



British Naturism response to Hate Crime Consultation

Chapter 9: A proposed model for reform

Consultation Question 1: *We provisionally propose that a single “Hate Crime Act” be used to bring together the various reforms to hate crime laws proposed in this paper. This could include:*

- *shifting the substantive aggravated offences currently in the CDA 1998 and the stirring up hatred offences in parts 3 and 3A of the POA 1986 to the new Hate Crime Act;*
- *making amendments to the enhanced sentencing provisions (currently in the CJA 2003 but planned to move to the Sentencing Code) and the Football (Offences) Act 1991; and*
- *if a Hate Crime Commissioner is to be introduced, the establishment of this office and its powers.*

Do consultees agree that hate crime laws should, as far as practicable, be brought together in the form of a single “Hate Crime Act”?

Yes

We agree with the principle of consolidating the various pieces of legislation into a single “Hate Crime Act” is desirable. The development of the various components over a number of years has created inconsistencies that:

- a) make interpretation of hate crime law difficult
- b) create the potential for judicial rulings made under one piece of legislation to be challenged under different legislation.

Gaps in the coordination of existing legislation make practical application of the law inefficient, so consolidation in a Hate Crime Act would provide three key benefits:

- a) Improvement in efficiency of application that would reduce court time and cost
- b) Simplification of what qualifies as hate crime will make management of situations much simpler for overstretched police forces
- c) Improved understanding of Hate Crime by the wider public. We strongly believe that the first priority of effective law should be to discourage criminal activity rather than to punish it retrospectively. Improved public understanding of what Hate Crime is and the consequences of Hate Crime will be an effective way of reducing it.

It should be recognised that bringing together existing legislation under a single Act will be challenging and may involve removal of components from other Acts in favour of forming the Hate Crime Act. We note that such an approach is being adopted for the Domestic Abuse Bill and so appears feasible.



Chapter 10: How should characteristics be selected?

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

Yes

We support the proposal to continue specifying protected characteristics as there are a number of practical reasons why specification is necessary and should be maintained.

- a) Practical application. Efficient policing and court proceedings benefit from a checkbox approach to classification. The police in particular favour “lists” of criteria so that they have clear guidance on how they should be interpreting and applying the law in the face of time pressure. Although they do not make the final ruling on whether an activity constitutes a Hate Crime, the police do usually make the first decision on whether to investigate or arrest and therefore need guidance in a workable system
- b) Personal bias. In the absence of clear guidelines, decisions on what would constitute Hate Crime will depend greatly on the personal views of those making decisions at either policing or judicial levels
- c) Clarity. Effective law should discourage criminal activity more than punish it retrospectively. A list of protected characteristics is much more easily communicated to and understood by the public
- d) Diminishing existing protections. A move away from specified protected characteristics would roll back the protections enjoyed by those characteristics currently protected. The concept of removing protections based on race, religion, etc would be contrary to the terms of reference of the project and face considerable political opposition, and rightly so.

However, we have sympathy with the view recorded at 10.72 of the Hate Crime consultation paper that there is a strong moral argument that any action motivated by hate should be recognised as such, and that the absence of an individual target from a list of protected characteristics does not diminish the impact of such actions. Hate is hate and care must be taken to ensure that the list of characteristics protects all of those who need protection.

One concern is that some disadvantaged minority groups may not fit clearly within a single characteristic. Wicca, for example, might be defined as a Religion but might align better as a Philosophical Belief, if that additional characteristic were adopted under Hate Crime legislation. Naturism, the characteristic that we represent meets the common definitions of Philosophical Belief and Alternative Subculture so could be recognised under Hate Crime law as either or both, should those characteristics be adopted. It is important that the formation of rigid silos within the protected characteristics does not cause some disadvantaged minorities to fall between the cracks. It would be in nobody's interest for the court hearing a case to have to hear argument on, potentially, repeated occasions about whether a minority fell within one of the protected characteristics.



Our further recommendation is that legislation has sufficient flexibility to accommodate future changing priorities, perhaps necessitated by emerging evidence of hostility towards groups that had not previously been identified as needing particular protection, without revisiting the primary legislation.

Finally, it seems to us that there are good arguments for the view that there should be a residual category, for the purposes of enhanced sentencing, designed to catch groups that may fall outside the defined characteristics but who are nevertheless targeted by hate groups and are therefore, we would argue, deserving of protection. (We return to this point in our response to question 38.)

Consultation Question 3: *We provisionally propose that the criteria to determine whether a characteristic is included in hate crime laws should be:*

(1) Demonstrable need: evidence that crime based on hostility or prejudice towards the group is prevalent.

(2) Additional Harm: there is evidence that criminal targeting based on hostility or prejudice towards the characteristic causes additional harm to the victim, members of the targeted group, and society more widely.

(3) Suitability: protection of the characteristic would fit logically within the broader offences and sentencing framework, prove workable in practice, represent an efficient use of criminal justice resources, and is consistent with the rights of others.

Do consultees agree?

Yes

We support the proposal that criteria are needed to determine whether a characteristic is covered by Hate Crime laws and support the proposed criteria. However, we do note some caveats that must be considered.

(1) Demonstrable Need.

This is logically desirable, protecting characteristics that do not need it creates an administrative burden and could diminish the protection of all characteristics if a standard is not maintained. However, “demonstrable” must be carefully defined and should not rely simply on reports of “hate” as offences against characteristics that are not already protected are not currently recorded as Hate Crimes. In other words, a characteristic would need to be protected before it could “demonstrate” need. As an example, the hate crime consultation report refers to offences against Naturists as “anecdotal” (14.175) because although there is police involvement and incident numbers associated with offences, they would not have been recorded as Hate Crimes.

The assessment of Demonstrable Need by the markers of prevalence is a good approach, but there should be caution as not all markers are equal. Measurement of “Absolute prevalence” is worthwhile but heavily dependent on the size of the target group. A core purpose of anti-discrimination law is to protect minority groups, smaller minorities should not be excluded because absolute prevalence is modest due to the small size of the group. Therefore “Relative prevalence” is a much more useful



marker. It is good to see that “Severity” has been incorporated into the “Prevalence” assessment as the Sophie Lancaster Foundation was formed in response to the single incident of the murder of Sophie Lancaster. Judge Russel overseeing the case sentenced the case under Hate Crime legislation, subsequently Greater Manchester Police began recording attacks against Alternative Subcultures as Hate Crime (<https://www.bbc.co.uk/news/uk-england-lancashire-22018888>) with at least ten further police forces following that example (<https://www.sophielancasterfoundation.com/index.php/news/129-11-police-authorities-now-recording-alternative-subculture-hate-crime>). It is worth noting that the Law Commission have used the Foundation’s definition of Alternative Subculture, and one would expect Alternative Subcultures to be included as a protected characteristic under new legislation.

The most common consequence of Hate Crime is that target groups conceal their characteristic to avoid further abuse. At this point, antagonists have achieved their objective of suppressing a minority group. Concealment of shared characteristics makes it more difficult to demonstrate need and prevalence. Minority groups should not be required to place themselves at risk in order to achieve protection.

(2) Additional harm.

We support this criterion, and support the proposed subcategories for additional harm.

“Increased harm to the primary victim” is a clear, logical basis for assessment. “Secondary harm to those who share the characteristic” is where Hate Crime legislation can provide the greatest benefit as hate acts almost invariably affect the lives of a great many people but are dealt with poorly under current legislation. Neither the primary target nor those sharing the characteristic should live in fear of further attack. The consequence of such fear is that those sharing the characteristic are forced to conceal that characteristic. Although Religion, Alternative Subculture or Philosophical Belief are not immutable characteristics, forcing a lawful lifestyle underground through fear contradicts human rights.

It should be noted that the concealment of a characteristic to avoid “Additional harm” makes it harder to “Demonstrate need” because that does reduce the number of incidents and more incidents go unreported.

(3) Suitability.

We support the proposal that protection of a characteristic should fit within the broader framework, be practical and consistent with the rights of others. However, we would note that assessment of suitability should be evidence driven, not politically motivated or based on opinion. A characteristic that causes demonstrable harm or compromises the human rights of other individuals should be excluded, but a characteristic should not be excluded simply because another group dislikes it.

Therefore, our summary view is that we support the proposed criteria, but that definition of some of the terms will need careful thought and that when judging whether a characteristic is included in hate



crime law, a balanced assessment of the criteria as a whole is needed. This approach aligns well with the academic arguments presented in Chapter 10 of the consultation report where all approaches have both strengths and weaknesses, with none being perfect.

Chapter 11: The existing protected characteristics

Consultation Question 4: *We invite consultees' views on whether the definition of race in hate crime laws should be amended to include migration and asylum status; and/or language.*

Consultation Question 5: *We provisionally propose to retain the current definition of religion for the purposes of hate crime laws (we consider the question of non-religious beliefs separately in Chapter 14). Do consultees agree?*

Yes

We would support the proposal that the current definition of religion is retained, but there are certain caveats.

There is inconsistency in how protected characteristics are handled under current law. Characteristics currently protected under "hate crime" provisions (Crime and Disorder Act 1998 ("CDA 1998") and Criminal Justice Act 2003 ("CJA 2003")) are:

- Race
- Religion
- Sexual Orientation
- Disability
- Transgender

However, the characteristics considered as protected under Section 10 of the Equality Act 2010 ("EA 2010") are:

- Race
- Religion or Belief
- Sexual Orientation
- Sex
- Disability
- Gender reassignment
- Age
- Marriage and civil partnership
- Pregnancy and maternity

The situation raises three major concerns:

- 1) While the EA 2010 considers "Religion or Belief" as a single entity with shared principles, the CDA 1998 and CJA 2003 considers Religion and Philosophical Belief to be entirely separate and that they should be treated separately, creating an inconsistency in the law that is difficult to justify.



