Law Commission consultation
Hate Crime law in England and Wales

Response from Christian Concern

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Question 1

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

No. We do not believe that there should be a Hate Crime Act.

We disagree with the concept of 'hate crime' altogether. A crime is a crime. It is not up to the state to assess the extent to which hatred of any particular characteristic was part of the motivation, nor should this change the penalty for the crime. If some victims are given greater protection in law than others then this perpetuates inequalites in society and undermines the fundamental principle of equality before the law. Those who are not deemed to have protected characteristics will justifiably feel inadequately protected by the law.

It is very clear that the Law Commission's brief to consolidate existing legislation is being used here to cause massive overreach of the law. These proposals, encompassing the proposals in this consultation, would effectively destroy free speech in England and Wales.

Question 2

We provisionally propose that the law should continue to specify protected characteristics for the purposes of hate crime laws.

We disagree. The further proliferation of protected characteristics will be futile given that the consultation document admits that hate crime legislation has no proven effect on the rate of crimes designated hate crimes. Instead what would happen is that disappointment would set in. In addition as the consultation admits, many criminals who commit crimes designated as hate crimes do so not out of a perverse sense of 'mission' but merely for the thrills. The consultation also admits that there are criminals who commit crimes precisely as a badge of honour. New specification of protected characteristics might therefore encourage criminals to commit crimes in such a way that they increasingly target people with these characteristics.

Question 5

We provisionally propose to retain the current definition of religion for the purposes of hate crime laws.

We agree.

Question 7

We invite consultees' views on whether "asexuality" should be included within the definition of sexual orientation.

We do not believe asexuality or any other new characteristic should be included within the definition of sexual orientation. This is in line with our principled objection to the expansion of the list of protected characteristics set out in response to question 2.

Question 8

We provisionally propose that the current definition of "transgender" in hate crime laws be revised to include:
• People who are or are presumed to be transgender
• People who are or are presumed to be non-binary
• People who cross dress (or are presumed to cross dress); and
• People who are or are presumed to be intersex
We further propose that this category should be given a broader title than simply "transgender", and suggest "transgender, non-binary or intersex" as a possible alternative.

For the reasons set out in response to question 2, we do not believe that the definition of the current category transgender should be revised.

The category of 'non-binary' should not be permitted as part of the definition of transgender. The Home Office has admitted in court that the provision of gender-neutral passports to assuage demands for recognition of non-binary identity would lower the efficacy of border security internationally. This should serve as a warning of what the criminal justice system would have to deal with if the transgender category were to be expanded further.

Specifically we are concerned that the term 'intersex' is being proposed as a subset of 'transgender here, as this makes no scientific sense at all. Whilst there is no physiological basis for transgender identity, conditions classed under the intersex category are congenital anomalies recorded at birth by hospitals. The law must not part with scientific objectivity when dealing with either victims or perpetrators.

Question 11

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

We do not believe that sex or gender should be added as a protected characteristic in hate crime law for numerous reasons. First, as stated above, the consultation document admits that hate crime laws have not had the desired effect of reducing the types of crime in question. Related to this they may well have the opposite effect, thus potentially putting more innocent people at risk. There are additional problems with introducing sex as a characteristic, which is that ironically this may not actually help women and girls. We note the extended discussion on this problem in the consultation document.

Introducing sex or gender-based hate crime legislation would create a hierarchy of victims and leave victims of obvious sex-targeted crimes such as FGM, forced marriage and honour-based violence lower down the rung of victims. This is because the authorities already do not convey the view that these are misogynistic crimes, i.e. motivated by hatred on grounds of

sex, for fear of being accused of racial and religious hatred and Islamophobia. In addition it would be impossible to prove in court that FGM is motivated by misogyny as it is a cultural practice done and approved by women.

We believe introducing sex-based hate crime category could demotivate people from coming forward to report some crimes against women and girls that are culturally-based, due to perceived breaking of ranks with hate crime lobbying within their own communities. This would be a particular danger in communities where the community and religious leaders are male, and where there are parallel problems of lack of respect for individual rights for women, e.g. ballot-stuffing at elections. We note that the Counter-Extremism Strategy addresses this problem.

