Hateful Extremism and the Law

An academic review

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Disclaimer

This report was produced by Professor David Denney, in conjunction with researchers from NatCen Social Research, for the Commission for Countering Extremism (CCE) to examine the legal provisions relating to hateful extremism in the UK. The views and opinions expressed are those of the authors and do not necessarily reflect the official policy or position of the UK Government or the Commission for Countering Extremism. Please note this report was produced in advance of the CCE report, *'Operating with Impunity'*, to help inform our report's findings. Unfortunately, the publication process was delayed but this report was published in Spring 2021.

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Glossary of terms

Term	Definition
CERD	Committee on the Elimination of Racial Discrimination
CPS	Crown Prosecution Service
CCE	Commission for Countering Extremism
CRPD	Convention on the Rights of Persons with Disabilities
EDL	English Defence League
ECHR	European Convention on Human Rights and Fundamental Freedoms
ECtHR	European Court of Human Rights
HRA	Human Rights Act 1998
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
CVE	Countering Violent Extremism

Contents

Summary of findings

This report draws upon existing literature to investigate how existing law balances respect for rights of free expression inherent in a democratic society with the rights of victims of hateful extremism in the UK and other jurisdictions.

1. How can hateful extremism be conceptualised?

The concept of hateful extremism occupies an ambiguous and contested position within the criminal justice system and policy making realms. Hateful extremism overlaps with some acts which are currently illegal and directed against terrorism, hate crime, and public disorder. It is the legal vagueness, lack of legal footing and subjectivity of the current usage of the term 'hateful extremism' which hampers practical attempts to construct effective policy and legal framework in this area. The CCE, in their 2019 report *Challenging Hateful Extremism*, have described hateful extremism as behaviours which:

- Incite and amplify hate or engage in persistent hatred or equivocate about and make the moral case for violence.
- Draw on hateful, hostile or supremacist beliefs directed at an out-group who are perceived as a threat to the wellbeing, survival or success of an in-group.
- Cause or are likely to cause harms to individuals, communities or wider society (CCE, 2019:6).

2. How does the law enforce an appropriate balance between preserving rights of free expression with the protection of victims of hateful extremism?

It is important to distuinguish between hate crimes and hateful extremism. There is no piece of legislation that criminalises hateful extremism in the UK, since it is not yet regarded as being a legal, conceptual entity. Hate crime legislation can provide no more than a limited foundation upon which to test the legal parameters of the concept. The existing law includes incitement to racial hatred (section 18, Public Order Act 1986), incitement to hatred on the grounds of religion or sexual orientation (section 29b, Public Order Act 1986), and racist chanting (section 3, Football Offences Act 1991). The Racial and Religious Hatred Act 2006 created new offences of stirring up religious hatred.

Protection from hateful extremism does not appear to be an absolute right in the UK however, hateful extremism could be seen as violating Article 17 of the Eurpean Convention on Human Rights. Judicial interpretations of relevant legal thresholds attempt to promote free speech whilst simultaneously protecting victims of hateful behaviour. In many of these cases what constitutes derogatory language is open to interpretation at all stages of the legal process. Such a situation is not conducive to victims of hateful extremism voluntarily resorting to legal redress.

3. How has public law and policy shaped the UK's response to hateful extremism?

HM Government strategies to tackle extremism (HM Government, 2012, 2015) have hitherto not considered how competing rights can be managed or acted upon. Policy has not taken sufficient account of hateful extremism from a human rights perspective. Public policy is wide-ranging to the point of vagueness and lacks any coherent implementation strategy. Agencies working in countering violent extremism have not sufficiently embedded research and evaluation into programme development and delivery.

4. Are existing powers being used consistently and appropriately?

Section 149 of the Equality Act (2010) contains an inbuilt ambiguity which does not unequivocally support the rights of victims of hate. Uniformity as to what constitutes a protected characteristic does not appear to exist.

Due to the lack of any clear operational definition of hateful extremism a worrying level of confusion exists as to how police officer's ought to respond to hateful extremism. Professional discretion is required by police officers in interpreting conditions which must be met in order for an incident to be recorded as a crime. Police officers at present do not have the resources or enough training to counter hateful extremism **effectively.** In several high-profile prosecutions, those who generate hatred are often prosecuted through legislation not directly related to incitement, while countless other cases do not result in prosecution.

The evidence from this report would suggest that at present there is an awareness amongst victims, the public, police, the legal profession and other criminal justice professionals that hateful extremism is insidious and widespread, damaging individuals

and communities. This is combined with a sense of frustration that the present legal framework and judicial and police practices do not appear to effectively protect victims.

5. How are the Human Rights Act 1998 and the European Convention on Human Rights (ECHR) relevant to the balance between the right to free expression in a pluralistic society and the need to ensure that democracy is not threatened?

The rights of the individual to freedom of expression must be balanced against the duty of the state to act proportionately in the interests of public safety, to prevent disorder and crime, and to protect the rights of others.

Article 10 of the ECHR is meant to ensure that citizens have the right to freedom to hold opinions, receive and impart information without interference by public authorities, unless exceptional circumstances occur as laid out in law. Article 17 is intended to deal with situations in which people misuse the rights enshrined in the ECHR to conduct activities which threaten or are intended to destroy the rights of others. Article 17 is linked to the concept of "democracy capable of defending itself". The ECHR employs a case-by-case approach to 'hate speech' and has not defined the precise meaning of 'hate speech' which results in inconsistent outcomes.

States have discretion in deciding whether and when to apply national legal restrictions on freedom of expression when prosecuting. The ECHR requires states to guarantee rights to its citizens but does not require individual citizens to uphold the values of the ECHR.

Although the UK Human Rights Act 1998 was designed to ensure that future UK legislation was compatible with the ECHR, significant limitations in its effectiveness and interpretation in specific cases have been noted in the report.

The Human Rights Act does not protect from discrimination in all areas. Other laws are utilised for more general protection, for example the Equality Act 2010. This creates a complexity which is difficult to navigate. These qualifications can create unnecessary complication whilst providing leeway for equivocation in interpreting the law.

6. How have other jurisdictions dealt with hateful extremism and measures that are needed to balance victims' rights with free expression?

The UK has signed and ratified several international conventions which include obligations relating to hateful behaviours. These include the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and the United Nations Convention on the Rights of Persons with Disabilities (CRPD). The Committee on the Elimination of Racial Discrimination (CERD) is an established body of 18 independent experts responsible for monitoring the implementation of ICERD provisions.

Article 20(2) of the International Covenant on Civil and Political Rights (ICCPR) states that 'any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law'. Some international jurisdictions have attempted to capture the central message contained in Article 20(2) of the ICCPR and have linked the perpetration of hatred directly with a prescribed punishment. This is not the case in the UK. Other jurisdictions have incorporated incitement to hatred against a community into its legal code. In some cases, states have incorporated the recommendations of CERD into guidelines for police and prosecutions based on an individual complaint. The right to individual petition under Article 14 of the ICERD applies to states which have entered the declaration. The UK has not accepted these conditions and relies upon domestic remedies when dealing with hateful extremism. However, it has been argued by senior judges that although the provisions of ICERD have not been incorporated into UK domestic law, the courts do take account of their provisions in their interpretation of legislation.

Thoughtlessness or a lack of attention to the negative impact of hateful utterances does not constitute a defence in some jurisdictions and can be made punishable by the criminal law, more accurately reflecting Article 20(2).

Recommendations for Government

- The Government should work towards establishing a single regulatory framework to tackle a range of harms. There should be a statutory duty of care for Internet Service Providers coupled with an independent regulator to oversee

and enforce compliance with the duty. Regulatory and voluntary initiatives are not enough to protect internet users from hateful extremism

- Develop a clear mechanism indicating how recommendations made by CERD are acted upon, implemented and coordinated.
- Signposting simply and clearly how an application of the Human Rights Act 1998 can be made.
- The UK should incorporate specific reference to incitement to discrimination, hostility or violence in its criminal law. At present, what is contained in the law does not reach the standards required by Article 20 of the ICCPR.
- The UK should accept rights of individual petitions to CERD under the optional protocol to the ICCPR.
- The Parliamentary Joint Committee on Human Rights should make recommendations with respect to the systematic implementation of observations made by the ICERD.
- The wording and application of Public Space Protection Order (PSPO) under the 2014 Anti-Social Behavior, Crime and Policing Act 2014 should be reviewed. Local authorities need to have powers to adequately protect residents against activities driven by hateful extremists carried out in a public place which will have a detrimental impact on those living in the locality.
- Legislation has criminalised the possession of defined categories of the most offensive materials in relation to extreme pornography (for example, Section 63 of the Criminal Justice and Immigration Act 2008; Section 62 Coroners and Justice Act 2009). Section 67 of the Criminal Justice and Immigration Act 2008 makes the possession of extreme pornographic images an imprisonable offence for up to three years. In a similar vein consideration should be given as to whether the possession of extremely offensive materials designed to incite hatred should also constitute an offence.
- The provisions of Equality Act 2010 should be extended to apply in Northern Ireland. The UK should ensure full application of the Act across its territories.
- The Public Order Act 1986 needs to be reviewed. The aim of the review should be creating consistent and effective administration of the criminal law to ensure that all members of agreed protected groups have support and safety through the existing legal frameworks.

- Commission a review into current sentencing practices for aggravated offences and of the threshold for the incidence of targeted criminal behavior need to be reviewed.
- Government needs to consider how victims of hate-inspired violence can gain redress and compensation for the harms that they have experienced.
- Clarity needs to be created as to what constitutes a legal definition of hostility.
- Enhanced sentencing provision under Sections 145 or 146 of the Criminal Justice Act 2003 should be recorded in all cases deemed motivated by hostility towards a specific group.
- The incorporation of Article 20(2) of the ICCPR into the legal system of England and Wales, and the wider UK legal system could enhance the visibility of the need for appropriate sanctions to be applied in relation to the use and impact of hateful language.

Recommendations for civil and wider society

- The punishment of those who perpetrate hate should be regarded as having the same societal significance as the right to free speech. This approach should form the foundations for capable guardianship on the part of government from the viewpoint of citizens who have suffered the impact of hateful extremism.
- Initiative and programmes that serve to benefit victims of extremism need to be underpinned by high quality evaluation frameworks. There is an abundance of UK policy critiques but very few robust evaluations of specific interventions in this field.
- Police bodies should consider routinely asking victims of hateful extremism what they consider to be the underlying motivation of the offence. Operationally and legally the police are dependent on the experience of the victim. If crime is not recognised and recorded as hate crime, then appropriate sanctions cannot be applied.
- A coordinated and clear role for the police to act in cases of extremism is required. The central elements of hateful extremism produced by the CCE mentioned above should be adopted as a working definition to assist with this.
- The CJS should work to clarify where hateful extremism sits on a spectrum of offences, with particular relation to hate crime and terrorism.

- More systematic effective disaggregation of offence data by the police would assist in strategic decisions and responses to hateful extremism nationally and in specific locations.
- Witnesses of hateful extremism need to know that their rights are protected, whilst at present victims are often reliant on third-party NGOs to assist with reporting of hateful extremism.
- Further detailed research needs to be conducted into the way the rulings and principals enshrined in judgments of the European Court of Human Rights are incorporated into existing UK case law and legal practices.

Introduction

The Commission for Countering Extremism (CCE) first proposed the term 'hateful extremism' in its report 'Challenging Hateful Extremism', launched in October 2019. The CCE had met thousands of people, including those critical of counter extremism. Reviewing nearly 3,000 submissions from a public consultation, the CCE team also visited over 20 towns and cities, held 16 roundtables, reviewed hundreds of pages of government documents and commissioned 19 academic papers.

While hateful extremism is not yet a legal term, many of the behaviours it describes are currently illegal under laws. This includes laws such as those covering hate crime, public disorder and stirring up hatred. The term itself is used to describe a range of behaviours, where the perpetrator may be motivated by hostility towards a specified group. As such, the concept of hateful extremism is distinct to that of hate crime and where hate crime is referred to in this paper, it is done so in trying to apply learning to better understand hateful extremism.

Central questions and structure of paper

This research used a comparative approach to understand how existing law balances respect for rights of free expression inherent in a democratic society with the rights of victims of hateful extremism. For policies to effectively tackle hateful extremism, it is important to understand how it is currently covered by legal systems in England and Wales, compared with other jurisdictions.

What follows constitutes a contribution to a legal review currently underway to appraise the CCE of the public law landscape and the various obligations, duties and rights that ought to be considered when formulating legislative measures countering extremism. The CCE (2019) identified nine questions to be addressed, which guide and structure this review.