- 2) Disparity between the acts means that the CDA 1998 and CJA 2003 have the potential to undermine the EA 2010, creating difficulties in the application of Equality law at a practical level.
- 3) The concept that lower-grade offences, such as denial of service should be prohibited under the EA 2010, but that more serious criminal offences are not considered aggravated by the CDA 1998 and CJA 2003 has some disturbing consequences. An individual, such as a vendor, would face sanctions under civil law for denying service to a group because of their Philosophical Belief, but would be exempt from hate prosecution under criminal law and therefore incentivised to take a more threatening action. Hate crime law enhances or aggravates existing offences, rather than creating new ones, so such escalated offences would be liable for prosecution but would not be considered Hate Crime. The messaging around legislation is backwards. If the ultimate aim of the Hate Crime Act is to discourage acts of hate, a simple message that actions motivated by hatred have consequences across the board is more likely to minimise the need for prosecution.

Therefore, we support the proposal that the current definition of religion be retained, with the proviso that Philosophical Belief be adopted as an additional characteristic as proposed in Chapter 14. Excluding belief from the definition of religion without adopting it as a separate characteristic would sustain a disparity in the law that directly contradicts the aim of this review to achieve logical consistency across the law.

Consultation Question 6: *We do not propose to add sectarian groups to the groups protected by hate crime laws (given that they are already covered by existing protection for “religious groups”). Do consultees agree?*

Consultation Question 7: *We invite consultees’ views on whether “asexuality” should be included within the definition of sexual orientation.*

Consultation Question 8: *We provisionally propose that the current definition of “transgender” in hate crime laws be revised to include:*

- *People who are or are presumed to be transgender*
- *People who are or are presumed to be non-binary*
- *People who cross dress (or are presumed to cross dress); and*
- *People who are or are presumed to be intersex*

Do consultees agree?

We further propose that this category should be given a broader title than simply “transgender”, and suggest “transgender, non-binary or intersex” as a possible alternative.

Do consultees agree?

We welcome further input from consultees on the form such a revised definition should take.

Consultation Question 9: *We invite consultees’ views on whether the current definition of disability used in the Criminal Justice Act 2003 should be retained.*



Consultation Question 10: *We invite consultees' views on whether criminal conduct based on a wrongly presumed lack of disability on the part of the victim should fall within the scope of protection afforded by hate crime laws.*

Chapter 12: Gender or Sex

Consultation Question 11: *We provisionally propose that gender or sex should be a protected characteristic for the purposes of hate crime law. Do consultees agree?*

We invite consultees' views on whether gender-specific carve outs for sexual offences, forced marriage, FGM and crimes committed in the domestic abuse context are needed, if gender or sex is protected for the purposes of hate crime law.

Consultation Question 12: *We invite consultees' views as to whether sex or gender-based hate crime protection should be limited to women or include both women and men.*

Consultation Question 13: *We provisionally propose that a protected category of "women" is more suitable than "misogyny", if sex or gender-based hate crime protection were to be limited to the female sex or gender. Do consultees agree?*

Consultation Question 14: *We provisionally propose a protected category of "sex or gender" rather than choosing between either "gender" or "sex" if hate crime protection were to adopt a general approach. Do consultees agree?*

Chapter 13: Age

Consultation Question 15: *We invite consultees' views on whether age should be recognised as a protected characteristic for the purposes of hate crime law.*

Consultation Question 16: *We invite consultees' views as to whether any age-based hate crime protection should be limited to "older people" or include people of all ages.*



Chapter 14: Other additional characteristics

Consultation Question 17: *We invite consultees' views on whether "sex workers" should be recognised as a hate crime category.*

Consultation Question 18: *We invite consultees' views on whether "alternative subcultures" should be recognised as a hate crime category.*

Subject to what follows, we agree that Alternative Subcultures should be recognised as a hate crime category.

As identified in the Hate Crime Consultation Paper, almost all Hate Crime schemes are based upon:

- a) Categorisation of groups of people who share characteristics
- b) Harm extends to individuals who share the characteristic, and not just the target of the crime themselves

As Alternative Subcultures are defined as a group that share a characteristic, the first test is immediately passed. Therefore, the question becomes whether the harm caused by a crime affects more than the immediate target of the crime and has impact across the subculture.

There are some very clear demonstrations of the impact of Hate Crime from organisations such as the Sophie Lancaster Foundation who have championed the protection of the Goth subculture. We note that the Hate Crime Consultation Paper quotes the Sophie Lancaster Foundation definition of Alternative Subculture as do a number of other bodies. The definition states:

"Alternative Subculture means a discernible group that is characterized by a strong sense of collective identity and a set of group-specific values and tastes that typically centre on distinctive style/clothing, make-up, body art and music preferences. Those involved usually stand out in the sense their distinctiveness is discernible both to fellow participants and to those outside the group."

Some police forces, including Lancashire Police, already unofficially regard Alternative Subculture as a characteristic that attracts hate crime (<https://www.lancashire.police.uk/help-advice/personal-safety/hate-crime/>). Greater Manchester Police were the first to make such records and Assistant Chief Constable Garry Shewan, GMP's lead on hate crime, said:

"The launch of this new strand of recordable hate crime is a major breakthrough. We are able to officially recognise that people who wish to express their alternative sub-culture identity freely should not have to tolerate hate crime – something that many people have to endure on a daily basis."
"This means that we can recognise the impact that alternative sub-culture hate crime has on its victims and the wider community, we can offer better support and risk assess the potential for repeat victimisation."

(<https://www.itv.com/news/granada/2013-04-04/gmp-launches-hate-crime-first>)

We support those observations.



As an organisation, our particular interest relates to Naturism, which sits in an interesting position. In our response to Question 2 we noted that Naturists can be categorised as members of an Alternative Subculture, holders of a Philosophical Belief, or both.

The features of Naturism that most often trigger abuse are the same as those which argue for its categorisation as an Alternative Subculture.

Since 1974, Naturism has been defined by both the International Naturist Federation (INF-FNI) and British Naturism as follows:

"Naturism is a way of life in harmony with nature characterised by the practice of communal nudity with the intention of encouraging self-respect, respect for others and for the environment"
(<https://www.naturisme.com/uk/naturism/>)

Referring to the definition of Alternative Subculture set out above, there is no doubt that Naturists share a strong sense of collective identity, and the practice of "communal nudity" points clearly to a distinctive style/clothing – or, more accurately, lack of clothing.

Nudity is the feature of the subculture that most often triggers abuse by those who falsely assume a sexual motivation.

It is worth noting that Wikipedia includes Naturism/Nudism in its subculture list
(https://en.wikipedia.org/wiki/List_of_subcultures).

However, there are also good arguments that Naturism is to be seen as a Philosophical Belief since it is a weighty belief that for many Naturists has a substantial influence over their behaviour, with individuals choosing to live their lives according to the Naturist philosophy to the extent that it defines their identity.

In our answer to Question 2 we expressed concern that disadvantaged minority groups that might not fit clearly within a single characteristic should not inadvertently fall between the cracks. For present purposes, the debate as to whether Naturism constitutes an Alternative Subculture or a Philosophical Belief is of lesser importance to British Naturism than bringing Naturists within the scope of the legislation. We would encourage the legislator to make sure that the definitions were sufficiently clear as to secure that aim.

Persecution of Naturists has grown over the last few years with larger Naturist gatherings now requiring a significant police presence, including Police Liaison Officers, to deal with attempts by hate groups to cause criminal damage and assault Naturists. The widespread harm provides strong evidence of the need for protection of a lifestyle that guides the behaviour and defines the identity of adherents. Our basic premise is that everyone has the right to respect in their private and family life, as stated in Article 8 of the European Convention on Human Rights, and that an individual's identity as



part of an Alternative Subculture or the holder of a Philosophical Belief should not cause them to forfeit that right.

Naturism is a good example of a minority group than can be used to model whether additional characteristics such as Alternative Subcultures and Philosophical Belief should be incorporated into Hate Crime legislation. The number of Naturists is small enough for the group to be a minority but large enough to exhibit a cohesive identity, rather than a collection of independent viewpoints. British Naturism, which is the largest representative of Naturists in the UK, comprises 9,000 individual paying members. It also has 90 Member Clubs, many of whose members are not direct members of British Naturism, so it is estimated that there are some 15,000 card-carrying Naturists in the UK. The International Naturist Federation (INF-FNI) boasts 450,000 paying members worldwide (<https://inf-fni.org/about-inf-fni/history-of-inf-fni/>).

Following guidance given at the helpful meeting with representatives of the Law Commission on the 10th December 2020, we are submitting our evidence of the effect of hatred on Naturists in responses to both Questions 18 and 20.

Naturism forms a fundamental part of the identity of individuals and groups, as shown by the fact that Naturist families often span generations. Although, like Religion, Naturism is not an immutable characteristic, it is not a characteristic that individuals should be forced to surrender or conceal to avoid living in fear of being targeted by criminal behaviour.

The Hate Crime Laws Consultation Paper suggests three tests and arguments that might be used to determine whether a characteristic should fall under the Hate Crime category. We will consider each test in turn.

DEMONSTRABLE NEED

Demonstrable need is required to meet the objective of protecting minority groups from persecution while maintaining minimal criminalisation. Demonstrable Need can be divided into:

- a) Evidence that a group is targeted on the basis of the characteristic, rather than other factors
- b) Prevalence of incidents

Naturists have often attracted abuse from non-naturists due to lack of understanding of our motivation and the perception that Naturists are “different”. Harassment stretches back many years, historical incidents including the targeting of Naturists at Welsh Harp Reservoir in 1930 [Reference 1]. However, aggression has escalated greatly and become more systematic over the last two years, with hate groups targeting individual Naturists, groups of Naturists, and those supplying services to Naturists.

