

Chapter 38: The incitement of hate

Chapter summary

Freedom of expression has boundaries. One boundary is that making or publishing some kinds of threatening statement is a crime. As this chapter explains, it is illegal to stir up hatred against people because of their race or religious beliefs or their sexual orientation. Such offences can be committed in speech, or in printed, broadcast or online material.

Stirring up racial hatred

Sections 18 to 22 of the Public Order Act 1986 make it an offence for a person:

- to use – for example, in the street or in a public speech – threatening, abusive or insulting words or behaviour with intent to stir up racial hatred, or to display, publish, or distribute written material which is threatening, abusive, or insulting, or to broadcast a programme of visual images or sounds of such content, or stage a play featuring it, with intent to stir up racial hatred.
- Even if there is no such intent, all of the above types of conduct are offences, if, having regard to all the circumstances, they are likely to stir up such hatred. The offences can be committed in an online posting, as can the other ‘stirring up’ offences referred to in this chapter.

Racial hatred is defined as ‘hatred against a group of persons defined by reference to colour, race, nationality (including citizenship), or ethnic or national origins’.

The Crown Prosecution Service guidance (see Useful Websites, below), says: ‘The courts have said that the term "race" should not be interpreted in a narrow or strictly legalistic sense. In one case the court said that the term “African” is a racial group and in others that it could include the term "foreigners" and "immigrants".’

The CPS guidance says of the term ‘hatred’: ‘As a minimum this connotes the idea of hostility and it has been taken to be regarded as a strong concept, going beyond dislike, ridicule, causing offence or bringing distaste.’

Case study: In 2015 Joshua Bonehill-Paine, 23, of Yeovil, was jailed for three years and four months after being convicted at Southwark Crown Court of inciting racial hatred. He had posted links to material on Twitter before a neo-Nazi rally planned in Golders Green, north London, an area with a large Jewish population – the event was later switched to central London. Police said this was ‘vile, anti-Semitic material’. Digital forensic examiners traced it back to his laptop. Bonehill-Paine, who described himself as ‘a rising star of the right-wing community’, had said the rally was an ‘anti-Jewification event’ designed to ‘liberate Golders Green as part of the summer of hate’. He appealed, arguing that his sentence was excessive, but the Court of Appeal upheld it. Rejecting his appeal, Lord Justice Hamblen, sitting with Mr Justice Goss and Judge Wait, said: ‘You did all you could to inflame the Jewish community to provoke a reaction from them’ (BBC online news, 17 December 2015; *The Jewish Chronicle*, 19 May 2016)

Case study: In February 2018 David Bitton, a ‘socially reclusive fantasist’ was jailed for a total of four years after admitting six offences of publishing was threatening, abusive or insulting with intent to stir up racial hatred contrary to section 19(1) of the 1986 Act and seven charges of publishing threatening written material with intent to stir up religious hatred, contrary to [section 29C\(1\)](#). Recorder Ciaran Rankin, sitting at Manchester’s Minshull Street Crown Court, heard that in the run-up to the 2016 Brexit referendum, 41-year-old Bitton, had posted a series of Tweets aimed against the Black, Muslim and

Jewish communities. The Recorder described the material as 'xenophobic, nationalistic and vitriolic'. The Court of Appeal later reduced Bitton's sentence to two years and eight months.

The fact that such an offence can be committed even without intent means that a media organisation reporting with direct or indirect quotes an inflammatory speech or election manifesto (such as that of an extremist politician) or other expression of anti-immigrant propaganda could conceivably be prosecuted. But the phrase 'having regard to all the circumstances' was inserted into the 1986 Act as a response to lobbying by the Guild of Editors (now the Society of Editors) because its inclusion in earlier legislation had been seen as a protection for bona fide news reports of, for example, a racist rally.

In 1987 the then Attorney General gave a general warning that a newspaper which published an inflammatory racist letter from a reader would not necessarily escape prosecution merely by publishing, in the same edition, an editorial or letters expressing an anti-racist view.

But it remains true that this law is used against extremists rather than against mainstream media. There is some frustration among anti-racism campaign groups that prosecutions are not more frequent.