1. How can hateful extremism be conceptualised?
2. Are existing powers enough to counter hateful extremist behaviours?
3. Are existing powers being used consistently and appropriately?
4. How does law enforce an appropriate balance between preserving rights of free expression with the protection of victims of hateful extremism?

5. How has public law and policy shaped the UK's response to hateful extremism?
6. How are the Human Rights Act 1998 (HRA) and European Convention on Human Rights (ECHR) relevant to the balance between the right to free expression in a pluralistic society and the need to ensure that democracy is not threatened?
7. How do other jurisdictions deal with hateful extremism and measures that are needed to balance victims' rights with free expression?
8. Are new powers required to fill gaps in countering hateful extremism?
9. What is an appropriate balance between preserving rights of free expression with the protection of victims of hateful extremism?

How can hateful extremism be conceptualised?

The idea of hateful extremism is a complex concept. Notions of what constitutes hate (and its limits) are open to debate and interpretation. This section considers how hateful extremism is conceptualised, focusing on the distinction between hateful extremism and hate crime.

In 2015, Her Majesty's Government (HMG) launched its first Counter Extremism Strategy. Although broadly conceived, it is insufficient in responding to the extended and complex nature of extremism. A key concern is the vagueness of its definition of extremism. The government is yet to set out a new, agreed definition of extremism and the role it expects individual agencies to play in tackling it.

Accordingly, as part of its mission to advise the government on extremism, the CCE developed a more precise definition to enable a targeted response. In 2019, the CCE described three distinctive elements, all of which must be present for a given behaviour to be considered as hateful extremism:

1. Behaviours that incite and amplify hate or engage in persistent hatred or equivocate about and make the moral case for violence.
2. Behaviours that draw on hateful and hostile beliefs directed at an out-group who are perceived to be a threat to the wellbeing, survival or success of an in-group.
3. Behaviours that cause or are likely to cause harm to individuals' communities or wider society (CCE, 2019:6).

The concept of extremism occupies an ambiguous and contested position within the criminal justice system. Whereas hate crime and terrorism can be legally defined and prohibited, extremism need not involve behaviour defined legally as criminal, although there are frequent overlaps (Redgrave, Scott, and Tipple 2020). It is the vagueness and subjectivity of the current usage of the term 'extremism' which obfuscates and undermines any attempt to construct a coherent policy framework whilst also leading to an incoherent response.

It is important to remember that only a portion of hate crime overlaps with hateful extremism. One form of collective harm created by hate crime (and by extension, an aspect of hateful extremism) and experienced by communities is the obstruction of civic

engagement, community cohesion and citizenship by community members (Aly, Taylor and Karnovsky, 2014). Such obstruction from a community can lead to intolerant views towards minority groups by majority group members within the community. Aldrich (2014) argued that the more removed individuals feel from their community, the more likely they are to pursue alternative values and norms.

Some of the most influential and significant anti-Islamist protests are situated around global events such as terrorist attacks, politics and foreign policy (Alessio, 2015) where the actions of a small number of individuals are associated to all group members. For example, following the Manchester Arena bombing, stereotypical judgements were directed towards the Muslim community. Reactions like this can threaten community cohesion. To ensure all groups are included and able to participate in social life, entire communities need to work together to combat extremist acts. Failing to do so may legitimise the divisions propagated by hate crime and extremism (DeMarco, Pullerits, Piggott and Saggar, 2018).

Waldron (2012) argued that the accumulated impact of hate speech over time constitutes an environmental threat to social peace. It seems plausible to argue that targeted hate promotes collective and individual insecurity. Duff (2007) also argued that hate speech constitutes a public wrong since it denies victims' membership to the community to which the racist belongs, while casting doubt on legitimate membership of the victim's own community. Feelings of victim insecurity are further exacerbated by the violence and public disorder associated with hate crime and extremism. Hate-based activities formed the justification for the creation of offences that are now contained in sections 18 to 23 of the Public Order Act 1986.

Chalmers and Leverick (2017) argued that demonstrating a direct causal link between hate speech and violence or disorder is complex, although it seems plausible that the negative stereotypes structured into hate speech have wider societal consequences. Accumulated instances of hate speech over time create negative attitudes towards members of targeted groups which may diffuse throughout society, normalising discrimination beyond the direct victim's community. Further harmful consequences such as the mental and physical health of minority groups, at present appear to be neglected within research.

This section highlights that collective experiences, community rejection, and global events give rise to alternative value systems which can be potentially damaging to individuals and groups through expressions of hate.

Are existing powers enough to counter hateful extremist behaviours?

This section examines existing powers used by the courts when considering behaviour which may have underlying hateful motivation. The existing legislative framework related to hate crime forms the basis for understanding what legally constitutes hateful extremism. The section begins with the legal definition of hate crime and goes on to consider the powers related to enhanced sentencing, aggravated and stirring up offences.

As a relatively new and theoretical concept, there is no piece of legislation that criminalises hateful extremism in the UK. Hate crime legislation provides a foundation to test the legal parameters of hateful extremism, and other offences, depending on their modus operandi. This includes incitement to racial hatred (section 18, Public Order Act 1986), incitement to hatred on the grounds of religion or sexual orientation (section 29b, Public Order Act 1986), and racist chanting (section 3, Football Offences Act 1991). However, these acts will, for the time being, always be classified as 'hate crimes' and thus distinct from hateful extremism.

In England and Wales, the CPS defines hate crime as **"a range of criminal behaviour where the perpetrator is motivated by hostility or demonstrates hostility towards the victim's disability, race, religion, sexual orientation or transgender identity"** (CPS, 2019). Since 1998, three different legal responses to hate crime have been identified by the Law Commission – the creation of aggravated offences, enhanced sentencing powers and the creation of 'stirring up' hatred offences (Law Commission, 2014).

The Crime and Disorder Act 1998 (CDA) lists certain offences requiring the court to find the offending behaviour as religiously or racially aggravated. These offences must, should the defendant be found guilty, result in the imposition of longer sentences. Aggravated offences include different types of assaults, criminal damage to property, and public order offences such as creating fear, provocation or harassment and stalking. Aggravated offences have a higher maximum sentence available than the basic form of the offence. A conviction for racially/religiously aggravated wounding/grievous bodily harm (s.29(1)(a) CDA) can result in a sentence of imprisonment for up to five years by the Crown Court, extended upwards to seven years (CPS, 2019).

There is a significant difference between section 28(1)(a) and 28(1)(b) of the 1998 Act. Paragraph (a) allows an offence to be classified as racially aggravated because of a demonstration of hostility, whereas paragraph (b) allows it to be so classified because of a hostile motivation. In *R v SH* [2011] 1 Cr App R 14, where the defendant was alleged to have threatened to stab the complainant, calling him a "monkey" and a "black monkey", the trial judge upheld a submission of no case to answer, on the basis that the defendant might have been motivated by personal animosity rather than racial hostility. The Court of Appeal argued that this confused paragraphs (a) and (b): The Crown's case was based on paragraph (a), and all that mattered was whether the defendant had demonstrated hostility. Whether he had any other motive would be irrelevant, as made clear by section 28(3).

Several other cases illustrate the complex and sometimes confusing way aggravated offences have been interpreted by judges. In the case of Pal [2000], the defendant, a young Asian male, called the victim a "white man's arse licker" and a "brown Englishman", later physically attacking him. The court held that the offence was not racially aggravated because the defendant's remarks were motivated by anger and referred not to the victim's racial group but to his relationship with white people (Walters et al, 2017). Anecdotally, the decision made by the judge on this case seemed unclear.

In other cases of racially aggravated assault, sentences have been reduced on appeal. In Letchford [2014] EWCA Crim 1474 [24], a youth offender was sentenced to 42 months in a Young Offender Institution. On appeal the sentence was reduced to one year on account of "double counting" by the judge and the original sentence was deemed excessive (Walters et al, 2017).

Enhanced sentencing is contained under sections 145 and 146 of the Criminal Justice Act 2003. If hostility is motivated by the five specified protected characteristics, it must be treated as an aggravating factor and this must be stated in open court. An important difference between aggravated offences and sentence enhancement is that hostility is an element of an aggravated offence, whereas it is an additional feature of an enhanced sentence. Enhanced sentencing is not considered until the sentencing stage and is considered by the judge or magistrate only.

The Public Order Act 1986 prohibits conduct that is likely to stir up hatred on grounds of race, religion or sexual orientation. If a person commits one of these offences and it can be proved the hostility was motivated by race or religion, that offence becomes a separate and additional aggravated offence. For the act to be considered relevant in, for example, stirring up racial hatred, the conduct must be threatening, abusive or insulting. A maximum sentence of seven years' imprisonment, an unlimited fine or both can be imposed in these cases.

Currently, gender identity and disability are not captured by stirring up offences. In addition, conduct which stirs up hatred on the grounds of religion or sexual orientation in the absence of 'threat' is not covered by the legislation. Existing "stirring up" prosecutions are rare in comparison to prosecutions for aggravated offences. The type of hate speech typically found in relation to disability and gender is far less likely to satisfy the requirements for a 'stirring up' offence than that in relation to race and religion.

Extensive criticism of the early attempts to criminalise incitement of religious hatred in England and Wales claimed that the provisions extended to insults, abuse and threats could inadvertently criminalise comedians and satirists who make jokes about religion, or religious texts (Chalmers and Leverick, 2017). Jokes about religion exemplify freedom of speech in a democratic society and few if any areas of social life should be off-limits regarding humour. Any attempt to use police powers to restrict free expression is fraught with inherent dangers requiring a delicate balance be made between protecting victims and allowing entertainers to express themselves. An alternative perspective, however, emphasises the need for more powers to address hate speech, whether it is comedic or not.

In considering current legislation, this section broadly describes the existing legal measures and thresholds related to hateful extremism, which are open to judicial interpretation. It also suggests that policy makers face difficulties attempting to balance the promotion of free speech whilst simultaneously protecting victims of hateful expression. Protection from hateful extremism does not appear to be an absolute right in England and Wales, despite the legislation described above.

How does the law enforce an appropriate balance between preserving rights of free expression with the protection of victims of hateful extremism?

This section explores the balance between free expression and the need to protect victims of hateful extremism. Prosecution guidance, 'flagging', restraining orders, and aggravating features of offences are discussed with reference to specific cases. This will serve to illustrate how current legal sanctions operate in practice. The section ends with a consideration of the perpetration of hateful extremism through social media platforms, with reference to two high-profile cases.

Guidance issued by the Sentencing Council (2020) that came into effect on 1st January 2020 (and draws links to section 5 of the Public Order Act 1986 and section 31(1)(c) of the Crime and Disorder Act 1998) recognises two forms of culpability; high and low. High culpability includes targeting an individual or group, a sustained incident, the use of force and substantial disturbance. The category of low culpability applies to all other cases.

The Racial and Religious Hatred Act 2006 created new offences of stirring up religious hatred, which were significantly different from race hate offences contained within Part III of the Public Order Act 1986. Section 29A of the Public Order Act 1986 defines "religious hatred" as hatred against a group of persons defined by reference to religious belief or lack of religious belief.

Prosecution

The CPS published guidance on the prosecution of cases involving hate crime (CPS, 2019) states that all cases referred to the CPS by the police which have been identified as racially and/or religiously aggravated should be flagged by prosecutors. Whilst not all flagged cases will result in racially or religiously aggravated charges or an application for an uplift of sentences under Section 145 of the Criminal Justice Act 2003, 'flagging' is still a requirement. Each case flagged as racially or religiously aggravated requires that the prosecution team review and consider how the specific offences under the Crime and Disorder Act 1998 may apply to the case's facts. There is no formal procedure in place by which the court determines whether a Section 145

uplift should be applied (for example *R v Kelly & Donnelly* [2001] 2 Cr App R (S) 73 C (i) (CPS, 2019).

In some cases, ancillary order applications are used, such as Restraining Orders under Section 5 of the Protection from Harassment Act 1997, and Criminal Behaviour Orders under the Anti-Social Behaviour Crime and Policing Act 2014. Factors considered by reviewing prosecutors include the use of derogatory language towards ethnicity, race, nationality, or religion (including caste, converts and those of no faith). Additionally, the involvement of excessive violence, humiliation and degradation are also considered (CPS, 2019). What constitutes derogatory language is open to interpretation and subjective judgements.

The CPS uses definitions agreed with the National Police Chiefs' Council to identify racist or religious incidents/crimes and to monitor the decisions and outcomes. This includes "*Any incident/crime which is perceived by the victim or any other person to be motivated by hostility or prejudice based on a person's race or perceived race*" or "*Any incident/crime which is perceived by the victim or any other person to be motivated by a hostility or prejudice based on a person's religion or perceived religion*".