Lastly we note that the consultation document says that same-sex sexual assault would not be covered by the designation of misogyny as a hate crime. Presumably this means it could be covered by the designation of sex as a protected characteristic either. Sexual assault, like other crimes, is not necessarily simply motivated by hatred of the victim. It may also be motivated by other vices such as jealousy, obsession, idolisation or scapegoating. However by its very nature sexual assault does focus on the sex of the victim. Same-sex sexual assault would be considered less serious in the criminal justice system than crimes that would come under the designation of sex-based or misogyny-based hate crimes. This would be an arbitrary distinction that would send out the wrong message to crime victims.

Question 13

We provisionally propose that a protected category of "women" is more suitable than "misogyny", if sex or gender-based hate crime protection were to be limited to the female sex or gender.

As noted previously we disagree with adding sex as a new protected characteristic for hate crime law. However if it were to be added, and if it were to be restricted to females, we would prefer to use the category of 'women'.

(i) This is because women can perpetrate crimes against other women and girls, complicating one-sided definitions of misogyny.

(ii) We note that in our present culture, arriving at a rigorous definition of an emotive state such as misogyny is extraordinarily difficult, especially if this is to be a legal definition. There is a real risk that an arbitrary threshold of misogyny is invented that would exclude cases that are hard to prove.

(iii) In addition we have little faith that some of the crimes most injurious to women and girls would be covered, given for example the widespread normalisation of pornography, prostitution and sado-masochism in mainstream secular culture.

(iv) Culturally-based crimes such as FGM are viewed by many as misogynistic; however they are carried out by women who sincerely believe they are doing the right thing for women and girls. This means that a law deeming such crimes 'misogyny' would not encourage people to come forward to report these crimes.

Question 17

We invite consultees' views on whether "sex workers" should be recognised as a hate crime category.

We do not believe that ‘sex workers’ should be recognised as a hate crime category. This would open the door tocensorship anddefamation of people who oppose prostitution and pornography as ‘whorephobic’. As a result the people who would be harmed the most by these proposals would be those trapped in prostitution and pornography. It would be unconscionable.

It makes no sense to recognise ‘sex workers’ as a hate crime category, as prostitution is a activity and not an identity. In addition many people are trafficked or tricked into prostitution and may or may not subsequently escape. No other activity is included within the protected characteristics of hate crime law. This strongly suggests that the real intention of calling for its inclusion is not simply protection but normalising prostitution and pornography, to the detriment of everyone. It would create a stigma aroundprograms and policies to help people exit the sex industry and would empower brothel madams and pimps. It would therefore undermine the existing law on sexual offences which makes keeping a brothel illegal.

We are unimpressed with the fact that the Law Commission clearly favours the sex workers’ rights movement, a movement which historically has been strongly opposed to ongoing efforts to help vulnerable adults and children leave prostitution and pornography. We are also particularly unimpressed with the manner in which the Law Commission holds up the Yorkshire Ripper’s claim to have heard God telling him to ‘rid the streets of prostitutes’, and doing so uncritically. Peter Sutcliffe’s mentality was very clearly the polar opposite of that of traditional anti-prostitution campaigners. Yet the Law Commission’s uncritical citation of his defence at trial sends out the message that it would make his mentality – a cover for serial murder – the normative criterion for assessing all genuine, welfare-based, charitable, political and legal opposition to prostitution. The end result of such distorted moral reasoning would be that people, including Christians, could be reported for ‘hate incidents’ if they express strong and practical opposition to and disapproval of prostitution. . This could have a negative effect on work opposing child sexual exploitation and human trafficking. It could also complicate safeguarding.

The text of the consultation document iself suggests the Law Commission is deliberately pushing for legislation of hate crime law against ‘sex workers’ in order to change public attitudes towards women. This is because it uncritically cites a source saying that ‘sex workers’ are ‘at the bottom of a hierarchy of femininity’. It is very concerning that the Law Commission is using the ideology of equality and equal outcomes to push for ‘sex workers’ to be protected under hate crime law. The likely result however would be the normalisation of prostitution and pornography as acceptable ‘work’ for vulnerable women. In light of the catastrophic effect of Covid-19 lockdown policies on employment prospects – especially those of women – this is completely unacceptable. We note that since March 2020 the movement for ‘sex workers’ rights has been campaigning to paint itself as a beacon of fundamental freedoms, when it is in reality no such thing. Another likely result of the more entrenched normalisation of prostitution and pornography would be increased acceptability in the legal profession of men visiting prostitutes. The Law Commission seems completely blind to the fact that hierarchies of values exist for assessing men’s behaviour as well. Doing away with those would be socially catastrophic.