Naturists often organise gatherings or events that allow us to meet as a community. Such events differ from simple social gatherings as they are motivated by the desire to practise Naturism. The



participation in social nudity defines the group identity. Naturists have arranged private-hire Naturist events at major waterparks in Stoke-on-Trent and Blackpool for 25 and 10 years respectively and have proven good guests. However, in 2019 and 2020 both events have seen mobs gathered outside to target attendees. Details of the incidents are summarised in the Additional Harm section below, but the targeting of group events demonstrates that hostility is against the shared characteristic, as event participants differ in other respects.

As we outline in our response to Question 3 and is stated in the Hate Crime consultation paper, demonstrating prevalence through official records is difficult for characteristics that are not already protected, because incidents are rarely recorded as hate crime. Therefore, we need to look at other sources of information. As the largest representative body for UK Naturists, British Naturism can offer some insight into the prevalence of hate-motivated aggression. Our response to this question includes a number of examples of abuse of Naturists that provide insight into problems encountered. We have restricted testimonies to incidents from 2019 and 2020 only, so that evidence is contemporary and demonstrating that examples are not difficult to find.

In terms of statistical prevalence, British Naturism typically hears of 2-4 abusive incidents per month from our 9000 members, so that equates to about 4 incidents per thousand people per annum. By comparison, the Hate Crime consultation paper reports 7483 racially motivated hate crimes per annum in Greater Manchester. The population of Greater Manchester is 2.7 million, of which 33% would be identified as BAME so that equates to 8.4 incidents per thousand people per annum.

There are some caveats to that calculation. Most of the time Naturists are not identifiable as such and many conceal their Naturism for fear of reprisal. If Naturists were continually identifiable as such, as is the case for BAME individuals, we would expect the incident rate to be much higher. Therefore, although the prevalence of incidents involving Naturists is lower than among the BAME community, it is not significantly lower, and it is almost certainly a lot larger per hour spent practising Naturism. The question is whether Alternative Subculture or Philosophical Belief should be protected, not Naturism specifically, so if the relative prevalence holds true across other subgroups, the overall prevalence would also be high.

ADDITIONAL HARM

Additional Harm can be divided into several subcategories, as outlined in paragraph 10.106 of the Hate Crime consultation paper. These categories will be addressed in turn.

INCREASED HARM TO PRIMARY VICTIM

Evidence of increased harm to primary targets can be seen in the incidents at our waterpark events.

At the event at Stoke-on-Trent on 26th September 2020, a group of 30 individuals threw abuse, accusations, threats and even stones at participants as they left the venue [Reference 2]. There was criminal damage to cars for which Staffordshire Police are still trying to apprehend offenders, and body-cam footage from police officers who responded to the incident have also shown spitting at



Naturists. Targeted participants in the Naturist swim included families with children ranging from 6 months to 14 years in age. The incident resulted in three independent crime reports to Staffordshire Police and a subsequent complaint regarding inadequate policing to the Professional Standards Department of Staffordshire Police (COM-20766-20-2100). One component of the hostility was that aggressors surrounded cars to film car registration plates and the occupants' faces. They subsequently used social media to state their intention to use the registration plates to discover the addresses of targets so that others would "know what to do". Filming or photographing targets to create a threat of future violence against Naturists has become a core component of these attacks and mean that the fear and anxiety persist long past the incident itself.

In a similar incident in Blackpool on the 2nd March 2019, another group aimed threats and baseless accusations of paedophilia at Naturists entering and leaving the waterpark. A family group comprising parents, grandparents and three children were obstructed and accused of paedophilia. The incident was streamed on Facebook as it happened with the result that the incident caused sustained distress as the children, one as young as 6, were ridiculed by other children in the aftermath. Police were called to the incident, though we do not know whether offenders were ultimately prosecuted.

The incident was repeated the following year in Blackpool on the 29th February 2020 with agitators issuing threats, abuse and accusations at Naturists while streaming video through Facebook. Some recordings were subsequently uploaded to You Tube after Facebook removed them following complaints of hate speech and include a recording of a group pursuing and harassing a family [Reference 3].

A witness statement from one of our stewards at the event says:

[Evidence 1]

The entire incident was extremely traumatic for all at the event, especially the families who had their children targeted. Again, the police were involved.

If we look at the consequences of this type of abuse, we see a number of additional harms:

- 1) Trauma. In the aftermath of the Stoke-on-Trent incident, oral interviews with attendees have revealed that the incident had affected their ability to sleep, that they were suffering anxiety, that the incident was preying on their minds to the exclusion of other things and, commonly for families, that they could not attend events in the future for fear of placing their children at risk. Written quotes from this single incident include:

[Evidence 2]

[Evidence 3]

[Evidence 4]

[Evidence 5]

[Evidence 6]

[Evidence 7]

[Evidence 8]

[Evidence 9]



[Evidence 10]

[Evidence 11]

[Evidence 12]

As an organisation, British Naturism organised several engagement sessions with groups of attendees to provide support and help them process the ordeal.

A more detailed testimony relating to the incidents in Blackpool demonstrates that the harm is long-lasting and impacts on other areas of the victim's lives:

[Evidence 13]

- 2) Concealment. The most significant effect of acts of hate against members of a Religion, Philosophical Belief, or Alternative Subculture is the pressure to abandon or conceal their characteristic. The harm done by such pressure not only increases the harm done by acts of hate, but in most cases exceeds the harm caused by the incident itself. Many individual Naturists attempt to keep their practice secret. These individuals will normally have been Naturists for many years and their choice to hide their lifestyle, rather than taking the easy option of abandoning it, demonstrates that the characteristic is an intrinsic part of their identity. Subordination of the identity characteristic, as seen in Naturism, would itself be justification for protection. As an organisation, British Naturism has to take great care to monitor mailing lists and use nondescript packaging for letters and magazines so that members are not inadvertently outed and exposed to harm. Feared reprisals include abuse from neighbours, targeting with criminal acts and misinformation campaigns against them that can result in loss of employment. Such fears are grounded in fact as there have been instances in 2010, 2012 and 2015 of individuals in the teaching profession being suspended for false allegations of sexual deviance that were motivated by hatred.
- 3) Fleeing abuse. In cases where Naturists do not wish to or fail to conceal their Naturism, we see Naturists threatened by neighbours to the extent that they have to leave their homes. The following examples are from an individual who had to move to a new house to escape abuse.

[Evidence 14]

[Evidence 15]

The examples of living in fear or having to modify their lifestyle are clear examples of additional harm experienced by individuals and would justify aggravation.

SECONDARY HARM TO THOSE WHO SHARE THE CHARACTERISTIC

Secondary harm is a common consequence of attacks against a close-knit minority groups and can be seen on two levels. Acts of hate that drive an individual to change or hide their belief or culture affect those close to the target and others who share the belief, even if not directly associated with the target.



1) Direct harm.

Offences and discrimination against a Naturist can often affect family that share the characteristic. We have received testimony from an individual who was dismissed from their employment when other individuals discovered they were a Naturist and pursued them by targeting the employer.

[Evidence 16]

As such we see evidence of direct secondary harm and how persecution of a characteristic can cause the breakdown of families.

2) Indirect harm.

Harm to those not directly associated with the primary target manifests as a change in behaviour of those sharing the characteristic. Naturists frequently suffer anxiety and conceal the characteristic due to constant fear of the targeted victimisation suffered by primary victims. False accusations that Naturists are guilty of sexual offences, including paedophilia are common:

[Reference 4]

[Reference 5]

Such accusations have no basis in fact and are in direct contradiction to the evidence; British Naturism has been running Naturist events at major tourist attractions for 25 years, during which time there have been no incidents of child abuse. The horror that is rightly associated with sexual offences against children is so great that even baseless accusations have impact as individuals would be ostracised for the rumour alone. Propagating allegations that individuals sharing a lawful characteristic are inherently guilty of other activities that are illegal and grossly immoral has led to a widely held stigma associated with Naturism and is one of the clearer examples of additional harm. Being accused of paedophilia face-to-face is a traumatic experience, knowledge that video footage of the incident, along with the allegations is being widely distributed has the potential to cause even greater harm. The victim suffers long-term emotional harm that may become physical if the accusations are believed. The allegations of paedophilia are a strong example of additional harm to the primary target, but we cover it under secondary harm as the impact on those sharing the characteristic is as great as the harm to the primary target. The effect of the secondary harm is demonstrated by Naturists cancelling their attendance at waterparks in Stoke-on-Trent and Blackpool due to fear caused by the allegations online, and the frequency with which individuals hide their identity as Naturists.

It should be noted that similarly unfounded accusations were levelled at the LGBTQ+ community and were a factor in causing sexual orientation to become a protected characteristic. The fact that the behaviour of entire sections of the population is altered by fear of hate acts should be reason enough itself to warrant the protection of such characteristics.

The consequences of the secondary harm are that individuals modify their behaviour. Individuals choose to stop gathering with others sharing the characteristic, a small selection of the comments we received after the 2019 incident in Blackpool:



[Evidence 17]
[Evidence 18]
[Evidence 19]
[Evidence 20]
[Evidence 21]
[Evidence 22]
[Evidence 23]
[Evidence 24]

The wider effect is that individuals sharing the characteristic even modify their behaviour within their private lives and their own homes for fear of being subject to the abuse they have seen targeted at others. Within our online community pages, we hear of hundreds of stories of individuals who are afraid that their Naturism will be discovered.

The final evidence of secondary additional harm amongst Naturists comes from the activities of clubs. There are over 100 Naturist clubs in the UK, some approaching 100 years of existence. Members usually remain part of their club for many years, making it clear that Naturism is an integral part of their identity and that they are committed to the Naturist philosophy and culture. Despite the need for members for their sustainability, clubs often operate very restrictive joining policies and avoid signage and other publicity that would reveal that the club is Naturist. The need to conceal the clubs stems from fears that members might be abused, or the property vandalised, demonstrating the long-term effects of fear.