The definition used for racial groups is wide, and victims may be encompassed under more than one of its references. For example, Jewish community members may define themselves as ethnically Jewish, whilst others identify themselves in terms of their faith. Another example includes how gypsies and travellers, refugees or asylum seekers or others from less visible minorities would be included within this definition (*Commission for Racial Equality v Dutton* [1989] QB 783). The Traveller Movement (2018) found that only two police forces have a targeted strategy and/or plan for improving relations with Gypsy, Roma and Traveller communities – Gwent and Dyfed Powys Police, suggesting a lack of uniform view on how this minority group is perceived. However, steps are being taken to improve racial disparities with this group. A national government strategy launched in 2019 aims to tackle inequalities within the Gypsy, Roma and Traveller community, which includes the provision of funds to work at developing more positive outcomes for this group.

Aggravating features can arise from hostility towards a religious belief or a racial group or a combination of both (*Mandla and another v Dowell-Lee and another* [1983] 2 AC 548). Evidence of words (spoken or written) or actions showing hostility towards the

victim is required. "Demonstrations" of hostility often involve swear words (for example: "black bastard" (*R v Woods* [2002] EWHC 85) or "African bitch" (*R v White* [2001] EWCA Crim 216). For example, racist chanting at a designated football match is prosecuted under the Football Offences Act 1991 and to prove this offence, the prosecution has to show that the chanting was threatening, abusive or insulting to another person because of that person's race, nationality (including citizenship), ethnic or national origin. The offence only applies to a "designated" match as specified in the Football (Offences) (Designation of Football Matches) Order 2004, namely, one involving a club that is a member of a UK professional league. If convicted, the accused person can be fined up to £1,000 and be banned from attending football matches, both in the UK and abroad. This raises the question as to whether hateful chanting is legal at non-designated football events.

Legislation has been enacted in relation to other religious offences. Section 2 of the Ecclesiastical Courts Jurisdiction Act 1860 created an offence of violent or indecent behaviour in any place of worship certified under the Places of Worship Registration Act 1855. The Act protects a person preaching or carrying out other religious duties including marriages, baptisms and funerals. The legislation applies to all religions. Additionally, Section 36 of the Offences Against the Person Act 1861 makes an assault on a religious minister -or preventing them from officiating at religious services- illegal, carrying a maximum penalty of two years' imprisonment on indictment (CPS, 2019).

When referring specifically to extremism (and its link to hate crime), extremism as a standalone concept often does not have its own sanctions or punishment. However, efforts have been made to tackle the spread of online extreme rhetoric. In a report on radicalisation published by the House of Commons' Home Affairs Select Committee, social networking providers such as Facebook, Twitter and YouTube were described as a 'vehicle of choice' for spreading terrorist propaganda and for attracting new recruits (Home Affairs Select Committee, 2016, Eighth Report, Session 2016–17, HC 135—Radicalisation: the counter narrative and identifying the tipping point, para 38). The Committee noted that the internet made a significant contribution to the availability and access of extreme content. Social media companies were failing to combat the use of their sites to promote terrorism and violence, while drawing huge revenues. The Committee supported a zero-tolerance approach to online extremism, including

enticement to join extremist groups, commit attacks of terror, and any glorification of such activities.

Although the CPS has published guidelines clarifying the circumstances in which a prosecution should be brought, online hate crime and extremist rhetoric continues. Some 74% of all anti-Muslim hostility reported to the charity TELL MAMA, a third-party reporting platform for anti-Muslim attacks and other incidents, occurred online *(*Awan and Zempi, 2015). In the reporting year ending March 2020, the CPS claimed that there were 10,950 cases of hate crime in England and Wales that were brought forward for prosecution, in which defendants were convicted in 85% of these (CPS News, 2020). The data did not segregate online from offline hate crime, but these numbers prosecution aiming for increased and tougher sentences when the crimes are believed to have an element of hate.

The Online Harms White Paper (2019) argued that regulatory and voluntary initiatives were not enough to keep users safe, proposing a single regulatory framework to tackle a range of harms (Department for Digital Culture and Media, Home Office, 2019). As such, a statutory duty of care for Internet Service Providers, coupled with an independent regulator to oversee and enforce compliance with the duty has been recommended. Although the White Paper received mixed reactions from some charities welcoming the proposal, other pressure groups claimed that the proposed framework would threaten freedom of expression. A wide array of regulators have roles in relation to online activity (for example, Ofcom, Competition and Markets Authority, Advertising Standards Authority, Information Commissioner's Office, and Financial Conduct Authority), making it more challenging and opaque in how to self-regulate. The Government has responded to the paper by recommending that a new duty of care for internet companies and legislation defining harmful content and the tackling of illegal activity online be implemented (DCMS & Home Office, 2020).

Mulhall and Lowles (2013) argue that high profile figures can provide individuals with justification to take extreme actions. A report published by Hope Not Hate (2020) lists 70 people convicted of terrorism and terrorism-related offences in the UK who have died abroad over the last 14 years and were linked to the Al-Muhajiroun organisation.

It is alleged that Anjem Choudary helped to motivate at least 70-100 people to turn to terrorism whilst operating lawfully and freely in Britain until 2016 (Mulhall and

Lowles, 2013). Since there was no direct evidence that his teachings could have shaped the minds of those who carry out terrorist atrocities, Choudary was ultimately charged and convicted in August 2015 under Section 12 of the Terrorism Act 2000 for inviting support for Islamic State between 2014 and 2015. He was sentenced to five years and six months' imprisonment in September 2016 but automatically released in October 2018. On Choudary's release, it was reported that the then Prisons Minister Rory Stewart still considered him to be dangerous (Independent, 2018).

An additional report published by Hope Not Hate (2020) emphasised the way Al-Muhajiroun and the English Defence League (EDL) "feed off each other and justify their own existence by the existence of the other" (Mulhall and Lowles, 2013). The founder of the EDL, Stephen Christopher Yaxley-Lennon, known as Tommy Robinson, has been banned from Twitter for violating its rules on hateful conduct. Facebook and Instagram have also banned him, citing violations of hate speech which targeted Muslims. In 2019, YouTube restricted Robinson's account for violating their community guidelines prohibiting hate speech and harassment. It is significant to note that these bans have occurred without recourse to law.

Robinson has gained several platforms where he has been able to express his views, including the Oxford Union in November 2014. Robinson's rhetoric on Muslims projects the idea of a cultural war whilst utilising the digital landscape as a recruitment tool. In 2017, he live-streamed from outside the trial of Asian defendants charged with raping a sixteen-year-old girl and was given a three-year jail sentence (suspended for 18 months) for contempt of court. He repeated the offence at Leeds Court, where a group of Asian males were accused of sexual grooming, and Robinson was imprisoned for the original offence from 2017. A national protest followed orchestrated by far-right activists based upon whether Robinson's imprisonment constituted a muzzling of the 'truth' about Muslims. It was argued that he was exercising the right of free expression by exposing images of the defendants. However, in exposing defendants not yet convicted for their crimes, a presumption of guilt over innocence was disseminated to the wider population, which challenges due process in our laws. Significantly Robinson used his imprisonment to victimise himself whilst simultaneously gaining national publicity and further recruits to his cause.

Choudary was prosecuted under Section 12 of the Terrorism Act 2000 whilst Tommy Robinson was imprisoned for repeated contempt of court after a suspended sentence had

been imposed. The activities of both individuals appears to have been designed to be socially divisive. The language used to propagate hate did not appear to have been a factor which led to their convictions, despite the ECtHR having adjudicated in cases against high-profile figures convicted of presenting specific groups in a disturbing light.

The activities of both these individuals exemplify behaviours that incite and amplify hate and appear to equivocate the use of violence to further a cause. They both draw on hateful supremacist beliefs directed at an out-group who are perceived as a threat to the wellbeing, survival or success of an in-group. Both have caused harm to communities and wider society. Despite this they have both been able to act with impunity for considerable periods which would seem to point to one of two possibilities: existing powers to counter hate crime are inadequate or existing powers are not being applied appropriately.

Extremism does, as it has been pointed out above, sometimes overlap with behaviours which can be defined as illegal (Redgrave, Scott and Tipple, 2020). Where this overlap occurs individual citizens can be protected from extremism through mechanisms which exist in criminal law and the construction of legal thresholds open to different judicial interpretations. However, this section highlights challenges, such as what constitutes derogatory language appears to be open to interpretation at all stages of the legal process. It could be argued that such a situation is not conducive to victims of hateful extremism voluntarily resorting to legal redress. There is also an increasing role of social media in the instigation and promotion of unregulated hate on a global scale. The need for a single regulatory authority and framework, as well as more clarity in judicial response to hate-based abuse, has also been emphasised.

How has public law and policy shaped the UK's response to hateful extremism?

This section explores the way in which public law and policy have shaped the UK response to extremism. Over the last decade, successive governments have formulated strategies with the stated aim of addressing the amplification of hatred in communities. More specifically, aspects of the Prevent programme and other strategic initiatives are discussed.

Unlike terrorism and violent extremism, inadequate attention has been given to the damage that can be caused to wider communities by behaviours that amplify and incite hatred. Hateful extremism has been conflated with terrorism in government policy. For example, the 2011 Government review of the Prevent programme described its function as "confusing" (HM Government, 2011). This may be partly attributable to the fact that terrorists are motivated by the same kinds of hostile, supremacist beliefs as extremists. The review recommended focusing on the challenges of ideological beliefs, and those who promote extreme views incongruent with British values. The review recommended that support, intervention and assistance for those who are at risk of being drawn into terrorism be prioritised.

Consequently, the coalition government produced a plan to tackle extremism in 2012 (HM Government, 2012). HMG claimed that they were instigating a human rights approach, however there was no consideration as to how competing rights within these discussions would be managed or acted upon. There was no discussion of the experiences of victims of extremism, how they were targeted, or how their targeting leads to harassment. This strategy was ambitious and wide-ranging to the point of vagueness whilst the implementation measures appeared to lack substance.

In 2015, HMG launched the first Counter Extremism Strategy in similarly vague terms, focusing on the building of partnerships with all those opposed to extremists, disrupting extremists and building cohesive communities. Although some elements of this strategy in relation to implementation are unclear, it has formed a basis upon which policy can be developed (Home Office, 2015). In 2019 the CCE was advocating for the development of a rights-based approach which balances *'competing rights and ensures a proportionate response. Previous attempts to introduce Counter Extremism Legislation have failed because they do not do this'* (CCE, 2019: 8).

Public policy in relation to extremism has lacked clarity and systematic evaluation. Such evaluation is essential to create more effective policies which can evolve in response to events, technological and societal change. Generalised, unspecific aims appear to have combined with confused policy implementation. Policies have consistently failed to act upon the roots of extremism in communities, amounting to little more than a set of good intentions.

Are existing powers being used consistently and appropriately?

In previous sections of the report, attention has been drawn to the complexities created when tackling hateful extremism in law. Attempts to address hateful extremism through the development of policy are also fraught with problems. In this section, the ways in which existing powers are applied in practice are discussed, including a lack of uniformity of protection across protected groups. The benefits of the Public Sector Equality Duty are presented, and a discussion of how current powers have impacted upon policing is included.

The present system lacks uniformity across protected characteristics. The Law Commission (2014) states that equal treatment under current legislation would contribute towards a clearer, less complex response to hate crime. To assist them in complying with their Public Sector Equality Duty (PSED), public authorities need legislation to treat protected characteristics equally. The requirements of section 149 of The Equality Act contain an inbuilt ambiguity which does not unequivocally support the rights of victims of hate crime as *'Case law establishes that the duty is not to achieve the goals specified in section 149 (such as eliminating discrimination against the relevant characteristics) or even to take any particular steps to achieve them. The duty is to have due regard to the need to achieve them'* (Law Commission, 2014, p. 93; Walters et al., 2016). Police and the CPS record data on hate crimes for five protected characteristics, but under the Equality Act 2010, there are nine protected characteristics.

