

# Section seven: Racial hatred offences and hatred against persons on religious grounds or grounds of sexual orientation

There are a number of other hate crime offences provided for by the Public Order Act.

Part 3 of the Public Order Act prohibits activities intended or likely to stir up racial hatred. Part 3A of the Act prohibits activities based on hatred against persons on religious grounds or grounds of sexual orientation. The legislation prohibits a range of activity including: use of words or behaviour or display of written material; publishing or distributing written material; public performance of play; distributing, showing or playing a recording; broadcasting or including in a programme service; and possession of racially inflammatory material where the offender intends to stir up racial hatred, and in some cases having regard to all the circumstances, racial hatred is likely to be stirred up. All offences carry a 7 year statutory maximum sentence.

The essence of each offence is the intention to stir up hatred. However, the offences contain an important distinction in that the racial hatred offences can include use of threatening, abusive or insulting words or behaviour, while the offences relating to hatred against persons on religious grounds or grounds of sexual orientation provide for threatening words or behaviour only, and do not extend to activity which is abusive or insulting.

It is proposed that one guideline could sufficiently capture all types of hatred offences. Although racial hatred activity can be broader and include abusive or insulting elements, the mischief of all offences is the incitement of hatred and potential harmful activity then being directed at particular groups.

Volumes of these offences are extremely low and there have been no offenders sentenced for some offences. However, given the recent social climate and an enhanced focus on this type of offending, the Council considers it would be useful for sentencers to be equipped with guidance on sentencing these offences.

## STEP ONE

The first step of the guideline is to consider the culpability level of the offender and the harm caused by the offence by the assessment of a series of factors.

### STEP ONE

#### Determining the offence category

The court should determine the offence category with reference **only** to the factors listed in the tables below. In order to determine the category the court should assess **culpability** and **harm**.

**Culpability** demonstrated by one or more of the following:

<b>A – High culpability</b>	<ul style="list-style-type: none"> <li>• Offender in position of trust, authority or influence and abuses their position to stir up hatred</li> <li>• Intention to incite serious violence</li> <li>• Persistent activity</li> </ul>
<b>B – Medium culpability</b>	<ul style="list-style-type: none"> <li>• Other cases falling between categories A and C</li> </ul>
<b>C – Lesser culpability</b>	<ul style="list-style-type: none"> <li>• Reckless as to whether hatred would be stirred up</li> </ul>

### High culpability

The factors proposed were identified as factors increasing seriousness of offences in the limited numbers of cases available for analysis. Among the cases analysed there were a number of ‘hate speech’ type offences, where inflammatory speeches were given by influential figures with the intention of stirring up racial hatred. Other cases involved publication on YouTube of content inciting serious violence towards particular racial or religious groups, websites being published including abusive and insulting content, with some activity continuing over a long period of time and intended to reach global audiences. The Council considers that activities of the type listed represent the highest level of culpability for these offences, as they demonstrate a serious intention to stir up hatred towards particular groups.

### Medium culpability

This category is intended to capture cases where culpability falls between a serious intention and reckless behaviour.

### Low culpability

This factor provides for those who may have been reckless as to stirring up hatred. While no cases involving such activity were identified, an example of such a case may be the reckless sharing and adding commentary to a social media post directing threats towards particular groups.

Q37

**Do you agree with the proposed approach to the assessment of culpability? Please give reasons where you do not agree.**

### Harm factors

Once the court has determined the level of culpability the next step is to consider the harm caused or intended to be caused by the offence. There are two categories proposed;

#### Harm

The court should consider the factors set out below to determine the level of harm that has been caused or was intended to be caused to the victim.

<b>Category 1</b>	<ul style="list-style-type: none"> <li>• Statement/publication/performance or broadcast directly encourages activity which threatens or endangers life</li> <li>• Widespread dissemination of statement/publication/performance or broadcast and/or strong likelihood that many would be influenced</li> </ul>
<b>Category 2</b>	<ul style="list-style-type: none"> <li>• All other cases</li> </ul>

### Harm category 1 factors

The proposed factors are intended to reflect the most serious harm which could be caused by this offence. The ways in which these offences can be committed are wide ranging, which the factors reflect.

The Council considers that the most serious harm present in these offences would be cases where activity is encouraged which threatens or endangers life, as well as cases involving widespread dissemination of material and/or a strong likelihood that many would be influenced.

### Harm category 2 factors

This is a catch all category and provides for cases where a lower level of harm is present in an offence.

Q38

Do you agree with the proposed approach to the assessment of harm? Please give reasons where you do not agree.

## STEP TWO

Once the court has determined the culpability and harm categories at step one, the next step is to identify the starting point.

### Sentence levels

The starting points and ranges have been based on statistical data from the Court Proceedings Database and analysis of first-instance transcripts and Court of Appeal sentencing remarks.

## STEP TWO

### Starting point and category range

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range from the appropriate sentence table below. The starting point applies to all offenders irrespective of plea or previous convictions.

Harm	Culpability		
	A	B	C
Category 1	<b>Starting point</b> 3 years' custody	<b>Starting point</b> 2 years' custody	<b>Starting point</b> 1 year's custody
	<b>Category range</b> 2 – 6 years' custody	<b>Category range</b> 1 – 4 years' custody	<b>Category range</b> 26 weeks' – 3 years' custody
Category 2	<b>Starting point</b> 2 years' custody	<b>Starting point</b> 1 year's custody	<b>Starting point</b> 26 weeks' custody
	<b>Category range</b> 1 – 4 years' custody	<b>Category range</b> 26 weeks' – 3 years' custody	<b>Category range</b> High level community order – 2 years' custody

Q39

**Do you have any comments on the sentence ranges and starting points?**

The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the sentence arrived at so far. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

#### Factors increasing seriousness

##### *Statutory aggravating factors:*

Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction

Offence committed whilst on bail

##### *Other aggravating factors:*

Planning of event or campaign designed to stir up hatred

Leading role where offending is part of group activity

Timing of incident – particularly sensitive social climate

Vulnerable/impressionable audience

Significant volume of publications published or disseminated (where not taken into account at step one)

Used multiple social media platforms to reach a wider audience (where not taken into account at step one)

Offence committed whilst on licence or subject to post sentence supervision

History of failure to comply with court orders

#### Factors reducing seriousness or reflecting personal mitigation

Minor/peripheral role in group activity

Previous good character

No previous convictions or no relevant/recent convictions

Remorse

Age and/or lack of maturity where it affects the responsibility of the offender

Mental disorder or learning disability where linked to the commission of the offence

Sole or primary carer for dependent relatives

Q40

**Do you agree with the aggravating and mitigating factors? Please state which, if any, should be removed or added.**

Q41

**Do you have any other comments on the structure and content of the draft guideline?**