The 'Regulation 19' defence could protect a website operator, such as a media organisation, from being prosecuted under the 1986 Act for a racist comment posted by a reader – see *McNae's*, 22.12.

See also 'Common elements', below.

Stirring up religious hatred

The Racial and Religious Hatred Act 2006 created a new offence specifically outlawing intentionally stirring up hatred against people on religious grounds. It did so by amending the Public Order Act 1986 (sections 29A - 29F). The crime occurs if a person uses threatening words or behaviour, or displays, publishes, distributes or broadcasts any material which is threatening, if he/she intends thereby to stir up religious hatred.

The Act says religious hatred is hatred against a group of persons defined by their religious belief or lack of religious belief. It does not seek to define what amounts to a religion or a religious belief. It will be for the courts to determine this in each case. However, the definition would include religions widely recognised – for example, Christianity, Islam, Hinduism, Judaism, Buddhism, Sikhism, and Rastafarianism. Equally, branches or sects within a religion can be considered as religious beliefs in their own right. By use of the term 'lack of religious belief' the Act prohibits such stirring up hatred against a group of people defined by reference to atheism or humanism.

This 'stirring up' offence applies only to the use of words that are threatening, but not to those which are merely 'abusive or insulting'. It differs in this respect from the offence of stirring up race hatred. Indeed, one of the amendments made by the 2006 Act to the 1986 Act was to insert sections 29J – referred to as the 'free speech section' - to safeguard robust criticism of groups for their religious (or non-religious) beliefs. It says that the offence of stirring up religious hatred is not intended to prohibit or restrict 'discussion, criticism or expressions of antipathy, dislike, ridicule, insult or abuse of particular religions or the beliefs or practices of their adherents, or of any other belief system or the beliefs or practices of its adherents, or proselytising or urging adherents of a different religion or belief system to cease practising their religion or belief system'.

To constitute the offence, the relevant words must be intended to stir up religious hatred – it is not sufficient that they have this effect as a result of recklessness.

See also 'Common elements', below.

Stirring up hatred on grounds of sexual orientation

In 2010 gay people gained greater protection against homophobic material, because a specific offence – intentionally stirring up hatred on the grounds of sexual orientation – became law, created in the Criminal Justice and Immigration Act 2008 as an amendment to the 1986 Act (sections 29A - 29F). This hatred is defined as 'hatred against a group of persons defined by reference to sexual orientation (whether towards persons of the same sex, the opposite sex or both)'. The definition means that heterosexuals are protected by this law, but its *raison d'être* was to protect homosexual and bisexual people.

This crime occurs if a person uses threatening words or behaviour, or displays, publishes or distributes any written material or broadcasts any programme which is threatening, if he/she intends thereby to stir up such hatred. The crime does not occur if the words have this effect merely as a result of recklessness.

The Act states, in what is known as the 'free speech' section (29JA), that discussion or criticism of sexual conduct or practices 'or the urging of people to refrain from or modify such conduct or practices' is not in itself illegal.

Common elements

For the offences outlined above, in respect of broadcast material the service provider, producer, director and the person uttering the offending words can be prosecuted.

None of the offences applies to the publication/broadcast of what is said in Parliamentary proceedings, including in the Scottish Parliament, or in the National Assembly for Wales, or to contemporaneous, lawful reports of court cases or of other judicial proceedings. Penalties for any of these offences are up to six months' imprisonment or a fine or both on summary conviction, and up to seven years' imprisonment or a fine or both on conviction on indictment.

Recap of major points

- It is an offence to publish/broadcast material that is threatening, abusive or insulting if the intention is to stir up racial hatred or if, having regard to all the circumstances, racial hatred is likely to be stirred up thereby.
- It is an offence to publish/broadcast material which is threatening if the intention is to stir up religious hatred or hatred on grounds of sexual orientation.

Useful Websites

http://www.cps.gov.uk/publications/prosecution/cases_of_inciting_racial_and_religious_hatred_and_hatred_based_upon_sexual_orientation.html

Crown Prosecution Service guidance on prosecuting 'stirring up' offences

<https://www.liberty-human-rights.org.uk/human-rights/free-speech-and-protest/speech-offences>

Civil rights group Liberty's webpage on 'speech offences'