The Law Commission is currently reviewing the adequacy and parity of protection offered by the law in England and Wales relating to hate crime. It will also consider which characteristics merit enhanced protection in criminal law and on what basis. Additionally, the Law Commission is examining the specific statutory incitement of hatred offences under the Public Order Act 1986 and will make recommendations on whether these should be extended or reformed. This includes recommendations for the establishment of appropriate models ensuring consistent and effective administration of the criminal law to ensure that all member of protected groups have support and safety through the legislative framework (Law Commission, 2014). This includes a consideration of current sentencing practices for aggravated offences and a threshold for the incidence of targeted criminal behaviour. The aggravated offences applicable to race and religion allow for higher sentences than the enhanced sentencing regime does for

cases of hostility based on disability, gender and sexual orientation. It is symbolically important to recognise that aggravated offences give express recognition to the additional seriousness and blameworthiness of hostility-based offending. Aggravated offences also give appropriate recognition to the experience of victims of hate crime based on one of the protected characteristics. The result of this is to create the perception that hate crimes based upon racial or religious hostility are regarded as more serious than crimes based on hostility due to disability, gender identity or sexual orientation. These difficulties are compounded by the lack of legal definition with respect to hostility.

Police practices and extremist hate

Police officers face complex and difficult challenges when dealing with hate crime and extremism and are often the first professionals to be involved when incidents are reported. They are required to make quick decisions which could directly impact on how a case is handled.

Some landmark events have structured police responses to racism. In 1981 serious rioting occurred in Brixton with disorder spreading to major cities across England. Lord Scarman's report into the disturbances was critical of many aspects of policing in Brixton. Scarman identified heavy-handed tactics, lack of liaison with local communities, low trust in the police and insufficient police training as factors which had exacerbated the situation leading to the riots. However, Scarman did not mention institutional racism within the police as a salient factor in explaining the causes of the unrest (Scarman, 1981).

This position changed following the killing of Stephen Lawrence; a young black man murdered at a bus stop in south London by a group of white racists in 1993. The resulting Macpherson report concluded that the police investigation was compromised by a combination of professional inadequacies, institutional racism and a failure of leadership by senior police officers (Macpherson, 1999). Whilst Scarman had not grasped the embeddedness of racism within the Metropolitan Police at the time of the Brixton riots, Macpherson was emphatic about the existence of institutionalised racism which had directly impacted upon the way in which the Lawrence case had been managed by the police.

Following the murder of Stephen Lawrence, the then Conservative Home Secretary Michael Howard rejected calls to introduce a new criminal offence for racial violence, arguing that all violent crimes regardless of motivation could already be dealt with under existing legislation. The incoming Labour government took a different view and introduced a new offence of racial harassment and a new crime of racially motivated violence. The Crime and Disorder Act 1998 (Section 29) introduced the offence of racially aggravated assault. In addition to racist incidents, the Crime and Disorder Act introduced the concept of racially aggravated offences which was subsequently extended to include religiously aggravated offences under the Anti-Terrorism Crime and Security Act 2001 (Newburn, 2007).

Despite the passage of time, police officers are still faced with complex operational challenges when dealing with extremism and hate crime. For the purposes of prosecution, officers are required to collate information that reflects the multiple and intersecting prejudices that can aggravate an offence in law (Walters and Krasodomski-Jones, 2018). Some crimes are reported to the police but are not recognised as crimes. The current advice given to police can be considered vague by some, and as many criminal justice organisations use a definition of hate crime that is based upon the perception of victims, makes it equally difficult to determine motivation and intent. In the UK, a hate crime is referred to as any criminal offence which is perceived, by the victim or any other person, to be motivated by a hostility or prejudice based on a person's [protected characteristic]. The exact criteria for hostility, motivation and the level of prejudice delivered can be subjective. Her Majesty's Inspectorate of the Constabulary, Fire and Rescue Services [HMICFRS] (2018) noted that victims were not routinely asked what they perceived to be the motivation behind a crime committed against them.

There is an important distinction relevant to how the police manage hate incidents and hate crimes. An incident refers to a call to the police where no crime has been committed (for example, an accident) whereas a crime is an infraction of the criminal law. Such definitions are not straightforward in law. A crime may constitute both a criminal act and a civil wrong. Legal classifications help in the identification of a crime but often do not tell us why a conduct is defined as criminal (Newburn, 2007). This is particularly the case with hate crime. This leaves a considerable amount of professional discretion to responding police officers. In some cases victims are unlikely to

differentiate between an incident and a crime, yet such data can provide valuable information about the kind of hostility towards communities in a particular area whilst also providing a valuable geographical warning sign for policy makers and the police.

In a 2018 review carried out by (HMICFRS, audits of hate incidents were undertaken to establish whether crimes had been missed. Some 42 hate incidents were analysed across police forces. In 11 of these cases, it was concluded that a crime had occurred but had not been recorded as such. The Inspectorate concluded that *"this level of non-recording isn't good enough, and it is worrying that, despite efforts by forces, this problem still exists"* (HMICFRS, 2018, p. 86).

Questions have also been raised as to whether the current laws are being operationalised to enable victims of hate-inspired violence to gain redress for the harms that they have experienced. It is significant that victims are not routinely asked what they thought the motivation was for the hate they have endured. Operationally and legally the police are dependent on the experience of the victim, and if crime is not recognised and recorded as hate crime then appropriate sanctions cannot be applied.

Attention is also required for the flagging process and the disaggregation of police data into various types of hate crime. The Equality and Human Rights Commission has called for the disaggregation of offence data in their evidence to the UN Committee on the Elimination of Discrimination in 2017. This data could prove useful in strategic decisions and responses to what is being referred to as hateful extremism nationally and in specific locations. The Law Commission (2014) has recommended that enhanced sentencing provision under Sections 145 or 146 of the Criminal Justice Act 2003 should always be recorded on the Police National Computer.

Since the Macpherson Report (1999) there have been indicators that the police desire to work cooperatively with community organisations to combat hate crime. The UK police have now agreed to share data on extremism with community organisations such as the Community Security Trust and Tell MAMA to work more effectively to combat hate crime.

The research indicates that online platforms are increasingly significant sources of hateful extremism. The Public Order Act 1986, Crime and Disorder Act 1998, and the Racial and Religious Hatred Act 2006 apply in online cases of hateful extremism. This

legislation is not consistently applied since, as with terrestrial crime, the threshold for a criminal offence is often not met and a 'hate incident' is instead recorded.

When a hate crime is committed, it is not clear from the research how the distinction between an incident and a crime is interpreted, even with published guidelines available from the CPS (2019). The Law Commission (2014) notes that these guidelines are relevant to aggravated offences and to offences such as Section 1 of the Communications Act 1988 and Section 127 of the Malicious Communications Act 2003. It was unclear from this review whether this operates in practice. The meaning of terms used such as 'offensive', 'rude', 'distasteful' or 'painful' are subjective and open to different interpretations which will inevitably lead to inconsistencies in application. Significantly the guidelines note that in some cases 'stirring up' offences may be relevant and should be used where there is a specific victim and the 'hate' element may influence the public interest. One question to be considered is whether the guidelines are sufficiently robust and clear in facilitating prosecutions for hate crime, or whether they have led to a toleration of online hate speech and extremist rhetoric that should be prosecuted (CPS, 2018; 2019).

Some of the apparent inconsistencies in law relating to hateful extremism include:

- a lack of clarity in the legislation leading to prosecution under existing arrangements inadequate, impractical, unpredictable, and inconsistent.
- relevant section of the Equality Act 2010 does not appear to unequivocally support the rights of those who have been subjected to forms of hateful extremism. P
- operational policing difficulties when implementing current law such as discretion around thresholds and conditions which have to be met in order for an incident to be recorded as a crime.
- The flagging process and the disaggregation of police data.

This report acknowledged that whereas hate crime and terrorism can be defined and legally prohibited, this is not the case with extremism which is in essence a contested concept sometimes overlapping with offences that can be legally sanctioned. The lack of clarity as to what constitutes extremism has made the creation of consistent policing policy and practices impossible. A recent 2020 report into the policing of extremism, *Countering Extremism: time to reboot?* revealed a worrying level of confusion about

how officers ought to respond to extremism within their communities. Police objectives were often conflicting whilst indicators of effective policing of extremism lacked clarity. The report emphasises the need to identify where extremism is located in relation to hate crime and counter terrorism. Without the clarity of a working definition, it is impossible to develop the appropriate tools that frontline staff such as police officers need to counter extremism. These tools include more resources, both human and technological, to respond to extremism (Redgrave, Scott, and Tipple, 2020). It would be inaccurate to present an entirely negative picture. Police authorities have, for instance, agreed to share their data with local community organisations. However, the section illustrates that police practices can only operate within the constraints of an inadequate legislative framework.

How are the HRA and ECHR relevant to the balance between the right to free expression in a pluralistic society and the need to ensure that democracy is not threatened?

The discussion presented in this section is widened to consider the European Convention on Human Rights and the UK Human Rights Act. It focuses on the complex need for states to balance freedom of expression under Article 10 of the ECHR whilst taking account of the need to take actions against those who seek to use that freedom to damage social cohesion. The section also explores the effectiveness of the UK Human Rights Act.

The ECHR is an international agreement ratified by the United Kingdom in 1951 which entered into force in 1953. It has been signed by all 47 member states of the Council of Europe. The Convention is designed to enact rights and freedoms embodied in the Universal Declaration of Human Rights, providing a list of guaranteed rights to human beings.

The three broad types of rights included in the ECHR are:

- **Absolute rights.** These include the right to life (Article 2) and protection against torture (Article 3). These rights cannot be removed or limited by member states.
- **Limited rights.** These rights can be limited under specific and finite circumstances. Article 10 allows freedom of expression with few exceptions.
- **Qualified rights.** These can be restricted. These would include the right to private and family life (Article 8), and freedom of thought and religion (Article 9) The basic right to practice or not to practice religion is also a qualified right. If that religion is offensive to others, and domestic courts have not met the needs of individuals, the ECtHR must balance the rights claimed by an individual practicing that religion and the possible damage that a religious practice might cause to societal cohesion through such safeguards as Article 17 of the ECHR.

Article 10 of the ECHR ensures that citizens have the right to freedom of expression. This right includes freedom to hold opinions and to receive and to impart information without interference by public authorities.

Article 17 of the ECHR states *"nothing in this Convention may be interpreted as implying for any state, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention."* (European Convention on Human Rights, 1953, p. 14). Thus, in a democratic society, people can hold different views, even when these may cause offence. However, the rights of the individual to freedom of expression must be balanced against the duty of the state to act proportionately in the interests of public safety, to prevent disorder and crime, and to protect the rights of others. Article 17 addresses the issue of people using the rights enshrined in the ECHR to conduct activities which threaten or are intended to destroy the rights of others. Article 17 is linked to the concept of "democracy capable of defending itself" (*Vogt v. Germany* [1995] GC, sections 51 and 59; *Ždanoka v. Latvia* [2006] GC). In order to guarantee the stability and effectiveness of a democratic system, the state may be required to take specific measures to protect itself.

A significant tool which enables this to be done is the 'Margin of Appreciation' (MOA). This refers to the space for manoeuvre granted to national authorities in fulfilling their obligations under the ECHR (Greer, 2000). The MOA allows states to operate in a way appropriate to local conditions. It is based upon the principle of subsidiarity whereby individual states democratically decide what is appropriate for themselves. Each individual state has the task of securing rights and liberties in accordance with their own systems, culture, and values.

An example of this in operation relates to religious dress. Article 9 provides for freedom of thought, conscience and religion, recognising that citizens have a basic right to practice religion. However, if aspects of that religious practice perceived to be offensive to society more generally or threaten social cohesion, the ECtHR will account for the MOA to balance conflicting interests and claims. For example, the ECtHR have upheld the ban on wearing the the Hijab, Burka, and Niqab in France and Belgium..

> *'The Court must steer a careful course between respecting national values and providing for effective protection of individual fundamental rights. Sometimes it seems as if it can never make the right choices. Nevertheless, against all odds, the Court often succeeds in 'ordering pluralism''* (Gerards, 2018, p. 497).

The ECtHR will ensure that recommendations comply with, and are conceptually informed by, human rights obligations, including under Articles 10 (freedom of expression) and 14 (prohibition of discrimination) of the ECHR.

Case law and Article 17

Article 17 is a provision which prohibits the destruction of and excessive limitation on the rights and freedoms set forth in the ECHR. Article 17 was included in the ECHR to ensure that no state group or person has the right to engage in activities which are aimed at the destruction of human rights, enshrined within the ECHR. Article 17 has been invoked in situations where applications have been made to the court to review sentences of those guilty of various offences involving freedom of speech and incitement to violence (for example, *Roj TV A/S v Denmark* [2018]). Parmar (2018) noted that the ECtHR has not upheld several applications under Article 17, finding that no violation of free speech under Article 10 had occurred. In the case of *Norwood v UK* [2004], having displayed a poster depicting the Twin Towers in flame with the words "Islam out of Britain – Protect the British People" on a window, a member of the BNP who had been charged with hate speech was successful in his appeal. Similarly, in the case of *Seurot v France* [2004] a French schoolteacher's conviction for incitement to racial hatred through the publication of an offensive article in a school newspaper was not considered to have restricted freedom of speech. Similarly, several cases involving incitement to hatred (for example, *Pavel Ivanov v Russia* [2007]), holocaust denial (for example, *Garaudy v France* [2003]), Nazi ideology and other forms of totalitarianism have found that the state was right to sanction the behaviour of the applicant (*Communist Party of Germany v Federal Republic of Germany* [1957], *B.H., M.W., H.P., G.K. v Austria* [1989], *Honsik v Austria* [1995], *Nachtmann v Austria* [1998], *Schimanek v Austria* [2000]).