WIDER HARM

Characterisation of hate crime often includes “wider harm to society” as a marker (Hate Crime consultation paper 10.106). Clear examples of wider harm would include effects on employees, suppliers or hosts of a protected group, who did not share the protected characteristic themselves. As detailed in “Increased harm to primary victim”, Naturists will often hire out venues or services that welcome us to meet as a group to practise Naturism. Threatening or abusive behaviour towards such events affects the venues and suppliers as well as the Naturists themselves.

A major component of targeting Naturist swims at waterparks in Stoke-on-Trent and Blackpool has been the targeting of the venues themselves. Following the Naturist event in Blackpool in February of 2020, the venue suffered criminal damage when an individual pasted allegations of paedophilia on the outer windows. Staff of the venue in Stoke-on-Trent were subjected to threats and abuse prior to the event in September 2020 [Reference 6] [Reference 7] that led to the cancellation of future support for family Naturist swims [Reference 8] [Reference 9] with the venue in Blackpool succumbing to similar pressure soon after [Reference 10]. Both of these changes have been celebrated by vigilante hate groups as proof that false accusations and targeting those providing services to minority groups works [Reference 11] [Reference 12] [Reference 13].

A further, long-term example involves another major tourist attraction that British Naturism has been hiring for 14 years. One of the conditions of the contract has always been that we must not publicise the event outside of Naturist circles as the venue fears reprisals.



In addition to the Wider Harm to the venues, the decisions to cease support for activities for Naturist families to protect venue staff causes further Secondary Harm to Naturists themselves. Criminal behaviour has hindered the full participation of Naturists in economic, social, and cultural life as Naturists are now discriminated against by venues and disadvantaged. The hate groups have themselves stated that achieving discrimination against Naturists by venues by enacting hostility against the characteristic was their primary objective.

Staff employed by British Naturism have experienced similar abuse, despite not being Naturists themselves. Abuse includes threats made by email and periods of persistent telephone calls [Reference 14] that required installation of security equipment at the office to protect the staff. Longer-term examples include the vandalism of cars at the headquarters of British Naturism and include addition of slogans such as “Do not park here Pervert”. Again, these incidents led to fear amongst staff such that non-naturist staff were afraid to drive to work. In response to the actions, visiting Naturists were required to modify their behaviour and avoid nudity that might provoke further hostility against staff. These precautions persisted for several years, until the office was closed earlier this year.

SUITABILITY

There are a number of subcategories upon which Suitability might be judged.

1) Complexity and Conflict of Interest

It is noted that some characteristics might not be suitable for consideration under hate crime due to complexity, an example given being domestic abuse where there are many compounding factors. Philosophical Beliefs and Alternative Subcultures do not have such complexity with hatred being motivated by irrational bias or desire to bully rather than a conflicting interest. Abuse based on Philosophical Belief is directly comparable to abuse based on Religion in that the abuse seems to be the only connection between perpetrators and targets such that the existence of the protected group could be completely ignored by the perpetrators and have no effect on their own lives. Abuse of an Alternative Subculture is similar to abuse based on Sexual Orientation, in both cases protagonists misunderstand the motivation and the identity of victims and are under no obligation to participate in the alternative lifestyle.

The experience of British Naturism when Naturists are targeted, is that aggression is often pre-meditated. Adversarial groups usually appear in response to a news story and coordinate their actions through social media, before usually, but not always drifting away after the incident. Often, they are groups that are also recognised for disconnected protest against other issues, be they anti-vaxxers, homophobic groups, anti-immigrants, anti-maskers, QAnon, paedophile conspiracy theorists, or protestors against 5G masts. In short, they appear to be individuals or groups looking for a minority to prey upon and often quickly move between targets, though the coordination demonstrates pre-meditated hatred, rather than spontaneity.

Opposing criminal actions taken purely for the sake of harming a minority group appears to be precisely the purpose of the proposed Hate Crime legislation. Aggravation of existing offences against



a Philosophical Belief or Alternative Subculture would be an effective tool for combating hatred and would fit logically into the broader sentencing framework.

2) Practical Workability

The second consideration in “Suitability” is whether it is workable in practice and the resourcing implication of recording and processing hate crimes. Unlike domestic violence or abuse of elders, which have multiple motivating factors, the motivating factor behind abuse of a Philosophical Belief or Alternative Subculture is an irrational desire to inflict harm on a minority group. In the absence of any benefit to the offenders, we would hope that the deterrent of possible aggravation or enhanced sentencing would help to drive down the number of incidents, saving time and resource for the police and judiciary. British Naturism hears several cases a month of police being called upon and many of those incidents are reported in local press. Although these incidents almost never lead to further action, they consume a significant amount of police time.

3) Rights of Others

The final consideration for suitability is that a protected characteristic should not conflict with the rights of others. Individual Philosophical Beliefs or Alternative Subcultures would have to be assessed on a case-by-case basis. The Hate Crime consultation paper notes that some groups such as paedophiles may match many of the criteria of a subculture, but should not be protected due to the harm to others. We would strongly agree. However, most Philosophical Beliefs or Alternative Subcultures have no negative effect on those outside the group and operate entirely within the law. We caution that considerations of harm and benefit must not conflate harm with prejudice.

Again, taking Naturism as our example we see several indicators within the law that Naturism is not incompatible with human dignity and does not conflict with the fundamental rights of others. Section 66 of the Sexual Offences Act 2003 creates an exposure offence deliberately carefully worded to avoid criminalising Naturism, the College of Policing in its ‘Briefing Note: Public nudity advice and decision aid’ makes clear that a person naked in public is unlikely to constitute any form of criminal offence in the absence of a sexual context and any intention that the behaviour cause alarm or be disorderly, while the Crown Prosecution Service’s ‘Nudity in Public – Guidance on handling cases of Naturism’ (September 2019) takes the same approach. Although not as well documented, most other Philosophical Beliefs and Alternative Subcultures share with Naturism the fact that they are not illegal.

A more detailed analysis can be found in case history and the review of Lord Justice Butler-Sloss of historical court rulings on child custody when parents separate [Reference 15]. The Butler-Sloss report reviews cases where custody was initially denied because of a parent’s “deviant status”, specific examples including a Naturist or lesbian parent. The Court of Appeal has recognised in the family law context that the sort of uninhibited behaviour Naturism involves was not to be equated with abuse: *Re W (Minors) (Residence Order)* [1999] 1 FLR 869. During the review, Lord Justice Butler-Sloss concludes that although Naturism and lesbianism deviate from societal norms and attract disapproval from parts of society, using those characteristics to determine child custody was inappropriate.

The observations of Lord Justice Butler-Sloss are relevant to the Hate Crime review because first, they conclude that Naturism is not harmful, and second, they note that disapproval of Naturism by some



people is not grounds to disqualify Naturists as parents. In the same way, simple dislike of a characteristic by some individuals should not be grounds for exclusion of a characteristic under Hate Crime legislation. The Demonstrable Need test of a characteristic means that there must be individuals who dislike the characteristic. We know there are racist individuals, but that justifies, rather than excludes Race as a protected characteristic. For a characteristic to fail the Rights of Others Suitability test it must cause demonstrable harm to others. Naturism along with most candidate Philosophical Beliefs or Alternative Subcultures cause no harm to the rest of society and may provide demonstrable benefit.

We can go even further by noting that, by definition, Naturism is founded on respect for each other so protection of Naturism would align with legitimate societal objectives of equality, dignity and respect for others. A recent example of positive contributions to wider society can be seen in British Naturism's submission to the Women and Equalities Select Committee's recent inquiry: "Changing the Perfect Picture, an Inquiry into Body Image" [Reference 16]. Naturists are not alone in such activities and most Philosophical Beliefs make a similarly positive contribution to society.

POWER

Academics Barbara Perry (In the Name of Hate: Understanding Hate Crimes (2001); B Perry, "The sociology of hate: Theoretical approaches" in B Perry (ed.) Hate Crime Volume One: Understanding and Defining Hate Crime (2009) pp 55 to 76) and Mark A Walters (Criminalising Hate: Law as Social Justice Liberalism (forthcoming) Ch 3, p12) argue that, at its core, Hate Crime is an establishment of power. Majority groups attempt to establish their dominance by a display of power towards a minority group. As such, the purpose of Hate Crime legislation should be to protect target minority groups from such hostility.

Alternative Subcultures by very definition are minority groups and the same is usually true for Philosophical Belief. Hostile encounters experienced by Naturists often appear to be an attempt to establish power, with the aggressor threatening Naturists with police action or violence. In each case hostility has been triggered by the dress code (nudity) that is the clearly visible feature of the Naturist subculture. Recent (2019-20) examples include:

[Evidence 25]
[Evidence 26]
[Evidence 27]
[Evidence 28]
[Evidence 29]
[Evidence 30]

The incident at the Stoke-on-Trent waterpark in September 2020 described above provides a larger example of hostility against a minority group. The gathering to abuse Naturists was triggered by reports in the local newspaper that whipped up emotions and incited hostility. British Naturism contacted the journalist in the run up to the event and the aftermath to draw attention to the fact that their actions were likely to incite criminal hostility. In the aftermath we raised further complaint with the managing editor to highlight that, as forecast, the actions of the journalist had incited abuse,



threats, criminal damage and one case of assault. The editor used a public interest defence in his response: “I do feel that there was significant public interest around the issue, and that we were justified to write about it.” In other words, appealing to the majority at the expense of the minority is acceptable.