Question 18

We invite consultees' views on whether "alternative subcultures" should be recognised as a hate crime category.

We disagree, based on our initial response to question 2.

Question 19

We invite consultees' views on whether "people experiencing homelessness" should be recognised as a hate crime category.

We disagree, based on our initial response to question 2. We note that the claim that crime against people experiencing homelessness is mainly perpetrated by 'members of the public' is only based on one sample of 336 respondents, and that their testimonies are taken at face value, not from court cases. This is unacceptable. Given the historic effect of hate crime law on public behaviour, we believe that strong and practical opposition to and disapproval of homelessness could be reported as as 'hate incidents'. . The existing bias in hate crime data collected and public by the police and the Crown Prosecution Service would likely be replicated in reporting. The press would find it much more difficult to investigate links between experiencing homelessness and commiting crimes, or being part of the black market.

Question 20

We invite consultees' views on whether "philosophical beliefs" should be recognised as a hate crime category.

We disagree, based on our initial response to question 2.

It is a matter of grave concern that the Law Commission lists Maya Forstater's case defending the absolute nature of biological sex as an 'objectionable political philosophy', and without critically assessing this claim. Does this suggest that the Law Commission objects to the scientific evidence that biological sex is based on people's chromosomes, and is therefore strictly unalterable?

We also object to the naïveté of proposing that political beliefs become a protected characteristic as a means of dealing with political violence. Making political beliefs part of hate crime law is not going to improve this. It would worsen things by giving people motivations to join in fights and then act as victims. The one-sidedness of hate crime data recording by the police and the Crown Prosecution Service already encourages such a mentality. This is because the protected characteristics of alleged victims are taken more seriously than those of alleged perpetrators.

In line with the consultation document's startling admissions about criminality, it would be a badge of honour for violent political activists to attack their opponents. Sections of society could descend into gang warfare.. Such a situation would be exacerbated by the long-standing perception of differing political allegiances among press outlets and other organisations. It would be a very short step then for newspapers, media sites or businesses that donate to political parties to report each other for 'hate incidents' on the basis of political beliefs.

Question 25

We provisionally propose that the characteristics protected by aggravated offences should be extended to include: sexual orientation; transgender, non-binary and intersex identity;

disability, and any other characteristics that are added to hate crime laws (in addition to the current characteristics of race and religion).

We disagree for similar reasons to those set out in response to question 2.

Question 27

We provisionally propose that aggravated versions of communications offences with an increased maximum penalty be introduced in reformed hate crime laws.

We disagree.

The Law Commission needs to explain why the only example given to support the proposal that of sending messages for 'Punish a Muslim Day'. The law on malicious communications is sufficient as it stands.

Consideration should be given here to the fact that the government's Covert Human Intelligence Sources (Criminal Conduct) Bill would allow authorisation by public bodies of spies to commit crimes with impunity. We could see the security services and law enforcement agencies authorise undercover agents to infiltrate Islam-critical groups to incite them to commit crimes, all in order to get members arrested. This could lead to more communications offences being committed but less being prosecuted, as the bill would not allow victims any redress. The problem with such a scenario is that those lobbying for hate crime prosecutions would not be able to prove that a given crime was really commited by an undercover agent. They would then demand ever more stringent laws and policies to combat hate crimes of various kinds. Thus divisions in society would be exacerbated.

Question 32

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

This proposal would only exacerbate the existing problem with hate crime law, namely that crimes against victims with specific protected characteristics are given heavier sentences than others. This constitutes a grossly unfair situation of ideologically-enforced inequality before the law. The question of having a workable and fair approach misses the point. Recognition of intersectionality merely deepens the injustice of hate crime legislation as far as victims are concerned.

Question 40

We provisionally propose that the stirring up offences relating to "written" material be extended to all material.

We disagree. These proposals would seriously erode free speech and freedom of expression in England and Wales.