The ECtHR is not tasked with determining whether statements qualify as "incitement" when deciding on verdicts. Instead, it assesses whether restrictions (such as sanctions on harmful speech) comply with a three-part test, based on the provisions of Article 10(2) of the ECHR which argues that States may only interfere with free expression if:

1. The interference is prescribed by law
2. The interference is aimed at protecting one or more of the following interests or values: national security, territorial integrity, public safety, prevention of

disorder or crime, protection of health, morals, reputation or rights of others, preventing the disclosure of information received in confidence, and maintaining the authority and impartiality of the judiciary.

3. The interference is necessary in a democratic society.

The ECtHR therefore employs a case-by-case approach to 'hate speech'. Although the ECtHR has previously found that certain elements of the expressive conduct at issue do not constitute 'hate speech' it has not defined the precise meaning of 'hate speech' (Article 19, 2018a).

Parmar (2018) notes the lack of any clear definition of hate speech as leading to a situation in which violations of free speech occur regularly under Article 10. For example, an applicant who displayed a striped Arpád flag with controversial historical connotations near a demonstration against racism and hatred (*Fáber v Hungary* [2012]). In another case the court decided that sanctions against the authors of an article defending war crimes and crimes of collaboration in a daily newspaper were violations of their rights (*Lehideux and Isorni v France* [1998]).

Other inconsistencies in court rulings have been noted with respect to Sharia law. The ECtHR has adjudged that regimes based upon Sharia law diverge from the values of the ECHR and conflict with the basic principles of democracy (*Refah Partisi and others v Turkey* GC [2003]). However, the ECtHR also found that defending Sharia is not 'hate speech' (*Gündüz v Turkey* [2003]). In one case, the applicant, a leader of an Islamist sect, had been convicted for incitement of religious hatred for comments made during a live studio debate, condemning democratic principles and calling for the introduction of Sharia law. The ECtHR found that punishing him for these comments was a violation of Article 10 of the ECHR. The court considered the nature of the public discussion, which sought to present an unorthodox view, made such comments appropriate. It was suggested that the defence of Sharia law without calling for violence cannot be regarded as 'hate speech' (Parmar, 2018).

In the case of *Molla Sali v Greece* [2018] Sharia law had been applied to an inheritance dispute between Greek nationals belonging to a Muslim minority, contrary to the will of the testator (a Greek belonging to the Muslim minority). Ms Molla Sali's deceased husband, Mr Molla Sali, had bequeathed his whole estate to his wife under a will drawn up in accordance with Greek civil law. Ms Molla Sali had been deprived of three-

quarters of her inheritance under Sharia law and submitted that she had suffered a difference in treatment on the grounds of religion. Had her husband not been of Muslim faith, she would have inherited the whole estate. The ECtHR found that Ms Molla Sali had not been objectively and reasonably treated. Since the application of Sharia law led to a situation that was detrimental to her individual rights, she was awarded the inheritance in accordance with civil law, as neither her nor her husband had intended for the estate to be awarded elsewhere.

There is concern in the UK that Human Rights law may protect those who condone and encourage terrorism (Mulhall and Lowles [2013]; Hope not Hate [2020]). The ECtHR has agreed that states were right to sanction those encouraging terrorism when concerns about free speech were brought to them. In the case of *Leroy v France* [2008], the applicant had expressed support for the perpetrators of the 9/11 attacks. The applicant argued that his freedom of expression had been infringed by the French legal system, which had convicted him of complicity in condoning terrorism. The court held that there had been no violation of Article 10 (freedom of expression) of the ECHR in respect of the applicant's conviction. The court judged that the applicant had commented approvingly of the violence perpetrated against thousands of individuals. Whilst recognising the sensitivity inherent in such decisions, the court noted that there had been a public reaction capable of stirring up violence and demonstrating a plausible impact on public order.

It is noteworthy that the ECHR requires states to guarantee rights to its citizens. It does not require individual citizens to refrain from negating the values of the ECHR. Behaviour that contravenes the values of the ECHR are not inherently protected, and would need to fall under Article 10(1) for one of its relevant rights to be engaged..

When hate speech emanates from high-profile political figures, the duty of the ECtHR is to defend the interest of the victims. In the case of *Le Pen v France* [2010], Jean-Marie Le Pen, the applicant and president of the French National Front party, was convicted under French law for incitement to discrimination, hatred and violence towards groups because of their race or religion. This offence related to an account of statements he made about Muslims in France in an interview with the Le Monde newspaper. Le Pen allegedly asserted that there were 25 million Muslims in France, and that they will be "in charge". Le Pen claimed in the ECtHR that the conviction had breached his right to freedom of expression. The court declared the application inadmissible, arguing that the

applicant's statements had been made in the context of a general debate on the problems linked to the settlement and integration of immigrants in their host countries. The ECtHR recognised that considerable latitude be left to the state in assessing the need for interference with a person's freedom of expression in a case such as this which reflects the MOA discussed above. The ECtHR considered that Le Pen's comments had presented the Muslim community in a disturbing light likely to give rise to feelings of rejection and hostility. The reasons given by the domestic courts for convicting the applicant had been relevant, sufficient and the penalty proportionate. The ECtHR found that interference with the applicant's enjoyment of his right to freedom of expression had been "necessary in a democratic society".

This ruling has a relevance in the UK to allegations of Islamophobia in the Conservative Party (Rawlinson, 2019) and antisemitism in the Labour Party (BBC, 2019). Given the damage which could be caused to societal cohesion by offensive comments by the two major political parties, the ECtHR judgement raises the question as to whether the two main political parties are entitled to enjoy unfettered freedom of expression or whether racist utterances constitute incitement to discrimination, hatred and violence towards a group because of their origin or membership. If legislators in the main political parties fail to sufficiently investigate and act to eliminate racism and hate speech within the political machinery, they are disregarding the position articulated by the ECtHR in the Le Pen case.

Significantly, the ECtHR does not discriminate between different forms of offence for different protected groups. For example, in *Vejdeland and Others v Sweden* [2012], discrimination based upon factors like sexual orientation was found to be as serious as hatred based upon racial discrimination. It is less clear in the UK if the same equal treatment amongst protected groups provided.

ECtHR and the internet

The ECtHR has also considered cases involving hate speech and the internet. The court found that there had been no violation of Article 10 in the case of *Delfi A.S. v Estonia* [2013]. The applicant company, which runs a news portal, complained that it had been held liable by the Estonian courts for offensive comments posted by its readers relating to one of its online news articles about a ferry company. At the request of the lawyers acting for the ferry company, the applicant company removed the offensive comments

six weeks after their publication. The court held that there had been no violation of Article 10 (freedom of expression) of the ECHR and was of the view that the internet provides an unprecedented platform for free expression while creating opportunity for the dissemination of hate speech. In this judgment, the court expressed the view that in order to protect societal rights more widely, contracting states may be entitled to impose liability on internet news portals without contravening Article 10 of the ECHR (should those companies fail to remove unlawful comments without delay, including in the absence of notice from the alleged victim or a third party).

Themes emerging from Article 17

Tolerance and respect for equal dignity of all human beings constitute the foundations of a democratic, pluralistic society and that is evident in ECtHR judgments. In *Erbakan v Turkey* [2006], the court stated that it was vitally important for states to take a cautious approach when determining the scope of crimes of hate speech. It called on them to strictly construe legislation in order to avoid excessive interference under the guise of action against such speech, when the authorities or their policies came into question.

The ECtHR judgments discussed above encapsulate the need for free expression (Article 10) and the need to protect democracies from groups and ideologies who would use their right to free speech to destroy or threaten the very institutions which give them the right of free expression.

Comparative approaches to countering violent extremism

The comparison with other jurisdictions showcases significant differences in the severity and punishments imposed in relation to hate crime, and perhaps extremism more widely. States have discretion in deciding whether and when to apply national legal restrictions on freedom of expression when prosecuting, and Article 17 cannot be applied directly to restrict hateful speech. Across jurisdictions, some authorities have appeared reluctant to prosecute hate speech, on the basis that defendants may be seen as ‘martyrs’ for their cause, drawing an influx of members to their organisation; or in fear of an acquittal which would justify the accused’s actions in the eyes of the peers (Coliver, Coyle & D’Souza, 1992). In the cases of Anjem Choudary and Stephen Yaxley-Lennon, individuals can utilise a wider platform for the dissemination of hate whilst claiming martyrdom. In both these cases the rhetoric associated with these high-profile individuals would appear contrary to the basic aim of the ECHR, which is to

work towards peace and greater unity based on human rights and fundamental freedoms. Yet no action was taken against either based on their propagation of hatred. However, in *Handyside v UK* [1976] the ECtHR made its position on the need for tolerance and pluralism clear, stating *"freedom of expression is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there would be no democratic society."* (*Handyside v UK* [1976]).

The Human Rights Act passed by British Parliament in 1998 is a landmark piece of legislation which recognised fundamental rights drawn from the ECHR. It requires all public bodies to respect human rights while trying to ensure, where possible, that new legislation is compatible with ECHR rights (Equality and Rights Commission, 2018). The courts are under an obligation to interpret legislation in a way that is compatible with ECHR rights if possible.

Before the HRA, the right to free speech as Barendt (2009) points out was not recognised in English common law, unlike rights of property law, trespass, or libel. *R on the application of Laporte v Chief Constable of Gloucestershire Constabulary* [2006] may be an example of the change in the way in which the courts interpreted the law following the passing of the HRA. This case concerned the legality of a protest against the invasion of Iraq. Under legal consideration was the legality of a police order forbidding protestors to proceed to RAF Fairford to demonstrate against the use of the base by U.S. bombers. The House of Lords unanimously held that the common law power to detain people to prevent a breach of the peace could only be exercised when such a breach was imminent. The House of Lords took the view that this requirement had not been satisfied and therefore was not lawful. It is noteworthy that that the same decision could have been reached under pre-existing common law notwithstanding the HRA There was no authority conferred, either by statue or by common law precedents, allowing the police to take such actions without reasonable belief that a breach of peace is imminent. However, the reasoning given by the Lords in *R on the application of Laporte v Chief Constable of Gloucestershire Constabulary* [2006] appeared to emphasise the importance of rights of expression and assembly. It is important to note that the HRA provides a platform for consideration of these aspects of free expression

rather than substantively changing the law. The effectiveness of any legislative change is dependent upon the way in which the courts interpret it. According to Barendt, the HRA has not radically changed legal reasoning but has created a 'climate of discussion in which people think about their right to 'freedom of expression'' (Barendt, 2009). The HRA has been severely criticised on grounds linked to forms of extremism. Following 9/11, the Anti-terrorism, Crime and Security Act 2001 enabled foreign nationals who were 'reasonably' suspected of terrorism to be returned to their country of origin and indefinitely detained pending deportation, without charge. On the basis of a threat to public safety and to allow the authorities adequate time to mitigate this risk, the then Home Secretary David Blunkett sought to derogate the UK from Article 5 of the ECHR (Denney, 2009).

Concerns have been expressed in the UK that the ECHR and HRA have unleashed a culture of grievance, encouraging people to make unreasonable claims which overburden taxpayers and make effective governance problematic. For example, Abu Qatada was first detained in Britain as an international terror suspect in October 2002 and then held for two-and-a-half years under 'Belmarsh powers' of indefinite detention pending deportation. He then began a battle against his deportation to Jordan, claiming he would be tortured. On 17 January 2012, the ECtHR ruled that Abu Qatada could not be deported to Jordan as this would violate his right to a fair trial under Article 6 of the ECHR. Qatada was finally deported to Jordan on 7 July 2013. Then Home Secretary, Theresa May, claimed that his removal had taken 12 years and cost over £1.7m in legal fees, constituting a "crazy interpretation of our human rights laws". She suggested that withdrawal from the ECHR should be considered to prevent repeats of the Qatada affair. May blamed the ECtHR, claiming that Qatada would have been returned to Jordan more swiftly had the ECtHR not "moved the goalposts" by establishing new, unprecedented legal grounds for blocking deportation. In response to this criticism, the Council of Europe welcomed the fact that Abu Qatada would face charges in Jordan under the condition that evidence obtained under torture could not be used. This was described as a victory for due process and for human rights.