These examples demonstrate that the desire of some in the majority to oppress a minority is a key motivating factor in actions against currently unprotected characteristics, such as Naturists. Comparison of decades of trouble-free Naturist waterpark use with the last two years where our events are consistently targeted shows that such incidents are becoming more frequent. These changes are an example of the growth in extremism and the prevalence in hate-related crime. Issues that would previously have remained a difference of opinion now translate into criminal acts of hate, and minority groups such as Philosophical Beliefs and Alternative Subcultures are now in desperate need of protection. Therefore, the review is timely and we would strongly support inclusion of Philosophical Beliefs and Alternative Subcultures as protected characteristics.

Consultation Question 19: *We invite consultees’ views on whether “people experiencing homelessness” should be recognised as a hate crime category.*

Consultation Question 20: *We invite consultees’ views on whether “philosophical beliefs” should be recognised as a hate crime category.*

Subject to what follows, we agree that Philosophical Beliefs should be recognised as a hate crime category.

Possibly the simplest way of assessing whether a new characteristic should be recognised as a Hate Crime category is to compare the motivations and effect of abuse to an existing category. For Philosophical Belief, a direct comparison can be drawn with the existing protected characteristic of Religion. Although a Philosophical Belief lacks a deity, the effect of hate acts on adherents of a Religion or Philosophical Belief are similar, in that they pressure an individual to abandon or conceal their belief. It is the history of oppression that necessitated the protection of Religion under existing Hate Crime legislation.

Article 9 of the European Convention on Human Rights makes no distinction between Religion and Belief and states that “Everyone has the right.... either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.” Therefore, the exclusion of Philosophical Belief from Hate Crime legislation contradicts agreed human rights.

The Equality Act 2010 already groups Religion and Belief together, and in response to Question 5 we discussed concerns about the disparity between the Equality Act 2010, the Crime and Disorder Act 1998 (“CDA 1998”) and the Criminal Justice Act 2003 (“CJA 2003”). In summary, the two major concerns are that:

- 1) Variations between the definitions of Protected Characteristics under different Acts create obstacles to the practical application of the law



- 2) Considering a characteristic such as Philosophical Belief as protected from some discriminatory behaviour, such as denial of service, but not from more serious criminal offences under the CDA 1998 and the CJA 2003 has the potential to encourage more severe discriminatory behaviour and promote criminal activity.

In response to questions 2 and 18 we outlined that there is debate as to whether Naturists should be classed as adherents to a Philosophical Belief, an Alternative Subculture, or both.

In response to Question 18 we noted that since 1974, Naturism has been defined by both the International Naturist Federation (INF-FNI) and British Naturism as follows:

"Naturism is a way of life in harmony with nature characterised by the practice of communal nudity with the intention of encouraging self-respect, respect for others and for the environment." (<https://www.naturisme.com/uk/naturism/>)

The characterisation as a "way of life" is relevant. Naturism is a weighty belief that for many Naturists has a substantial influence over their behaviour, with individuals choosing to live their lives according to the Naturist philosophy to the extent that it defines their identity. The qualification of Naturism as a Philosophical Belief can be demonstrated by analysis of equality law. Case law under the Employment Equality (Religion or Belief) Regulations 2003, which preceded the Equality Act, defined the Grainger test (*Grainger plc and others v Nicholson EAT/0219/09*) for what constitutes a Philosophical Belief, and those tests are replicated in the Explanatory Notes to the 2010 Act and in the Statutory Code of Practice. British Naturism has obtained an Opinion from Counsel based at reputable London chambers, confirming the view that Naturism is indeed capable of constituting a Philosophical Belief.

As we explained in answer to question 18, there are also strong arguments that Naturism could be characterised as an Alternative Subculture.

In our answers to Question 2 and 18 we expressed concern that disadvantaged minority groups that might not fit clearly within a single characteristic should not inadvertently fall between the cracks. For present purposes, the debate as to whether Naturism constitutes an Alternative Subculture or a Philosophical Belief is of lesser importance to British Naturism than bringing Naturists within the scope of the legislation. We would encourage the legislator to make sure that the definitions were sufficiently clear as to secure that aim.

There are good arguments for securing that additional protection. Persecution of Naturists has grown over the last few years with larger Naturist gatherings now requiring a significant police presence, including Police Liaison Officers, to deal with attempts by hate groups to cause criminal damage and assault Naturists. The widespread harm provides strong evidence of the need for protection of a lifestyle that guides the behaviour and defines the identity of adherents. Our basic premise is that everyone has the right to respect in their private and family life, as stated in Article 8 of the European Convention on Human Rights, and that an individual's identity as part of an Alternative Subculture or the holder of a Philosophical Belief should not cause them to forfeit that right.



Naturism is a good example of a minority group that can be used to model whether additional characteristics such as Alternative Subcultures and Philosophical Belief should be incorporated into Hate Crime legislation. The number of Naturists is small enough for the group to be a minority but large enough to exhibit a cohesive identity, rather than a collection of independent viewpoints. British Naturism, which is the largest representative of Naturists in the UK, comprises 9,000 individual paying members. It also has 90 Member Clubs, many of whose members are not direct members of British Naturism, so it is estimated that there are some 15,000 card-carrying Naturists in the UK. The International Naturist Federation (INF-FNI) boasts 450,000 paying members worldwide (<https://inf-fni.org/about-inf-fni/history-of-inf-fni/>).

Following guidance given at the helpful meeting with representatives of the Law Commission on the 10th December 2020, we are submitting our evidence of the effect of hatred on Naturists in responses to both Questions 18 and 20.

[Evidence detailed in response to Question 18]



Chapter 15: The legal test for hate crime laws

Consultation Question 21: *We provisionally propose that the legal test that applies in respect of enhanced sentencing should be identical to that which applies to aggravated offences. Do consultees agree?*

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

Consultation Question 23: *We invite consultees’ views as to whether the current motivation test should be amended so that it asks whether the crime was motivated by “hostility or prejudice” towards the protected characteristic.*

We agree with the provisional view of the Law Commission favouring amending the motivation test so that it asks whether the crime was motivated by “hostility or prejudice” towards the protected characteristic – option 3 among those discussed.

We agree with the proposition that it would be imprudent to apply such an extended test only to some characteristics, and we would prefer to see it applied across the wider list of characteristics discussed earlier in the report. Some of the hostility sometimes experienced by Naturists is based on erroneous assumptions about the practice which can readily be considered prejudice.

There are striking similarities between recent experiences of Naturists and the example set out in paragraph 15.92 of the Hate Crime consultation paper, where a disabled person was targeted based on an erroneous assumption that their disability meant they were a paedophile. In Blackpool and Stoke-on-Trent in 2019 and 2020 Naturists attending an organised swim were targeted by protestors accusing them of being paedophiles because children were present. Participants arriving at or departing from venues were jostled, threatened and spat at. The organisation among the protestors could be evidenced from their social media presence, which also demonstrated prejudice based on conspiracy theories with no basis in fact. More detail of these incidents has been provided in response to Questions 18 and 20.



Chapter 16: Aggravated offences

Consultation Question 24: *We provisionally propose that the model of aggravated offences with higher maximum penalties be retained as part of future hate crime laws. Do consultees agree?*

Yes

Consultation Question 25: *We provisionally propose that the characteristics protected by aggravated offences should be extended to include: sexual orientation; transgender, non-binary and intersex identity; disability, and any other characteristics that are added to hate crime laws (in addition to the current characteristics of race and religion). Do consultees agree?*

Yes

We strongly agree with the proposal to retain and extend the same level of protection to all of the existing characteristics and to those that may be added. We feel that this would greatly simplify the current situation without detriment to any of the characteristics currently protected.

Aggravation of offences is important in serving as a deterrent and sends a clear message of how seriously such offending is viewed by the wider society. However, it also forms the basis upon which the concept of Hate Crime is defined and perceived in some quarters. We have seen that several Police Forces have adopted slightly different definitions of hate crimes and perhaps more importantly, hate incidents. The Hate Crime consultation paper identifies that much of the evidence of a need to protect any particular characteristic is anecdotal as it goes under reported or unrecorded. In our response to Questions 18 and 20 we provide several examples of abuse of Naturists but only one was recorded as a hate incident because it was also homophobic. By ensuring that all protected groups are treated equally in this regard it should standardise the response from the police service.

We believe that it is right to remove the disparity treatment amongst the existing characteristics and to provide that same level of protection to any group or characteristic added. A hierarchy of protection is illogical and causes confusion.

Consultation Question 26: *We provisionally propose that the decision as to whether an aggravated version of an offence should be created be guided by:*

- *The overall numbers and relative prevalence of hate crime offending as a proportion of an offence;*
- *The need to ensure consistency across the criminal law;*
- *The adequacy of the existing maximum penalty for the base offence; and*
- *Whether the offence is of a type where the imposition of additional elements of the offence requiring proof before a jury may prove particularly burdensome.*

Do consultees agree?



Consultation Question 27: *We provisionally propose that aggravated versions of communications offences with an increased maximum penalty be introduced in reformed hate crime laws. Do consultees agree?*

Yes

We support the proposal that aggravated versions of communications offences be introduced. As noted in the Law Commission's own Scoping report 2018 in relation to Abusive and Offensive Online Communications, there is a serious problem with damaging online hatred.

It can also be argued that directing hatred in the form of electronic communication can be more easily conducted, though no less damaging, than related 'offline' offences e.g. (online) stalking, (online) harassment, putting people in fear of violence.

Furthermore, due to easily accessible technology and platforms, hatred via online communications is likely to continue to be the prevalent means. Recognition of this within law, and the means to address it, would be of huge value to those members of the public targeted due to membership of a specific, protected group.

As an example minority group, Naturists are increasingly finding it difficult to live their Naturist lives without fear of threatening or abusive online communications. Messages received during the brief 2020 September-December consultation period include [sic]:

[Evidence 31]
[Evidence 32]
[Evidence 33]
[Evidence 34]
[Evidence 35]
[Evidence 36]

Online harassment can exacerbate the Additional Harm caused by in-person acts of hate, or cause similar harm without the need for an in-person incident. Fear of online harassment contributes to Naturists feeling vulnerable and to keeping their Naturism 'hidden', in order perhaps to protect employment, or to avoid threats from neighbours, such as those we describe in response to Questions 18 and 20.