The Law Commission's bias is very clear in 18.66 where it implies criticism of multiculturalism is beyond the pale. This is completely unacceptable. Plenty of decent minds are highly critical of multiculturalism. The Commission's proposals would have a chilling effect on free speech in all spheres and in particular higher education, think-tanks, political

parties and the civil service. These are the main organisations where multiculturalism can be and is critically assessed.

It is extremely concerning that paragraph 18.73 of the consultation paper complains about 'Islamophobic cartoons', following the Home Affairs Select Committee. The Commission's proposals amount to legislating for an assassin's veto. See also paragraph 18.75

It is very concerning that not offending Islam appears to be such a priorityfor the Law Commission. The Law Commission needs to provide a full explanation of this.

Question 41

We provisionally propose to replace sections 19 to 22 and 29C to 29F of the Public Order Act 1986 with a single offence of disseminating inflammatory material.

We disagree with any attempts to extend the Public Order Act to diminish freedom of speech.

Material that is critical of or opposed to Islam could be deemed 'inflammatory' under the proposals and therefore criminalise. This will bring into being an effective blasphemy law protecting Islamic beliefs from criticism.

Question 45

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

We disagree. Isolating intent from the need to demonstrate that words used were threatening, abusive or insulting means no proof of actual stirring up of hatred would be needed. This would lower the standard of proof required in court, which is unacceptable. At the same time requiring less proof would lead to greater injustice against defendants.

Intention would be more difficult to prove than whether or not hatred had truly been stirred up. Already we see objective, dispassionate discussions and statements being shut down in the media and on social media due to complaints that they are motivated by 'hatred', i.e. intention to show and spread hatred. We see this particularly in debates on transgender issues, where saying that women cannot become men or vice versa is increasingly deemed to be 'hatred'.

Question 46

We provisionally propose that where intent to stir up hatred cannot be proven, it should be necessary for the prosecution to prove that: 1. the defendant's words or behaviour were threatening or abusive; 2. the defendant's words or behaviour were likely to stir up hatred; 3. the defendant knew or ought to have known that their words or behaviour were threatening or abusive; and 4. the defendant knew or ought to have known that their words or behaviour were likely to stir up hatred. Do consultees agree?

It is evident that this proposal is being made precisely because the previous one set out in question 45 would result in weakening the standard of proof required for conviction and prosecution. The defendant would be put in a double bind here. If intent to stir up hatred

cannot be proven, then the defendant's words or behaviour have to be proven to be threatening or abusive. The entire problem arises because intent was closed off from other factors and made the primary factor. Not requiring intent to stir up hatred to be proven makes it far too easy for complainers to shut down all kinds of discussion, debate and disagreement. This applies equally to religious and non-religious beliefs.

Defining words as 'threatening' or 'abusive' is extremely difficult. Equally difficult is to presume that defendants 'ought to have known' that their words or behaviour counted as such. In our present fragile culture, disagreement and conscientious beliefs and principles are already treated as 'hatred' by many.

Finally we note that the Scottish Justice Minister has conceded that intention to stir up hatred must be demonstrated in new stirring up offences.

Question 47

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

We disagree.

It would be a serious breach of free speech to treat all protected characteristics in the same manner. Some such as race are innate and inherited. Religion, sexual orientation and transgender identity are different in that they are beliefs, behaviours and identities that can be partly chosen and relinquished by the individual. Tacit acknowledgment of this is central to preservation of individual freedoms. As such they can be discussed and debated.

Question 48

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

We disagree. It is inaccurate and untruthful to conflate transgender identity and disability. On the whole disabilities are physically-rooted whereas transgender identity is not. The available evidence shows that transgender identity may be sought out and relinquished by individuals. The philosophy that has been used to normalise transgender policies and identity is highly contested and not always well understood in society. The history of debates in this area over the past four years in particular shows just how fragile free speech has become, and how much it is needed. People in all professions and all walks of life need the freedom to discuss the issues without fear of being reported for hate crime. The fundamental freedoms at stake are far too important to sacrifice at the altar of equalising hate crime legislation: preservation of single-sex based right, public safety, public health, parental rights, children's rights, religious freedom and free speech.