Theresa May and other prominent Conservative Party politicians, including David Cameron, have said that that the future of the HRA should be reviewed and possibly replaced by a bill of rights (The Guardian, 2018). Such cases create the need for a complex balance between the rights of victims who need to be protected against the

activities of extremists, and the rights of all, including those accused of hate, to due process and protection from torture. In this case, the government took the view that provisions of ECHR and the HRA prevented them from protecting their citizens from the hate perpetrated by a dangerous individual, but were powerless to act in order to deport Abu Qatada. From this perspective, the ECtHR was applying powers inappropriately and ultimately devaluing the human rights of those towards whom the hatred was directed. If the HRA was abolished following Brexit without replacement, some commentators have suggested that complainants would have to take their cases directly to Strasbourg. Rozenberg (2014) has argued that in this event, UK judges would probably find ways of developing the Law by ruling that ECHR rights have now become part of the common law. This raises the questions as to whether judges have the power to change laws passed by a sovereign Parliament.

The ECHR requires states to guarantee rights to its citizens but does not require individual citizens to uphold the values of the ECHR. Although the HRA was designed to ensure that future UK legislation was compatible with the ECHR, significant limitations in its effectiveness and interpretation in specific cases have been noted.. Given the many difficulties discussed, there may well be a case for the creation of a new bill of rights.

How have other jurisdictions dealt with hateful extremism and measures that are needed to balance victims' rights with free expression?

The previous section focused on balancing the rights of victims of hateful extremism with the right to free speech, considered with specific reference to the ECHR and HRA. This section widens the discussion to consider how other jurisdictions have dealt with these complex and seemingly paradoxical propositions.

The UK has signed and ratified several international conventions which include obligations relating to hate crime. These include the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and the United Nations Convention on the Rights of Persons with Disabilities (CRPD).

Differentiated approaches to rights-written and unwritten codes and constitutions

As a matter of international law, the UK is bound to respect, protect, and fulfil the rights contained in conventions it has ratified. Conventions are what is referred to as soft law which is more often found in the international sphere. Whereas legal sanctions refer to legal obligations, soft law is not directly enforceable in signatory states, but neither does it lack legal significance. Notwithstanding this, ICERD (2016) includes an obligation to states to 'declare an offence punishable by law'. The offence should include:

- All dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination
- All acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin
- The provision of any assistance to racist activities, including the financing thereof' (Article 4).

Rights across states reflect different traditions and cultures. In Germany, the notion of human dignity is mentioned in the constitution, whilst in Holland education is regarded as a constitutional right. Sweden emphasises the value of free expression. The Irish constitution emphasises the centrality of traditional values and the sanctity of human life. In Hungary, the constitution "takes up with its national history and its values" (Puppinck, 2011, p. 1).

The constitutions of Austria, Germany, Hungary, Italy and Poland provide both the protection of the right to freedom of expression and the right to equality. The United Kingdom has an unwritten constitution derived from Acts of Parliament, common law and conventions along with certain seminal nineteenth century texts which include:

- Erskine May *Parliamentary Practice* (May 1844)
- A.V. Dicey *Law of the Constitution* (Dicey, 1885).

Have other states gone further than the UK in fulfilling their obligations under the ICERD and Article 20(2) of the ICCPR?

The ICERD was adopted in 1965 as the core international human rights treaty following the UN's 1948 Universal Declaration of Human Rights. It is a globally significant convention, having been ratified by 177 states (Lappin, 2016). The Committee on the Elimination of Racial Discrimination (CERD) is an established body of 18 independent experts responsible for monitoring the implementation of ICERD provisions. Each state assumes an obligation to submit periodic reports to CERD on the implementation of the rights and recommendations made by CERD. This process has been problematic, with individual states delaying submission of reports for up to five years and in some cases not submitting reports at all (Tanaka and Nagamine, 2001).

The UK has not always produced its reports to CERD punctually, submitting periodic reports one year late in 2015. The submission consisted of three combined reports (21 to 23), with the Commissioner highlighting that there were insufficient non-governmental consultations (Office of the High Commissioner for Human Rights, 2016).

Article 20(2) of the ICCPR states that *'any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law'* (United Nations, 1966). Comparable wording to Article 20 is rarely found in domestic legislation. Some jurisdictions use the terms 'stirring up' to describe hateful speech. Denmark uses the more specific term 'threatening speech' which does not itself connote incitement. The Spanish Criminal Code of 1996, Article 510 states that:

> *'Those who provoke discrimination, hatred or violence against groups or associations for racist, antisemitic or other reasons including ideology, religion or beliefs , family status, ethnic, race or national origin, gender, sexual*

> *orientation illness will be punished with one to three years imprisonment'(Article, 19, 2010: 4).*

The Spanish example is a significant part of criminal law appearing to accurately capture the central message contained in Article 20(2) of the ICCPR, since it links hatred directly with a prescribed punishment (unlike the UK).

Other jurisdictions incorporate the spirit of Article 20(2). In Hungary, incitement against a community (Criminal Code Article 332) is a felony committed by "any person who, before the public at large, incites hatred or violence against the Hungarian nation, any national, ethnic, racial or religious group, or certain societal groups, in particular on the grounds of disability, gender identity or sexual orientation, punishable by up to three years of imprisonment" (Refworld, 2017). In Ireland, the Prohibition of Incitement to Hatred Act 1989, prohibits:

> *'Words or behaviours which are threatening, abusive or insulting and are intended or, having regard to all the circumstances, are likely to stir up hatred against a group of persons in the state or elsewhere on account of their race, colour, nationality, religion, ethnic or national origins, membership of the travelling community or sexual orientation.' (Articles 2 and 1 of the Prohibition of Incitement Act 1989 quoted in Article 19, 2010 :4)*

This part of the Act links stirring up with directed hatred at specified groups.

Article 14 of ICERD is a central part of the Convention since it allows applications to be made by individuals alleging violations. The example below demonstrates how Article 14 was used by an individual petitioner to CERD and the response of the Dutch government.

Summary of communication no. 4/1991 (L.K. v. The Netherlands): 'L.K., a Moroccan citizen residing in Utrecht, Netherlands, wished to visit a house for which a lease had been offered to him and his family, but a group of people had gathered in front of the house, shouting 'no more foreigners', with some threatening to set fire to the house if L.K. moved in. A petition was signed by 28 residents saying that the house could not be offered to L.K. L.K. filed a complaint claiming he had been victim of racial discrimination. Most of the signatories were questioned but a few months later, the prosecutor at the District Court of Utrecht informed L.K. that the matter had not been

registered as a criminal case with his office because it was not clear if a criminal offence had taken place. L.K.'s counsel turned to the Appeal Court of Amsterdam, asking for an order that a prosecution be filed against the signatories of the petition. This request was refused on public interest grounds, holding that the petition was neither a document of a deliberately insulting nature, nor inciting racial discrimination. L.K. filed a complaint to CERD, on the grounds that the remarks and statements of the residents were racially discriminatory, that the police did not act expeditiously and effectively in the investigation, and that the Court of Appeal had prolonged the proceedings and had relied on incomplete evidence. At its 42nd session in March 1993, CERD decided that the acts of the residents were discriminatory; that the investigation by the police and prosecution was incomplete; and that when threats inciting racial violence are made, especially in public and by a group of people, it is incumbent upon the state to investigate with diligence and expediency. Furthermore, the police and prosecution did not offer effective protection and remedies within the meaning of Article 6 of the Convention. CERD thus recommended that the state party review its policy and procedure concerning acts of racial violence, and that it provide the applicant with relief commensurate with the moral damage he had suffered. In its 13th periodic report to CERD, the Dutch government provided extensive information on new, stricter anti-discrimination guidelines for the police and the public prosecutions department, adding that in issuing these new guidelines, it had also complied with the relevant recommendations of the Committee in the L.K. case. Moreover, the government stated that, in consultation with the applicant's counsel and the applicant, it had provided reasonable compensation' (cited in Tanaka and Nagamine, 2001:11).

In the above case, the Dutch government incorporated the recommendations of CERD into guidelines for police and prosecutions based on an individual complaint. The right to individual petition under Article 14 applies to states which have entered the declaration of these provisions. The UK has not accepted these conditions and relies upon domestic remedies instead. The 14th UK Joint Parliamentary Committee on Human Rights recorded its view that the failure to accept rights of individual petitions to CERD under the optional protocol to the ICCPR hampers the ability of people from vulnerable groups to secure their rights to equality. Although the provisions of ICERD have not been incorporated into UK domestic law, it has been argued by senior judges that the courts take account of an incorporated treaty in their interpretation of legislation. This process, however, is dependent on an individual judgment and judicial

interpretation. At present, the UK does not appear to have any clear mechanism which indicates how recommendations made by CERD are acted upon, implemented and coordinated in practice. CERD Committee Experts have noted that the ICERD has not been integrated into domestic legislation, although no state is under obligation to do so. The UK has argued that many of the rights contained in Articles 5 and 6 of the Convention were included in the Equality Act 2010 in England, Scotland and Wales, while other rights were covered by criminal legislation in England and Wales.

The full application of the Equality Act 2010 does not apply in Northern Ireland, and concern has been expressed about the effective implementation of equality and anti-racism legislation across devolved areas (Office of the High Commissioner for Human Rights, 2016). This raises the question as to how the UK ensures full application of the Convention in all of its territories.

This is not the position in other jurisdictions, which appear to have a more coordinated response to implementing the recommendations of CERD. In Australia, the Parliamentary Committee on Human Rights can make recommendations with respect to the systematic implementation of observations made by the ICERD in their conclusions (Australian Human Rights Commission, 2010). In this respect, the UK is lagging behind other jurisdictions.

The incorporation of Article 20(2) of the ICCPR into the English legal system could enhance the visibility of the need for appropriate sanctions to be applied in relation to the use and impact of hateful language. Article 20(2) is generally framed and contains wording that is wide-ranging enough to offer states considerable scope for interpretation. Vague and generally-framed wording also leads to difficulties in practical application. The language contained in the Convention also differs from that used in the UK legislation and would need interpretive guidance in practice.

Inconsistencies in incorporating ICERD recommendations into domestic law are further complicated by a range of specified protected characteristics in countries. Available case law also highlights that legal reasoning deployed by the courts in the UK and elsewhere is often vague, ad hoc and lacking in conceptual discipline or rigour.

Mason (2015) has identified three ways in which jurisdictions legislate against expressions of targeted hate. These include:

- The penalty enhancement model
- The sentence aggravation model
- The substantive offence models.

Individual jurisdictions may combine these models in their legislative schemes rather than opting for one. The first two of these do not create additional offences to address hate crime but permit modifications to the applicable penalty. The substantive offence model involves the creation of a specific offences to address hate crime.

The UK adopts a differentiated model for the prohibition of incitement, which incorporates all the three approaches. For example, under the Criminal Justice Act 1998, religious and racially aggravated offences have higher maximum sentences. Under the Public Order Act 1986, stirring up racial hatred can become a separate and aggravated offence. The Racial and Religious Hatred Act 2006 created new offences which are different from race hate offences contained in Part III of the Public Order Act 1986. The wording of this Act draws attention to the need to protect freedom of expression when dealing with hateful forms of expression as *'nothing in this part (of the Act) shall be read or given effect in a way which prohibits or restricts discussion, criticism or expressions of antipathy, dislike, ridicule, insult or abuse of particular religious or 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'* (Section 29J of the Racial and Religious Hatred Act 2006).

The ECHR has repeatedly asserted that "*Freedom of expression … is subject to a number of exceptions which, however, must be narrowly interpreted and the necessity for any restrictions must be convincingly established*". Thus, speech that "offends, shocks or disturbs" in many instances is protected.

Other commentators have suggested that for an incitement-related restriction to be legitimate, it must conform to the requirements of a three-part test:

- 'The interference must be provided for by law. This requirement is fulfilled only where the law is accessible and formulated with sufficient precision to enable the citizen to regulate his conduct'.

- ‘The interference must pursue a legitimate aim. The list of aims in the various international treaties is exclusive in the sense that no other aims are considered to be legitimate as grounds for restricting freedom of expression’.
- ‘The restriction must be necessary in a democratic society or meet a pressing social need. The reasons given by the State to justify the restriction must be “relevant and sufficient” and the restriction must be proportionate to the aim pursued’ (Article 19, 2010:9).