Electronic communication of threats and abuse extends to Wider Harm of members of the public, including staff at waterparks who host Naturist events who have been subject to offensive, threatening, menacing communications via email and direct social media messages [Reference 17]. The hostility of those communicating hatred was motivated solely by the Naturist element of the waterpark events, as shown by the lack of abuse at other times. The abusive communications have left Naturists unable to practise Naturism due to withdrawal of services by suppliers.

The sending of communications that are grossly offensive, obscene, threatening or of menacing character, for the purpose of causing anxiety, is already a criminal offence under Section 127 of the



Communications Act 2003 and Section 1 of the Malicious Communications Act 1988. Our evidence clearly demonstrates the Additional Harm caused by abusive and threatening electronic communications that are motivated by hatred and provides ample justification for aggravation of the offences.

Consultation Question 28: *We provisionally propose that aggravated versions of the following offences should be created, notwithstanding that they have life maximum penalties:*

- *Grievous bodily harm with intent contrary to section 18 of the OAPA 1861; and*
- *Arson with intent or reckless as to whether life is endangered contrary to sections 1(2) and 1(3) of the Criminal Damage Act 1971.*

We do not propose that aggravated versions be created in respect of any other offences with a life maximum penalty.

Do consultees agree?

Consultation Question 29: *We provisionally propose that aggravated versions of the following offences against the person should not be introduced in reformed hate crime laws:*

- *Maliciously administering poison so as to endanger life or inflict grievous bodily harm (section 23 OAPA 1861);*
- *Maliciously administering poison with intent to injure, aggrieve or annoy any other person (section 24 OAPA 1861);*
- *Threats to kill (section 16 OAPA 1861); and*
- *Threatening with an offensive weapon or article with a blade/point (section 1A Prevention of Crime Act 1953/ section 139AA(1) Criminal Justice Act 1988).*

Do consultees agree?

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

We consider that there would be merit in including at least some of the property and fraud offences listed in paragraph 16.88 within the specified aggravated offences. We share the view of the stakeholders described at 16.23 that there would be a policy benefit in labelling offences motivated by hostility as such, as well as the other benefits outlined in that paragraph.

In our responses to Questions 18 and 20 we provide evidence of incidents involving criminal damage to cars motivated by the fact that the occupants of the vehicles were thought to be Naturists.

We cannot at this time identify direct evidence of past offences of theft or burglary motivated by hostility to Naturists. We do, however, have similar concerns to those attributed to the LGBT community in relation to blackmail at paragraph 16.87. Many Naturists remain "closeted", even if they do not use that term, and may be concerned about their identity as Naturists being revealed against their wishes to their employer, neighbour, or others and may therefore be susceptible to the threats of a blackmailer.



Consultation Question 31: *We provisionally propose that aggravated versions of sexual offences should not be introduced (and hate crimes in these contexts should continue to be dealt with through enhanced sentencing). Do consultees agree?*

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

Consultation Question 33: *We invite consultees' views on whether the maximum sentences for the aggravated offences in the CDA 1998 are appropriate.*

Consultation Question 34: *We invite consultees' views on whether where only an aggravated offence is prosecuted, the Courts should always be empowered to find a defendant guilty of the base offence in the alternative.*

Consultation Question 35: *We invite consultees' views on whether they consider the Sussex Report's proposed "hybrid" approach to hate crime laws to be a preferable approach to the model that we have proposed.*

Chapter 17: Enhanced sentencing

Consultation Question 36: *We provisionally propose that the enhanced sentencing model remain a component of hate crime laws, as a complement to an expanded role for aggravated offences. Do consultees agree?*

Consultation Question 37: *We provisionally propose that sentencers should continue to be required to state the aggravation of the sentence in open court. Do consultees agree?*

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

Further, we invite consultees' views on whether this might be best achieved by:

- *a residual category;*
- *a set of criteria for judges to consider;*
- *sentencing guidance; or*
- *a combination of approaches.*

We support the Commission's provisional view that a more flexible approach to characteristic protection might be appropriate for the purposes of enhanced sentencing.

We note the Commission's view in relation to question 36 that enhanced sentencing should continue to exist to complement expanded aggravated offences. In responding positively to the proposals canvassed in question 38 we stress our preference that aggravated offences be expanded in such a way that Alternative Subculture and Philosophical Belief be brought within the categories protected.



Whether available in parallel or as an alternative to that approach, we do see merit in allowing courts sufficient flexibility to consider hostility to a wider class of victims when passing sentence. We have no preference as to whether this be by reference to a residual category of non-specified characteristics or within a set of criteria. The key concerns for us are that it should be clear that offences motivated by hostility to a characteristic of the victim, defined in such a way as to include minorities such as Naturists, should attract an enhanced sentence designed to provide deterrence, and that offences of this kind should be recognised as Hate Crimes.

Consultation Question 39: We provisionally propose that, contrary to the more flexible approach set out in R v O’Leary, a court should not be permitted to apply an enhanced sentence to a base offence, where an aggravated version of that offence could have been pursued in respect of the specified characteristic. Do consultees agree?

Chapter 18: Stirring up offences

Consultation Question 40: We provisionally propose that the stirring up offences relating to “written” material be extended to all material. Do consultees agree?

Yes

We support this proposal as it is the intention to stir up hatred and the consequences that matter, not the means of communication. In many instances, equivalents of stirring up offences already encompass all material. The Public Order Act considers words and behaviour, in addition to written material, while the CPS guidelines specifically identify social media postings as a potential marker of hostility:

Section 18 of the Public Order Act 1986, Use of words or behaviour or display of written material, states:

“(1) A person who uses threatening, abusive or insulting words or behaviour, or displays any written material which is threatening, abusive or insulting, is guilty of an offence if—

- (a) he intends thereby to stir up racial hatred, or
- (b) having regard to all the circumstances racial hatred is likely to be stirred up thereby.”

Section 29B of the Public Order Act 1986, Use of words or behaviour or display of written material, states:

“(1) A person who uses threatening words or behaviour, or displays any written material which is threatening, is guilty of an offence if he intends thereby to stir up religious hatred or hatred on the grounds of sexual orientation.

www.cps.gov.uk (Racist and Religious Hate Crime – Prosecution Guidance), Motivated by hostility, states:

The following evidence will be necessary:



Primary evidence, whether direct or circumstantial, from which it can be deduced or inferred that the offender has a hostility towards people (or one person) of a particular race or religion. The kind of evidence will vary from case to case but may well include, for instance:

- words, whether contemporaneous or not;
- writings;
- social media postings;
- insignia;

There is also legal precedent for offences that combine written and oral approaches to incite hostility (Hammond v DPP [2004] EWHC 69 (Admin)).

Inclusion of all means of communication within Stirring Up offences is necessary for:

- a) Consistency across different areas of the law
- b) Consistency between different forms of communication

Failure to do so introduces loopholes that inhibit application of the law as intended and demand investment of court time in determining the classification of types of communication. For example, there would be space for legal debate over whether social media postings constitute written material, or even whether the thresholds are different for print vs online media.

The extensive use of social media in communicating hatred and harassing targets means that potential exemption of communication through social media from stirring up offences would work against the objectives of hate crime legislation.

British Naturism's own experiences of hate-motivated abuse have been stirred up by a mixture of irresponsible journalist articles, social media activity and verbal incitement, with social media activity being the dominant medium. In 2019, online agitators spread misinformation and false allegations about Naturists attending a gathering through social media, that resulted in extreme abuse of Naturists entering and leaving the event. In 2020 reckless journalism fomented further antagonism that then spread onto social media and again resulted in abuse of Naturists at events. Although Naturism, Alternative Subcultures or Philosophical Beliefs are not currently protected characteristics, the point here is clear. Two identical events, two identical actions by hate groups, and two identical outcomes. The only difference is the second example involved printed material, while the first did not. Given the parallels, to say that the second incident involved stirring up, but the first did not would be illogical.

Consultation Question 41: *We provisionally propose to replace sections 19 to 22 and 29C to 29F of the Public Order Act 1986 with a single offence of disseminating inflammatory material. Do consultees agree?*

Yes

Consultation Question 42: *We provisionally propose to align the defences available to innocent disseminators of inflammatory material to ensure consistency as follows:*



- (1) The provisions relating to performers, rehearsals and recordings of performances would apply to both plays and broadcasts.*
- (2) The defences available to third parties who did not intend to stir up hatred would be aligned, so that the offence would not apply to a person who did not realise that the material was to be included; did not realise that material was threatening or abusive; or did not realise that the circumstances were such that hatred was likely to be stirred up.*
- (3) Unless intention to stir up hatred is proved, no offence would be committed by showing a recording that has been certified by the British Board of Film Classification or licensed for cinema performance by a local authority.*
- Do consultees agree?*

Consultation Question 43: *Under what circumstances, if any, should online platforms such as social media companies be criminally liable for dissemination of unlawful material that they host?*

If “actual knowledge” is retained as a requirement for platform liability, should this be the standard applied in other cases of dissemination of inflammatory material where no intention to stir up hatred can be shown?

For criminal liability of social media companies to be incorporated into law, we would argue that “dissemination” and “unlawful” would need to be carefully defined.

With regards to “unlawful”, we would suggest use of the definitions that parallel those specified in Section 18 of the Public Order Act 1986, Acts intended or likely to stir up racial hatred. Although we would expect liability to be extended to all characteristics protected under the Hate Crime Act, uniformity of definitions across law would be desirable.