Those most negatively impacted by transgender policies, such as those who suffer from gender confusion and do not want to continue down the transgender path, detransitioners who regret 'transitioning', family members and professionals who are deeply concerned about the effects, would be the most likely to be caught by these proposals. These proposals would build walls of suspicion and mistrust in society where there should be none.

Question 51

We provisionally propose that the current exclusion of words or behaviour used in a dwelling from the stirring up offences should be removed. 18.257 Do consultees agree?

We disagree. The Public Order Act should not be extended to cover private dwellings – it is called the Public Order Act for a reason.

Removing the dwelling defence would destroy free speech and religious freedom in England and Wales. We believe the Law Commission is trying to target the fact that many more people are working and socialising online from home now as a result of Coronavirus response policies.

Prosecuting threatening, abusive or insulting words which cause a person harassment, alarm or distress in a dwelling would clearly affect the following:

1) Parents reprimanding children
2) It would cause a spike in false allegations of abuse within households
3) It would result in prosecution on grounds of family feuds and could fuel them
4) It could be used against house groups and house churches
5) It could be used against deliverance ministry and exorcism carried out in private homes

The Law Commission's proposals here would be deadly if enacted alongside the Covert Human Intelligence Sources (Criminal Conduct) Bill. The latter could allow ministers to add the Charity Commission to the list of public bodies which can authorise undercover agents to commit crimes with impunity for reasons of national security. This could result in infiltration of Islam-critical groups including churches in order to find 'far right extremists'.

The term 'insulting' is far too subjective to be put into statute. It is why there was a successful campaign to reform Section 5 of the Public Order Act not long ago.

'Insulting words' could be easily interpreted to mean 'insulting Islam'.

Ex-gay ministry and therapy could be considered 'insulting', if only by undercover journalists/gay activists who do not share the same beliefs and values as sincere clients seeking help. This illustrates the inappropriateness of legislating to outlaw 'insulting' speech.

Given that so many people are now working from home due to the response to the Coronavirus pandemic, would this law cover conversations over telephone and internet channels such as Zoom? These can be recorded and could be used as evidence.

The Public Order Act should only cover offences perpetrated in public.

Question 52

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

We agree that the current protections in the Public Order Act must remain in order to safeguard free speech.

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

Free speech protections must be given with respect for all these characteristics. People must be free to use a person's name given at birth and pronoun corresponding to their biological sexa, and to refuse to use 'preferred pronouns'. People must be free to say that girls and women cannot become boys and men, and that boys and men cannot become girls and women. People must be free to say that gender reassignment and transition are morally wrong and must be free to give reasons for this view without risk of arrest or prosecution. People must be free to say that there are only two sexes.

Question 54

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

We disagree. There is no good reason for this proposal. Rather it would amount to a serious erosion of checks and balances preserving free speech from over-zealous litigation. The role of the Attorney General should not be undermined in this manner. It is a role that is key in maintaining the balance between the powers of government. The Attorney General, unlike the Director of Public Prosecutions, is answerable to Parliament and more distant from the Crown Prosecution Service.

Question 55

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

We agree that the current exemptions should be maintained.

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

We agree that all the categories listed should enjoy full exemption.

At the same time we wish to note that the very existence of exemptions reveals that hate crime police has made free speech the preserve of professional governing elites. This is bound to cause resentment in society. To confine free speech to Parliament and law courts increases the likelihood that people will take political and legal routes to resolve disagreements and disputes. This is unnecessarily bureaucratic, time-consuming, expensive and off-putting. It makes no sense at all for there to be an exemption for Parliament but for free speech to be curtailed in wider society, given that Parliament is there to represent the concerns of citizens.

The parallel made between hate speech law and the Defamation Act 2013 in 18.302 is erroneous. The law on defamation is a civil law aimed at protecting the reputation of the innocent. It has nothing to do with being a victim of crimes deemed to have been aggravated by hatred on the basis of a narrow and arbitrary set of protected characteristics. The law on defamation does not set up inequality among victims before the law, unlike the law on hate crime.

Question 62

We invite consultees' views on whether they would support the introduction of a Hate Crime Commissioner.

We disagree with the creation of a Hate Crime Commissioner, for reasons similar to those stated in response to question 1.