It is argued that the three-part test could form the basis for a more coherent framework in which freedom of speech is respected, protected and upheld while allowing upholding restrictions that are required to limit incitement to hatred (Article 19, 2010).

The burgeoning impact of the internet has made the creation of an appropriate balance between protecting free speech and protecting victims of hateful attacks urgent. The UK is lagging behind other jurisdictions where measures have been taken against those who allow their platforms to be used for the perpetration and dissemination of targeted hatred.

- In Australia, the Sharing of Abhorrent Violent Material Act (2019);
- In New Zealand, the Enhancing Online Safety Act (2015);
- In Germany, the Network Enforcement Law (NetzDG) (2018).

The table below highlights the grounds for inciting hatred and the variety of grounds that have been introduced at national level in specific anti-discrimination legislation with respect to six jurisdictions. The term “incitement to hatred” or “incitement to violence or hatred” is used in some cases (for example, England and Wales, Germany, and Austria). This results in various types of incitement being conceptualised in vague terms (Article 19, 2018).

Table 2 Inciting hatred legislation across different jurisdictions

	Poland	Italy	Germany	Austria	Hungary	England and Wales
Incitement to hatred	Public insult of a group of individuals	Public instigation to disobedience of public order or hatred amongst social classes	Dissemination of certain propaganda	Hatred with intentional harming of human dignity	Any person who, before the public at large, incites violence or hatred	Intentional threatening acts towards others on the basis of perceived race, religion or sexual orientation.

Protected characteristics	"Nationality, ethnicity, race or religion or belief"	Race, ethnic origin, nationality or religion	National, racial, religious groups defined by their ethnic origin" and "segments of the population;"	Gender, race, language, ethnic origin, religion, age, sexual orientation, disability, sexual identity,	Sex, racial affiliation, nationality, belonging to a national or ethnic minority, mother tongue, disability, religion or belief, political, sexual identity and age	Disability, race, religion, sexual orientation or gender can be targeted

In Poland, the provisions on hate crime and speech prohibit the use of violence or threats, and the public insulting of a group of persons or a particular person because of their national, ethnic or racial origin, political or religious beliefs. Incitement to hatred based on race, national or ethnic origin or religion is also banned. Significantly, this offence category does not mention sexual orientation or gender identity as grounds for hate crimes or give protection against anti-LGBT hate crimes (Godzisz and Pawel, 2018). Within this system, the prosecutor has independence and flexibility in discharging duties related to the Polish criminal code. However, actions taken by the prosecutor have often been limited.

In 2019, the liberal mayor of Gdansk, Poland, was stabbed to death. Prior to the stabbing, an antisemitic satire was broadcast on TV, numerous verbal attacks and a "public death certificate" had been directed against the victim (Walker, 2019). The Office of the Public Prosecutor General (PPG) chose not to react. Following the murder, the victim's wife subsequently tried to change Europe's hate speech laws, to make not only users but also companies (such as Facebook) responsible for the content and communicated published on the platforms.

In another Polish case in 2018, a Moroccan security officer was insulted by a young man who shouted hateful slogans, insulting the Moroccan because of his racial affiliation and threatened him. During the prosecutor's investigation, it was established that the young man had committed two crimes: publicly insulting the victim and directing criminal threats against him due to his racial affiliation. At the time of writing, the district prosecutor imposed police surveillance on the assailant and ordered him not to contact the aggrieved party (Cuper, 2019).

Another example originating from Poland highlights behaviour at a football game in September 2013, where the fans of the Lech Poznań Football Club chanted "Down with

Jews". The shouts were directed at fans of the Łódź Widzew Football Club. The prosecutor discontinued the investigation as Łódź Widzew were not Jewish. The Appellate Prosecutor's Office in Poznań reviewed this decision and ordered re-examination of the case (Wąsik and Godzisz, 2016). Similarly, in 2013 when "Move on, Jews! Your home is at Auschwitz! Send you to the gas (chamber)!" were chanted at a football match, the Polish municipal prosecutor in Poznań decided that football chants were not criminal offences (Masters, 2014). Thus, in the case of Poland, flexibility appears to work against the interest of victims of hate speech.

The Italian legal system is reliant on terms such as "public instigation to disobedience of public order or hatred amongst social classes". Increased numbers of migrants and refugees arriving from different countries have been targeted by far-right groups. Hate speech has been further exacerbated by the spread of comments in online forums, on articles and social media platforms that incite hatred and violence. The protected characteristics in Italian criminal law relating to hate speech are limited to race, ethnic origin, nationality, and religion, whilst attempts to expand protection have stalled in Parliament. The interpretation of the existing 'hate speech' provisions contained in criminal law are also inconsistent. Italian victims of 'hate speech' can either initiate proceedings within the criminal system to claim compensation for damages, or pursue a separate civil defamation lawsuit. Administrative pecuniary sanctions are imposed in cases of defamation of religion/blasphemy, and a system of police warnings was established by a recent law protecting minors against 'cyberbullying'. However, Italian legislation does not provide a definition of hate crime and no guidance for police officers in identifying hate crimes.

There have been numerous examples of the Italian system failing victims of hate speech. In July 2016, a Nigerian couple were walking in the centre of Fermo when they were racially abused by two men waiting for the bus. One of the men yelled "African monkey" and other insults. A fight ensued, which resulted in the Nigerian male being beaten to death. The main perpetrator, affiliated with a far-right group, was arrested on charges of manslaughter, aggravated by racist motives; however the defence, supported by media portrayals of the story, pleaded legitimate defence. In 2017, the perpetrator agreed to a reduced sentence of four years and house arrest (Nwabuzo, 2019).

The German Criminal Code refers to "politically motivated", "hate" or "biased" crimes more directly than the UK. However, the German Code does not create specific criminal

offences related to homophobic, racist, xenophobic or antisemitic conduct. However, Section 46 of the German Criminal Code does allow the offender's "motives and objectives, including racist, xenophobic or other motives evidencing contempt for humanity" to be considered when fixing a penalty (Grell et al, 2009). Germany does have a victim's compensation law while its Criminal Code also contains several provisions in relation to defamation. However, civil law remedies have been criticised in providing inadequate redress for victims of hate speech (Article 19, 2018).

Since 2019, prospective gun buyers in Germany have been required to undergo background checks to ensure they have no ties to extremism (Eddy, 2019). Social media companies operating in Germany are also required to report suspicious posts (Bennhold, 2018). This legislation followed increases in far-right extremism. For example, in 2019, far-right extremists murdered a conservative politician, whose name had appeared on a neo-Nazi hit list circulated online. A right-wing extremist killed two people after attacking a synagogue in Halle and posted a video of the event online. Other events in Germany have led to changes in legislation. A truck drove into the Christmas market in Breitscheidplatz, killing 12 and injuring 50 people in 2016. Following this attack, a victim's compensation law was enacted. However, the government encouraged regions to accelerate deportations of failed asylum-seekers, especially those considered radicals.

The approach taken in England and Wales, Scotland, Northern Ireland, and Western Australia is a broad one, and is designed to capture motivation and the demonstration of hostility towards an individual or groups. Other jurisdictions (for example, Hawaii, Louisiana and Maine) require that the victim of a hateful act was targeted due to a protected characteristic. In New Zealand, it must be shown that the offender committed the offence wholly or partly because of hostility, although as with all nations, hostility is not clearly defined. In the Northern Territory of Australia, the motivation of hatred is specifically required. Where a motivation test is used, it is enough for the offender to have been only partly motivated in targeting a protected characteristic in some jurisdictions. This is another complexity, as the distinction between partial and full motivation can be complex to interpret. Chalmers and Leverick (2017) noted that the Canadian courts have experienced difficulties in this regard, specifically in relation to proving the aggravated nature of the crime. It is also important to note that hate crimes can be aimed at a range of intersecting characteristics possessed by a victim, some of which are not protected by existing legislation.

The model adopted in the UK attempts to incorporate motivation, hostility and hatred. This enables the law to be interpreted in differing ways, both in the courts and by criminal justice professionals. Some international jurisdictions give public prosecutors flexibility in the way they use their powers. At times, this can work against the interest of victims.

A major challenge for the UK emerging from international comparisons is the way in which causal links between the offence and hatred are demonstrated and acted upon. Unlike other jurisdictions, the UK does not appear to have any clear mechanism indicating how recommendations made by CERD are acted upon, implemented and coordinated. Commendable and well-intentioned legislation such as the HRA puts the courts under an obligation as far as is possible to interpret legislation in a way which is compatible with the ECHR where possible. This does not appear to amount to an unequivocal requirement as contained in Article 20(2) of the ICCPR related to *'any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law'*.

Further equivocation in the UK is noted in prosecuting high-profile purveyors of hate. Such hesitancy is based upon the idea that prosecution could lead to the creation of a wider platform for those who perpetrated hate and can be regarded as a form of publicity.

In order to deal with these cases, there must be explicit recognition of incitement as provided by Article 20 of ICCPR. The UK should incorporate specific reference to incitement to discrimination, hostility or violence in its criminal law. At present, what is contained in the law does not meet the obligation under Article 20.

Other states have gone further than the UK in recognising that incitement is critical to addressing the way hate is presented, sometimes in ways which are deliberately designed to stay within the law. It is possible in the UK to transmit ideas that appear to incite targeted discrimination with impunity over a considerable period. ICERD includes an obligation for states to 'declare an offence punishable by law'. The dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination from this perspective should be made punishable by the law. Article 4 of ICERD also includes prosecution of those providing any assistance to racist activities, including financing these crimes.

In several states such as Armenia, Bosnia & Herzegovina, Latvia, Montenegro, Serbia, Slovenia, and Ukraine, the fact that incitement to hatred has provoked violence constitutes an aggravated offence (Article 19, 2010). There are several examples in the UK of hateful extremist speech leading to violence, fear, unrest and damage to property. The impact of far-right activities against the Muslim community has provided a number of case studies over a two-decade period (Select Committee on Religious Offences in England and Wales [Minutes of Evidence, 2001]). The violent clashes in June 2020 across the UK provide an example of the way in which hate and clashing ideologies create disorder, fear, danger to property and attacks on police officers attempting to keep the peace (BBC, 2020). Some commentators have argued that anti-protest laws in Australia and the United States threaten the ability of people to express views on issues they care deeply about (Howie, 2018). The UKs Police, Crime, Sentencing and Courts Bill (2021), which seeks to make the first major changes to the Public Order Act 1986 in nearly two decades, has also been met with backlash from the general public, who view ambiguity within the bill as infringing upon the rights of the population to demonstrate.

In most states, including the UK, intent to incite discrimination and hostility or violence is a specific and necessary element in prosecution and sentencing in state criminal law. Under the Irish Prohibition of Incitement Act 1989 it is a defence to show that the defendant had not intended to stir up hatred. Such intent is also necessary in other jurisdictions, including Portugal and Malta. In a minority of European states, the threshold for prosecution is lower than intent. In the Norwegian Criminal Code, recklessness is sufficient to demonstrate incitement to hatred. Gross negligence is a situation which can demonstrate incitement to hatred within the Norwegian General Civil Penal Code. Paragraph 135 (a) of the code states that *'any person who wilfully or through gross negligence publicly utters a discriminatory or hateful expression shall be liable to fines or imprisonment for a term not exceeding three years. An expression that is uttered in such a way that it is likely to reach a large number of persons shall be deemed equivalent to a publicly uttered expression'* (General Civil Penal Code, pp. 41).

Furthermore, the use of symbols can also be regarded as a form of hateful expression: *'the use of symbols shall also be deemed to be an expression. Any person who aids and abets such an offence shall be liable to the same penalty. A discriminatory or hateful expression here means threatening or insulting anyone, or inciting hatred or*

persecution of or contempt for anyone because of his or her a) skin colour or national or ethnic origin, b) religion or life stance, or c) homosexuality, lifestyle or orientation' (General Civil Penal Code, pp. 41).

This Norwegian approach appears to be more far-reaching than the UK position. Lack of intent does not appear to constitute a defence for hateful expression. Thoughtlessness or a lack of attention to the impact on victims of hateful utterances is in this jurisdiction punishable by the criminal law, which more accurately reflects Article 20(2). The punishment of those who perpetrate hate takes precedence, or is at least regarded as having the same societal significance as the right to free speech, which does not appear to be the case in the UK and other jurisdictions. This approach could be constituting a form of capable guardianship from the viewpoint of citizens who have suffered the impact of hateful extremism.