With regards to “dissemination”, we would argue that continuing to host material deemed to be unlawful would be sufficient to be considered dissemination. We note that due to the sharing nature of social media, content can become quickly ‘viral’ beyond the control of the original content creator, and therefore stir up a level of hatred beyond the intention of the individual. As a consequence, material on social media is more likely to stir up acts of hatred than dissemination through other means, such as the spoken word, and the social media provider should have liability for allowing the material to propagate unchecked.

To illustrate our response, we would comment on our experiences of the damage done through social media. The connectivity of large platforms, and the relative anonymity with which they can be used makes them the preferred tool for coordinating acts of hate.

In response to Questions 18 and 20 we provide examples of hate-motivated actions against Naturists at events at waterparks. Those actions involved aggressors gathering to throw abuse, false accusations, threats and missiles at Naturists and venue staff and include actions that have been subsequently considered by police to include assault and criminal damage. The language used made it clear that the aggression was motivated by hostility towards Naturists. In all cases the perpetrators arranged their activity through social media (Facebook). Furthermore, a key component of the actions



was the desire to stream videos through Facebook of Naturists being abused in order to appeal to their fans. In effect, social media was being used to glamourise Hate Crime and turn criminal activity into a form of entertainment. Stronger action by the platform would have first, removed the ability to coordinate criminal activity, and second, removed the emotional reward for those participating. Although freedom of speech must be protected, it is hard to argue that streaming videos of criminal activity should be considered freedom of speech.

It should be noted that our members frequently report posts where they or Naturists in general are targeted, and reports are frequently ignored, even in cases where posts were abusive or contained threats of violence towards those making the report. Anecdotal testimonies from our members indicate that responsiveness varies between platforms with 70% of reported Twitter posts, but only 10% of reported Facebook posts being removed. That our members encounter different responses on different platforms, despite the people reporting being the same and the content similar, suggests that culpability lies with the platform. It has been suggested by affected users that reliance on “checkbox” reporting systems and computer algorithms to manage reports is likely to be a factor in the failure to recognise and respond to hate speech by social media platforms. It was also observed that stirring up posts that encourage hostility in others were rarely removed, with posts only being removed if they issued a direct threat. As the Law Commission considers Stirring Up offences, this is an important issue. Stirring Up has the potential to cause far more harm than a direct communications offence, as Stirring Up incites hostility in a much greater number of people yet is often overlooked by the law.

Whether or not criminalisation of social media providers is the best mechanism for dealing with these problems, providers should not be exempt from liability for facilitating or glorifying Hate Crime. Given the demonstrable reluctance of providers to take meaningful action, we very much doubt that they will take their responsibilities seriously unless there are stringent penalties. We note that the question around criminal liability of online platforms is one already discussed in other areas, for example disinformation:

House of Commons: Digital, Culture, Media and Sport Committee; Disinformation and ‘fake news’: Final Report Eighth Report of Session 2017–19:

“14. Social media companies cannot hide behind the claim of being merely a ‘platform’ and maintain that they have no responsibility themselves in regulating the content of their sites. We repeat the recommendation from our Interim Report that a new category of tech company is formulated, which tightens tech companies’ liabilities, and which is not necessarily either a ‘platform’ or a ‘publisher’. This approach would see the tech companies assume legal liability for content identified as harmful after it has been posted by users. We ask the Government to consider this new category of tech company in its forthcoming White Paper.”

On the technical question, we do believe that “actual knowledge” should be retained as a requirement for liability, but that there should be a requirement for reasonable steps to acquire that knowledge. Claims of ignorance should not automatically exempt providers from liability.



Consultation Question 44: *We invite consultees' views on whether the meaning of "likely to" in the racial hatred offence should be defined in statute (and for any other characteristics to which it would apply in future). We further invite views on how might this be defined.*

For the purpose of clarity, we firmly believe that protected characteristics should be treated equally and our views on the meaning of "likely to" would apply to equivalent offences against all protected characteristics, not just racial hatred.

While accepting that it can be difficult to be precise, we do believe that guidelines on the meaning of "likely to" in statute would be beneficial. Failure to include a definition or guidelines would make application of the law both subjective and variable. Consistency in the law, to the extent that is possible, is highly desirable so that victims, culprits and the judiciary have a good understanding of what falls outside the law. Aside from fairness, guidelines will also reduce the procedural burden as courts will be able to determine whether specified standards have been met faster than they would be able to reach a decision from first principles. Furthermore, lack of definition would increase the frequency and time required to deal with appeals.

However, we also believe that it is necessary to retain some flexibility in the system so that the judiciary are able to exercise discretion according to the context of specific cases. Failure to include flexibility could result in some careless communication being penalised beyond reasonable scope and other communication that should be sanctioned avoiding sanction because it did not match a checklist.

When considering the guidelines, we would emphasise that the purpose of Stirring Up offences is to oppose speech that is motivated by hate and likely to cause real harm. It should not be a mechanism for suppressing discourse.

In terms of possible definitions we would draw attention to the Crown Prosecution Service guidelines, Racist and Religious Hate Crime - Prosecution Guidance (<https://www.cps.gov.uk/legal-guidance/racist-and-religious-hate-crime-prosecution-guidance>), which recommends a definition of "likely" based on Part III of the Public Order Act 1986, Racial Hatred:

"Racial hatred is defined in section 17 of the Act. The prosecution must prove that hatred was intended to be stirred up or that it was likely to be stirred up. "Likely" does not mean that racial hatred was simply possible. We therefore have to examine the context of any behaviour very carefully, in particular the likely audience, as this will be highly relevant."

Although the passage does not precisely define where the barrier for qualification should be set, it does highlight some important considerations.

Given the difficulty in balancing clear guidance with flexibility, we would suggest that listing factors that determine whether likelihood is achieved, rather than providing strict definitions might be the better approach. Although we do not have an exhaustive list of factors, considerations we would suggest include:

- 1) Whether an act was calculated as likely to cause hatred



- 2) Whether an act involved the disclosure of personal information, such as an address, that creates a real and substantial possibility of harm
- 3) The nature of the act
- 4) The audience or visibility of the act
- 5) All of the circumstances of the case
- 6) That consistent with *DPP v Smith* [1961] AC 290 House of Lords, the test is whether “a reasonable man is likely to” rather than “any man is likely to” or “any man could be”

While this is not intended to be an exhaustive list, it should guide the mind of the tribunal of fact in deciding if an act is 'likely' to stir up hatred.

Consultation Question 45: *We provisionally propose that intentionally stirring up hatred be treated differently from the use of words or behaviour likely to stir up hatred. Specifically, where it can be shown that the speaker intended to stir up hatred, it should not be necessary to demonstrate that the words used were threatening, abusive, or insulting. Do consultees agree?*

Yes

We strongly agree that where a speaker intends to stir up hatred, it should not be necessary for the speaker to be making threats or be abusive or insulting themselves.

“Stirring up” can be defined as “to cause (someone) to feel a strong emotion and a desire to do something, as in ‘The speech stirred up the crowd’”. Synonyms for “stirring up” would be “provoking” or “inciting”, and this is what the law is trying to deal with. Instances where an individual is stirring up, provoking or inciting hate acts by others. When such behaviour occurs, the intention of the individual would usually be that they would NOT be committing the hate act themselves but relying on others to deliver harm. The need for a threat, abuse or insult to be included in a stirring up offence insulates those who are behind hate acts from prosecution. Those making pre-meditated attempts to stir up hatred are often highly knowledgeable about the relevant law and carefully skirt the boundaries of what is illegal.

British Naturism has experienced such activity several times over the last few years where political extremists have provoked abuse and assault of Naturists by locals, without participating in the illegal activities themselves. Discouraging the instigators from stirring up hatred would be a far more effective than prosecution of the intermediaries.

We will not provide specific details of these events because, under current law, the instigators have not necessarily committed a criminal offence and we are not going to risk an act of defamation.

Consultation Question 46: *We provisionally propose that where intent to stir up hatred cannot be proven, it should be necessary for the prosecution to prove that:*

- (1) *the defendant’s words or behaviour were threatening or abusive;*
- (2) *the defendant’s words or behaviour were likely to stir up hatred;*



(3) the defendant knew or ought to have known that their words or behaviour were threatening or abusive; and

(4) the defendant knew or ought to have known that their words or behaviour were likely to stir up hatred.

Do consultees agree?

Other

It is becoming evident that as society becomes more tribal, hate is often enacted by groups and that those groups often form as a result of Stirring Up. This observation would appear to fall outside of the remit of this question, as there is “intent” in such actions. However, the challenge is that extremist leaders are carefully skirting the edges of current offences, couching actions to avoid legally demonstrable “intent”, and achieving considerable success by doing so. The growing prevalence of effective demagogues indicates that the current offences are too narrowly drawn.

Racists, anti-semites, islamophobes, homophobes, and all the other haters are not born, they are made. If the problem of hate crime is to be combatted effectively then the things that create the hatred must be addressed. Revisions of Stirring Up offences are the most effective way of addressing the challenge, due to the wide impact of Stirring Up, particularly when enacted by an individual in a position of influence (e.g. politician or media). It is essential that freedom of speech is not compromised during any redefinition, though we would note that freedom of speech is not a defence for Defamation under civil law, so should not be a defence for Stirring Up under criminal law. Therefore, we would advocate an offence along the lines of the French approach as outlined in paragraph 2.5 of the consultation paper.

With regard to the proposed statements:

(1) and (3) Stirring up hatred does not rely on statements that are threatening or abusive, indeed, such words would appear to be a Communications offence, rather than a Stirring Up offence. Therefore, in our opinion, they should not be a pre-requisite.

