor. As the consultation paper observes at §6.14, hate crimes are given some priority by the Police. This is very

important in practice, since other crimes not involving violence are often unlikely to be prosecuted.

20. In our view, these are significant considerations in relation to both whether there should be additional aggravated offences and sentencing.

Consultation questions

We now address the specific questions in the consultation paper:

Q1: We support bringing hate crime laws together in a single Hate Crime Act.

Q2: We agree that the law should continue to specify protected characteristics for the purposes of hate crime laws.

Q3: We agree in general with the proposed criteria for determining whether a characteristic is included in hate crime laws, with the proviso that satisfaction of the “demonstrable need” condition should not be constrained by the way in which data has been collected to date. Crime based on hostility or prejudice towards a particular group may be prevalent but not recorded by reference to the group, precisely because it is not recognised as a protected group, so that there is a “vicious circle”.

Q4: We have no comments on this, since it is outside our remit.

Q5: We agree with the retention of the current definition of religion for the purposes of hate crime laws.

Q6: We agree that it is not necessary to add sectarian religious groups to those protected by hate crime laws on the basis that they are protected as religious groups.

Q7-Q19: We have no comments on these issues which are outside our remit.

Q20: We consider that philosophical beliefs should be recognised as a hate crime category, particularly in view of the points made above.

Q21: We would agree with using the same test of hostility for both enhanced sentencing and aggravated offences.

Q22: We agree with the retention of proof of demonstration of hostility towards a relevant characteristic of the victim as qualifying a crime as a hate crime.

Q23: We would support amendment of the motivation test to cover motivation by hostility or prejudice.

Q24: We incline to the view that it would be better to take the opportunity to move to a simpler system in which any crime may be found to be aggravated by hate. Where practicable, the maximum penalty should be higher if the crime is found to be

aggravated by hate of a protected group; and where there is not practicable, the Court should take the aggravation by hate of a protected group into account.

Q25: We have no comments on these issues which are outside our remit.

Q26: We would agree with these criteria if the existing system of separate aggravated offences is retained with additional offences being added, with the proviso that assessment of prevalence should not be constrained by the data that has been collected hitherto, since the data may not have been collected precisely because there is no aggravated offence.

Q27: We would agree with the introduction of aggravated versions of communications offences.

Q28: We would agree with creating aggravated offences of GBH and arson.

Q29: We would agree with creating aggravated offences of poisoning, threats to kill and threatening with an offensive weapon.

Q30: We consider that there should be an offence of aggravated trespass aggravated by hate. Deliberate disruption of lawful activity of Israeli owned businesses by trespassers motivated by and/or demonstrating hate for Israelis is a problem, and existing sentences are inadequate.

Q31: We have no comments on these issues which are outside our remit.

Q32: We consider that a provision requiring satisfaction of the legal test in respect of "one or more" protected characteristics would be workable and fair, if it does not reflect the existing position.

Q33: We have not reviewed this fully, but suspect that the existing maximum sentences for these offences are appropriate.

Q34: We consider that the Court should be empowered to find a defendant guilty of the base offence where only an aggravated offence is prosecuted.

Q35: As stated above, it seems to us that a hybrid approach would be preferable, with the proviso that maximum sentences should be increased where the crime is found to be aggravated in cases where this is practicable/

Q36: We agree that the enhanced sentencing model should be retained as well as an expanded role for aggravated offences, if a hybrid model is not adopted.

Q37: We agree that aggravation of the sentence should be stated in open court.

Q38: We are not persuaded that there should be a more flexible approach to characteristic protection for the purpose of enhanced sentencing, since this would tend

to devalue the concept of hate crime. Additional circumstances can always be taken into account in the sentencing.

Q39: We would support the approach in R v O’Leary.

Q40: We support extension of the stirring up offences to all material.

Q41: In principle we would agree with rationalising sections 19-22 and 29C-29F, but have not assessed whether this would result in any significant substantive change and, if so, whether this would be desirable.

Q42: In principle we would agree with this rationalisation, but have not assessed whether it would result in any significant substantive change and, if so, whether this would be desirable.

Q43: We regard this as a complex subject which requires more detailed analysis.

Q44: We consider that “likely to” is an ordinary English phrase that does not require further definition. However, we would urge the inclusion of a provision that in determining the meaning and effect of words used, particular regard should be had to how they are understood by persons to whom they are addressed and by persons to whom they refer.

Q45: We would agree with the proposal that it should not be necessary to demonstrate “threatening, abusive or insulting” where intention to stir hatred is shown

Q46: We would support this formulation of the offence where the conduct is shown to be likely to stir up hatred but not shown to be intended to stir up hatred

Q47: We agree that there should be a single threshold of “threatening or abusive” where the conduct is likely to stir up hatred but not intended to do so.

Q48-49: We have no comments on these issues which are outside our remit.

Q50: We agree that the definition of hatred for the purposes of the stirring up offences should include hatred on grounds of one or more protected characteristics.

Q51: We agree with the removal of the exception for conduct in a dwelling from the stirring up offences.

Q52: We agree with applying protection as in existing section 29JA to the new offence of stirring up hatred. We do not agree to applying protection as in existing section 29J. This is unduly broad and would drive a coach-and-four through the offence. If the conduct is intended to stir up racial hatred, it should be an offence. Similarly if it is threatening, abusive and likely to stir up racial hatred. We repeat the points made above regarding the seriousness of hatred against Jews and the dangers of allowing it to be stirred up.

Q53: We repeat our comments on Q52.

Q54: We do not support a requirement for consent by either the AG or the DPP for charging the stirring up hatred offences

Q55: We would support retention of exemptions for reports of Parliamentary and court proceedings but not for reports of local government meetings or scientific journals. We fear that these could be abused. A leading medical journal has repeatedly contained content likely to stir up hatred of Israelis.

Q56: We agree with the retention of a separate offence for racist chanting at football matches

Q57: We have no comment on this issue which is outside our remit.

Q58: We would agree with extending the offence to cover gestures and missile throwing.

Q59: We would agree with extending the offence to cover journeys to and from a designated football match

Q60: We would agree with amending the offence to include association and perceived characteristics

Q61: We think that the maximum penalty should be increased, without detracting from the possibility of rehabilitative measures where appropriate

Q62: We are not convinced that the appointment of a Hate Crime Commissioner will be worthwhile.



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Executive Director

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