The emerging theme from the different approaches show complex variations in the way penalty enhancement, sentence aggravation and specific substantive offences are conceptualised and administered across jurisdictions. Some models appear highly prescriptive and specific. Although such attempts are commended for criminalising specific offences related to systematic hatred, the terminology employed lacks clarity. Words like 'hostility' and 'hate' are ill-defined across jurisdictions, including the UK. Notwithstanding, this cross-jurisdictional approach appears to operate on the assumption that clear working definitions exist, are useful and form the basis of sentence enhancement. The UK has not incorporated recommendations made by CERD into its policing and prosecution practices. Neither has the UK accepted the rights of the individual to individually petition CERD, which in some cases could be an encumbrance to victims of hateful extremism attempting to secure their human rights.

Are new powers required to fill the gaps in countering hateful extremism?

In previous sections of this report the ECHR, Human Rights Act and legislation in other jurisdictions have been considered in relation to upholding the right to free expression whilst protecting victims of hateful extremism. This section discusses the need for legislative intervention tackling online hateful extremism and an examination of the need for redress and compensation.

Following the London Bridge attacks in 2017, bereaved relatives raised a question around the impact of online extremist material consumed by the perpetrators. The coroner's report (2019) mentioned that Khuram Butt, one of the attackers, had accessed a considerable amount of extremist material online including IS propaganda, violent images and hate sermons. The coroner acknowledged that the impact of this material on his mindset at the time of the attack was difficult to judge. People often view material without committing terrorist offences. The coroner considered that appropriate measures were in place to arrest and charge Subjects of Interest, including the dissemination of material which encourages terrorism.

> *'Judgments about what can be deduced from an individual's possession of extremist material are inherently difficult, but I am not satisfied that there is any evidence of investigators lacking the skills and experience to make those judgments competently'* (Chief Coroner, 2019).

The coroner noted that in the field of extreme/illegal pornography, recent legislation has criminalised the possession of defined categories of the most offensive materials (for example, Section 63 of the Criminal Justice and Immigration Act 2008; Section 62 Coroners and Justice Act 2009). Section 67 of the Criminal Justice and Immigration Act 2008 makes the possession of extreme pornographic images an imprisonable offence for up to three years.

The research has also shown that opportunities for redress in cases of extremism are limited in the UK. Although the quantification of the damage caused by hate crime is complex, compensation and the right of correction and reply (if incitement to hatred occurred in the mass media) need to be seriously considered. This could form the basis for a compensation framework for extremist activity (Article 19, 2018).

One of the major findings from this research is the lack of tools to address the perpetuation of hate speech/rhetoric on the internet. Regulation of social media and the media's seeming apathy in self-regulation is currently being considered by Parliament. Media regulators and self-regulatory bodies should develop and publish clear policy guidelines on 'hate speech' and apply guidelines in their decision making (Article 19, 2018). Social media companies are generally regarded as providing routes to transmit information rather than creating it. These companies are not currently liable for the content that they host, provided they do not have actual knowledge of illegal activity and act 'expeditiously' to remove the information if they are informed that it is illegal (Woodhouse, 2020).

This complex and loosely structured situation contrasts starkly with other jurisdictions which have prioritised victims of hate crime and extremist acts in their approach. Australia passed the Sharing of Abhorrent Violent Material Act in 2019, introducing heavy financial criminal penalties for social media companies, and possible jail sentences for top company executives when their platforms were used to disseminate hate-based materials. In New Zealand, the Enhancing Online Safety Act 2015 created a Safety Commissioner with the power to demand that social media companies take down harassing or abusive posts. Similar legislation has been enacted in Germany's NetzDG law, which came into effect at the beginning of 2018 (BBC, 2020).

Many of the proposals for legislative change mentioned in this research require amendments and strengthening of existing law rather than the creation of new legislation to secure a fairer balance between the rights of victims of hate and the need for free speech. Ultimately the impact of legislative change will be subjected to the interpretation of law by the courts. It has been argued in this section however, that urgent attention needs to be given to the creation of new legislation directed against those who allow their social media platforms to be used to perpetuate and normalise hateful extremism. The need for online regulation has been a recurring theme. It is the unprecedented power to influence others that social media gives to hateful extremists which makes action necessary. Free expression which deliberately harms, denigrates and dehumanises individuals and groups of individuals is potentially more damaging than legislating to limit excesses of hate. Lack of effective legal action in this area gives rise to incalculable societal damage. It has also been suggested that some form of compensation needs to be introduced for victims of hateful extremism. The cost of such

compensation should be borne by those who have directly instigated the crime and those who have permitted their platforms to be used for hateful purposes. A new system for regulation needs to be overseen and administered by a safety commissioner, as is the case in other jurisdictions mentioned in this section.

What is an appropriate balance between preserving rights of free expression with the protection of victims of hateful extremism?

Protection from hate crime, extremism or, theoretically, hateful extremism, does not appear to be an absolute right in England and Wales despite the legislation described above. Protection from these crimes is qualified through criminal law mechanisms and the construction of a legal threshold open to different judicial interpretations. This is illustrated in a case that came before the House of Lords soon after incorporation of the ECHR into the law of Engand and Wales (*R v Shayler* [2002]). This case concerned the compatibility of the Official Secrets Act 1989 with freedom of expression. Lord Bingham ruled that freedom of speech had been recognised as common law for some time but was now underpinned by statue. He went on to argue that, as with common law, the Convention right was not absolute, but allowed for many exceptions (Barendt, 2009, p. 854).

Limitations to the rights of victims of hateful extremism were found in relation to differences in the prosecution and sentencing of those convicted of offences aggravated by hatred (currently being addressed by the Law Commission). There does not appear to be agreement as to what constitutes a protected characteristic. In practice, terrorist offences take priority over targeted hate crime, even though the latter can create considerable harm to individuals and to communities. High-profile hate preaching, political activism and targeted individual attacks have been occurring. In high-profile cases, perpetrators were ultimately prosecuted through legislation not directly related to the proliferation and generation of hatred, despite the disruptive, abusive and offensive impact of their rhetoric on and offline.

The research has revealed an abundance of UK policy critiques but very few robust evaluations of specific interventions in this field. This is needed to inform initiatives and programmes that serve to benefit victims. Agencies working in countering violent extremism have not sufficiently embedded research and evaluation into programme development and delivery. Evidence is necessary to inform practitioners and victims of developments in effective practice and policy.

In the UK, several evaluations of projects designed to counter violent extremism have been examined dating back to 2006. These studies were undertaken by a variety of

agencies including the police, probation and prison service, targeting those who have been convicted of various forms of extremism. In some cases, no evaluation was attempted and in others small sample sizes gave very limited empirical reliability. More recently, the government has instigated systematic evaluations, particularly around local partnerships working to combat hate crime and terrorism (Pullerits et al., 2020; DeMarco et al., 2020). The current review of relevant law being undertaken by the Law Commission will be useful in redressing the imbalance about specific offences.

In the UK, it is still possible for hate to be spread with impunity in the name of free speech. The balance between free expression and the control of those who would wish to destroy that right to expression has been illustrated with the discussion of Article 10 and Article 17 of the ECHR. There is a need for a rebalancing in favour of the rights of victims who hitherto have not had a voice in legal and public debate. These crimes are vicious but often hidden since victims are afraid to identify themselves and are not sufficiently trustful of the measures in place to protect them and support them in a court of law. Witnesses need to know that their rights are protected, whilst at present victims are often reliant on third party NGOs to assist with reporting. The research has noted a failure to incorporate the ruling and the logic enshrined in ECtHR case law into existing legal practices, although some of these actions created a barrier to sovereign states who wish to rid themselves of hate crime and extremists. The report has noted the complexity of the balance between attempting to protect the rights of victims who are being demeaned by hate and the rights of individuals to due process within the law (for example, the deportation of Abu Qatada).

This report evidences significant improvements in the way in which the police approach hate crime since the murder of Stephen Lawrence. However, until a common definition of extremism is accepted, it will be impossible for the right tools to be designed in order for the police and other agencies to counter extremism effectively. A coordinated and clear role for the police to act in cases of extremism is urgently required. The definition produced by the CCE mentioned earlier on page 7 of this report above (CCE, 2019) forms a starting point upon which urgently required effective and coordinated anti-extremist policing can be built. Although the research indicates a willingness on the part of government to develop more meaningful sanctions to counter extremism, further changes in the criminal justice system are required to form a basis for the development of an evidence-based practical counterstrategy. The evidence from this report would

suggest that at present there is an awareness amongst victims, the public, police, the legal profession and other criminal justice professionals that hate is insidious and widespread, damaging individuals and communities. This is combined with a sense of frustration that the present legal framework and judicial and police practices do not appear to effectively protect victims.

Recommendations

These findings can be used to enhance the response to tackling extremism in communities, including support for those who feel they have been the target of hateful extremism. Specifically, the findings could be used to:

Recommendations for Government

- The Government should work towards establishing a single regulatory framework to tackle a range of harms. There should be a statutory duty of care for Internet Service Providers coupled with an independent regulator to oversee and enforce compliance with the duty. Regulatory and voluntary initiatives are not enough to protect internet users from hateful extremism
- Develop a clear mechanism indicating how recommendations made by CERD are acted upon, implemented and coordinated.
- Signposting simply and clearly how an application of the Human Rights Act 1998 can be made.
- The UK should incorporate specific reference to incitement to discrimination, hostility or violence in its criminal law. At present, what is contained in the law does not reach the standards required by Article 20 of the ICCPR.
- The UK should accept rights of individual petitions to CERD under the optional protocol to the ICCPR.
- The Parliamentary Joint Committee on Human Rights should make recommendations with respect to the systematic implementation of observations made by the ICERD.
- The wording and application of Public Space Protection Order (PSPO) under the 2014 Anti-Social Behavior, Crime and Policing Act 2014 should be reviewed. Local authorities need to have powers to adequately protect residents against activities driven by hateful extremists carried out in a public place which will have a detrimental impact on those living in the locality.
- Legislation has criminalised the possession of defined categories of the most offensive materials in relation to extreme pornography (for example, Section 63 of the Criminal Justice and Immigration Act 2008; Section 62 Coroners and Justice Act 2009). Section 67 of the Criminal Justice and Immigration Act 2008 makes the possession of extreme pornographic images an imprisonable offence

for up to three years. In a similar vein consideration should be given as to whether the possession of extremely offensive materials designed to incite hatred should also constitute an offence.

- The provisions of Equality Act 2010 should be extended to apply in Northern Ireland. The UK should ensure full application of the Act across its territories.
- The Public Order Act 1986 needs to be reviewed. The aim of the review should be creating consistent and effective administration of the criminal law to ensure that all members of agreed protected groups have support and safety through the existing legal frameworks.
- Commission a review into current sentencing practices for aggravated offences and of the threshold for the incidence of targeted criminal behavior need to be reviewed.
- Government needs to consider how victims of hate-inspired violence can gain redress and compensation for the harms that they have experienced.
- Clarity needs to be created as to what constitutes a legal definition of hostility.
- Enhanced sentencing provision under Sections 145 or 146 of the Criminal Justice Act 2003 should be recorded in all cases deemed motivated by hostility towards a specific group.
- The incorporation of Article 20(2) of the ICCPR into the legal system of England and Wales, and the wider UK legal system could enhance the visibility of the need for appropriate sanctions to be applied in relation to the use and impact of hateful language.

Recommendations for civil and wider society

- The punishment of those who perpetrate hate should be regarded as having the same societal significance as the right to free speech. This approach should form the foundations for capable guardianship on the part of government from the viewpoint of citizens who have suffered the impact of hateful extremism.
- Initiative and programmes that serve to benefit victims of extremism need to be underpinned by high quality evaluation frameworks. There is an abundance of UK policy critiques but very few robust evaluations of specific interventions in this field.
- Police bodies should consider routinely asking victims of hateful extremism what they consider to be the underlying motivation of the offence. Operationally

and legally the police are dependent on the experience of the victim. If crime is not recognised and recorded as hate crime, then appropriate sanctions cannot be applied.

- A coordinated and clear role for the police to act in cases of extremism is required. The central elements of hateful extremism produced by the CCE mentioned above should be adopted as a working definition to assist with this.
- The CJS should work to clarify where hateful extremism sits on a spectrum of offences, with particular relation to hate crime and terrorism.
- More systematic effective disaggregation of offence data by the police would assist in strategic decisions and responses to hateful extremism nationally and in specific locations.
- Witnesses of hateful extremism need to know that their rights are protected, whilst at present victims are often reliant on third-party NGOs to assist with reporting of hateful extremism.
- Further detailed research needs to be conducted into the way the rulings and principals enshrined in judgments of the European Court of Human Rights are incorporated into existing UK case law and legal practices.

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