(4) We strongly support inclusion of the term “ought to have known”, principally because it adjusts the threshold to allow for the circumstances of the communicator. It expects higher standards from, for example, the press and politicians than it does from a casual social media user and that is entirely reasonable. British Naturism has itself encountered difficulties when a newspaper published a story likely to stir up hatred, we advised the journalist that the story was likely to stir up hatred, they could see hatred developing in response comments on the article, and rather than withdrawing the story, the journalist went on to publish follow up articles. Once the stirring up articles resulted in hate-motivated criminal offences, the journalist and editor dismissed the consequences as unforeseen and unintended. With all of the evidence before them, the journalist “ought to have known” the consequences of their actions.

We further observe that dissemination of untruths is often used in Stirring Up. Allegations of paedophilia have been made against the LGBTQ+ community both in the past and the present, and



there is a current trend to use the same allegation against a range of target groups. We would suggest that if stirring up hatred through the dissemination of untruth is used as a test, it should be in parallel to those defined above rather than an additional requirement. It should be possible to avoid the risk of freedom of speech being curtailed by the use of definitions such as "manifestly untrue" or "it shall be a defence that reasonable steps were taken to establish the validity of".

Consultation Question 47: *We provisionally propose that there should be a single threshold to determine whether words or behaviour are covered by the "likely to" limb of the stirring up offences, applying to all protected characteristics. Do consultees agree?*

If so, would consultees favour applying a single threshold of "threatening or abusive" but not "insulting" words to prosecutions brought under the "likely to" limb?

Yes

We would support a single threshold to determine whether words or behaviour are covered by the "likely to" though, as we note in our response to question 46, we have serious concerns whether "threatening or abusive" are the correct criteria for a Stirring Up offence.

We do not believe that "insulting" words should be brought under the "likely to" limb as incorporating "insulting" would begin to impinge freedom of speech and would not meet tests such as "Additional Harm" that are included in other parts of the proposed Hate Crime legislation.

We would recommend some clarification on the difference between "abusive" and "insulting". Our recommendation is that the difference should be defined by the potential to cause harm. We would consider "insulting" to mean words that are merely rude and not worthy of inclusion in the "likely to" limb, whereas "abusive" words would cause harm either directly or by inspiring hate acts in others. Although we seek definitions of insulting and abusive in Question 47, these definitions also impact on other areas of the proposed legislation.

Consultation Question 48: *We provisionally propose that the offences of stirring up hatred be extended to cover hatred on the grounds of transgender identity and disability. Do consultees agree?*

Yes

We would support this proposal, though our expectation would be that any characteristic that is protected under a Hate Crime Act would be covered by stirring up offences. Our understanding is that the framing of this question arises from the current inclusion of transgender identity and disability as protected characteristics, but not under Stirring Up offences, and that the intention would be to also include any new protected characteristics. Creation of different tiers among the protected characteristics is inconsistent with other proposals in the review and propagates inconsistency within the law itself that makes application by both police and judiciary more difficult. Introducing stirring up offences against some protected characteristics but not others appears to directly conflict with the manifestly sensible desire, including by the Law Commission, for consistency across Hate Crime law.



We recognise that a balance must be struck between protecting minority groups and defending individuals' freedom of speech. However, that that should be achieved by careful definition of what constitutes a stirring up offence, rather than restricting stirring up offences to a subset of the protected characteristics. Derogatory opinions should not constitute a stirring up offence, but incitement of criminal hostility against any protected characteristic should be covered.

Freedom of speech is a qualified right. Article 10 of the European Convention on Human Rights states that freedom of speech is subject to restrictions where it is necessary for the prevention of crime and protection of the reputation or rights of others. Limitations on freedom of speech, where it has been necessary in democratic society to prevent irreparable harm, are already seen in criminal and civil law. As an example, in civil law the Defamation Act 2013 prohibits communication that causes or is likely to cause serious harm to the claimant, unless the statement is substantially true or of public interest. Therefore, limitations on freedom of speech, where warranted, are not a novel concept or inconsistent with current law, so that extension to Stirring up offences under criminal law would be appropriate.

As a group we encounter derogatory comments, baseless allegations of paedophilia and calls for violence against Naturists on social media, with the second item often being used as the justification for the third. Such statements meet the tests of both causing serious harm and substantially untrue, and we believe that the incitement of violence against any protected characteristic should fall under the umbrella of Stirring Up offences.

We expect Naturism to gain protection under one of the new characteristics, Alternative Subculture, Philosophical Belief, or both, and therefore we provide an example of the need for inclusion of all protected characteristics under Stirring Up offences. In 2019, the name and approximate address of one of our members was distributed on social media, along with false allegations of paedophilia. Although the posts were not directly threatening, they stirred hatred and raised the risk of a criminal action to the point that the local police force designated the target a vulnerable person and placed a watch on their house for protection. This incident is precisely the sort of action that Stirring Up offences are design to prevent, and shows that necessity is not limited to race, religion, and sexual orientation.

Consultation Question 49: *We provisionally propose that the stirring up offences be extended to cover sex or gender. Do consultees agree?*

Other

We believe that all protected characteristics should be treated equally under Stirring Up offences, so if sex or gender become recognised as protected characteristics under other parts of the review, Stirring Up offences would also be extended to cover them.

Consultation Question 50: *We invite consultees' views on whether the definition of hatred for the purposes of the stirring up offences should include hatred on grounds of one or more protected characteristics.*



We would like to see this question become irrelevant. If stirring up offences against different characteristics have the same definition and threshold, as we recommend in response to Questions 41 and 47, and stirring up offences are extended to all protected characteristics equally, as we recommend in response to Question 48, the need to consider individuals with multiple protected characteristics is removed. We would not suggest that there be cumulative sentences for targeting an individual who is both black and lesbian, for example. We would argue that the harm is done to the individual and that there is no less harm if a targeted individual possesses only one protected characteristic.

Consultation Question 51: *We provisionally propose that the current exclusion of words or behaviour used in a dwelling from the stirring up offences should be removed. Do consultees agree?*

Yes

The current exclusion provides a loophole that those seeking to stir up hatred can exploit.

Consultation Question 52: *We provisionally propose that the current protections in sections 29J and 29JA apply to the new offence of stirring up hatred. Do consultees agree?*

We invite consultees' views on whether similar protections should be given in respect of transgender identity, disability and sex or gender, and what these should cover.

Consultation Question 53: *We invite consultees' views on whether there should be similar protections to those in sections 29J and 29JA under the racial hatred offences.*

Consultation Question 54: *We provisionally propose that prosecutions for stirring up hatred offences should require the personal consent of the Director of Public Prosecutions rather than the consent of the Attorney General. Do consultees agree?*

Yes

We agree that consent should be the responsibility of the Director of Public Prosecutions. As a political appointment, the actions of the Attorney General will always be under pressure to align with the section of the electorate that the Attorney General represents. The application of Hate Crime law should be impartial and serve the entire population, so placing the decisions under the control of the civil service reduces the risk of bias or political influence.

Consultation Question 55: *We invite consultees' views on whether the current exemptions for reports of Parliamentary and court proceedings should be maintained in a new offence.*

Further, we invite views as to whether there are any additional categories of publication which should enjoy full or partial exemption from the offence, such as fair and accurate reports of local government meetings or peer reviewed material in a scientific or academic journal.



Chapter 19: Football Offences

Consultation Question 56: *We provisionally propose that racist chanting at football matches remain a criminal offence distinct from the current Public Order Act 1986 offences. Do consultees agree?*

Consultation Question 57: *We provisionally propose that the offence under section 3 of the Football (Offences) Act 1991 of engaging in “chanting of an indecent or racist nature at a designated football match” be extended to cover chanting based on sexual orientation. Do consultees agree?*

We welcome consultees’ evidence on the prevalence of discriminatory chanting targeting characteristics other than race and sexual orientation, and would welcome views on whether the offence should be extended to cover all protected characteristics.

Consultation Question 58: *We invite consultees’ views on whether the offence under section 3 of the Football (Offences) Act 1991 should be extended to cover gestures and missile throwing.*

Consultation Question 59: *We invite consultees’ views on whether the offence under section 3 of the Football (Offences) Act 1991 should be extended to cover journeys to and from a designated football match.*

Consultation Question 60: *We invite consultees’ views on whether the offence under section 3 of the Football (Offences) Act 1991 should be amended to include association and perceived characteristics.*

Consultation Question 61: *We invite consultees’ views on whether the current penalty for the offence under section 3 of the Football (Offences) Act 1991 of engaging in chanting of an indecent or racist nature at a designated football match, a Level 3 fine, is sufficient.*

Chapter 20: A Hate Crime Commissioner?

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

We would support the creation of a Hate Crime Commissioner role. We take the view that the increasing profile of hate crime on the political agenda, as well as its fast-developing nature, merits the oversight and awareness-raising functions foreseen in the report. It is not hard to see the potential benefits of appropriate monitoring of the functioning of new legislation if the sorts of far-reaching reforms to hate crime legislation contemplated by the report are implemented.

We agree, too, that research, development of educational resources and consultation of a diverse range of stakeholders would be important against the background of the reforms contemplated. All of these functions are identified as potentially beneficial at paragraph 20.12 of the Hate Crime consultation paper.



Those reforms are proposed, in large part, because of the perceived need to identify certain increasingly prevalent forms of criminality as hate crime. It is unfortunately likely that future developments might need to be met by further reform to the law, whether by adding further additional characteristic groups to those currently protected, or in other ways. We therefore see particular merit in a Commissioner having a role in keeping the legislation under review, as proposed at 20.13.

From the perspective of Naturists, one of our challenges is that the practice is widely misunderstood within society, and we have seen cases where that misunderstanding spills over into violence, threats or other misbehaviour motivated by hostility or prejudice. It has been especially helpful to be in a position to explain this to the Law Commission during the conduct of the present review. A key factor in the successful application and ongoing review of Hate Crime legislation will be an understanding of the minority groups that make up the protected characteristics and to be able to maintain the dialogue with a responsible Commissioner in future would be of continuing benefit to affected stakeholders, including British Naturism.