



TONY BLAIR
INSTITUTE
FOR GLOBAL
CHANGE

Designating Hate

New Policy Responses to Stop Hate Crime

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Executive Summary

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Hate crime is rising in the UK and worldwide. The UK has seen a 17 per cent rise (2017-18) in hate incidents overall, while religiously motivated hate soared over 40 per cent. British Muslims are bearing the brunt of this rise: despite representing eight per cent of the UK's religious population, they suffer 52 per cent of religious hate.

The UK has become increasingly permissive to public hate:

- Divisive groups – especially increasingly mainstreamed far-right groups – spread hatred with relative impunity because responses to nonviolent extremism remain uncoordinated;
- Hate incidents spike around major events, leaving communities exposed; and
- Perpetrators of religious hate are rarely prosecuted due to gaps in legislation.

This report highlights the policy responses government should take to tackle hate crime in the UK.

The Problem:*Groups that spread hate function with impunity*

Government and public bodies have recognised the dangerous nature of hateful groups, including on the far right like Britain First and Generation Identity. But current laws are unable to stop groups that spread hate and division, but do not advocate violence.

The Solution:

- **Create a new law to designate ‘hate groups’.** This new tier of hate group designation would be the first of its kind in Europe and would help tackle nonviolent extremist groups that demonise specific groups on the basis of their race, religious, gender, nationality or sexuality.ⁱ The new designation would sit alongside proscription but not be linked to violence or terrorism, while related offences would be civil not criminal. Unlike proscription, hate designation would be time-limited and automatically reviewed, conditioned on visible reform of the group. Powers to designate would, like proscription powers, fall under the Home Office’s remit and require ministerial sign off. Under designation, hate groups would be limited from appearing on media outlets or engaging with public institutions.

ⁱ The Institute’s work has consistently highlighted the link between the ideas that underpin nonviolent and violent extremism and has proposed resources for governments to begin defining nonviolent extremism.

The Problem:*Hate surges around major events*

A steady growth in hate crime has been driven by surges around major events. Often this begins online. Around the 2017 terror attacks in the UK, hate incidents online increased by almost 1,000 per cent, from 4,000 to over 37,500 daily. In the 48-hour period after an event, hate begins to flow offline.¹

The Solution:

- **Earmark contingency funds to protect communities around major events.** Government reacted well to the threats faced by UK Muslims following the Christchurch (New Zealand) terror attack. But hate incidents still took place. A broader fund should increase protections in all public spaces after events, not just minority-specific locations such as places of worship. Access is vital to integration and hate should not be allowed to prevent people from going anywhere.
- **Develop an emergency response to online hate after flashpoints, alongside tech companies.** The UK government should work with tech companies to develop a consensus response to emergency situations. This could include joint mechanisms for faster content removal or de-prioritisation of problematic content via an additional set of emergency algorithms to nip online hate in the bud before it spills offline. However, any measures taken would need to establish consensus on the trade-off between the security of users and citizens, versus restrictions on free speech. A new or existing government body could be authorised to deem an event major, requiring a more precautionary approach from companies for a set period (for example 48 hours) following an incident. This time-limited inoculation method would prevent the need for broader and potentially less democratic blocks, like the one implemented by the Sri Lankan government in the wake of the April 2019 bombings. International initiatives like the Christchurch Call in May 2019 have already highlighted the need for coordinated approaches to eliminate terrorist and violent extremist content online; an initiative to stop hate online would be a welcome next step as part of the Online Harms White Paper process in the UK.

The Problem:

Religious hate is hard to prosecute

Hate crime legislation is designed to punish those that seek to divide us. But currently, the lack of prosecutions and justice for perpetrators does nothing to deter hate, or prove government's commitment to a cohesive society. This is particularly acute for religious hate, where only two per cent of incidents are successfully prosecuted. Legislation does not allow intersectionality to be recorded,² exacerbating the disparity between religious and racial hate. This exposes poor data collection but also risks underplaying religious identity, making people feel it is less important than racial characteristics.

New Labour tried to equalise protections against religious hatred but was rebuffed by the House of Lords due to concerns about free speech. The Lords objections led to a higher evidence bar and narrower criteria for prosecuting religious as opposed to racial hate.

The Solution:

- **Clearly define terms related to hate crimes in law**, including hatred and hostility, to bring equal protection. Currently wide definitions in the Racial and Religious Hatred Act 2006, and Public Order Act (1986), give a high and varied evidence bar. Language should be consistent, with the same phrasing for religious, racial and other forms of hatred. The UK government should share these new definitions through the Organization for Security and Coordination in Europe (OSCE), supporting efforts to tackle an international phenomenon.
- **Review the impact of offline harms.** The recent Online Harms White Paper is welcome, but the biggest rise in hate crime has been offline. We rightly curtail freedom of expression when it is threatening or harmful. But harm is not properly understood, especially the unquantified impacts on chances of professional or personal success. Clear guidance would support the Crown Prosecution Service (CPS) to make the public interest case and, along with definitions, improve both steps of its two-stage test for prosecutions. Better understanding harm will also make it easier for juries by showing how hate intends to marginalise others.

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Chapter 1: Introduction

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With rising populism, divisive debates around Brexit and a continual terror threat, the UK in 2019 is polarised. Counter-terror chief Neil Basu warned that this polarisation could “lead to a rise in hate crime and a rise in disorder”.³ This prediction has sadly been on point. Hate crimes and incidents have steadily risen since 2013, particularly for racially and religiously aggravated offences.ⁱⁱ

As the College of Policing states, while not all hate crime is linked to extremism and terrorism, there is a clear overlap between hate and terrorist activity, with terrorist acts mostly motivated by hate.⁴ Not only is hate a threat itself, it can lead to extreme consequences.

Hate crimes are crimes committed against someone due to their disability, gender, race, religion or any other perceived difference.⁵ To be classified as a hate crime, there must be a criminal offence, where there is no criminal offence, acts can still be recorded as hate incidents.

ii. Some increases can be attributed to improved reporting. Yet, as outlined in the government’s updated Hate Crime Action Plan, October 2018, recent spikes in incidents continue to be of concern.

Highly visible incidents of anti-Semitism and Islamophobia in the Labour and Conservative parties demonstrate how permissive the broader political environment in the UK has become to hate. According to monitoring group Tell MAMA, anti-Muslim attacks rose by 26 per cent last year.⁶ Meanwhile anti-Semitic incidents rose for a third consecutive year in 2018, a rise of 16 per cent.⁷

This growth is not confined to the UK (see table 1). Anti-Semitism in France is rising dramatically,⁸ and refugees in Germany are 10 times more likely to be victims of hate crime than other citizens.⁹ We have also seen a sharp rise in hate in the US¹⁰ and Canada.¹¹ Anecdotal evidence in New Zealand, where hate crimes are not officially recorded, show an uptick in incidents prior to the Christchurch attack.¹²

For hate crime laws to work, perpetrators must be held accountable and prosecuted equally across all forms of hate. But currently, the rate of prosecutions does not reflect the increase in incidents.

This lack of justice is apparent at each stage of a hate crime. Statistics from the Crime Survey for England and Wales (CSEW)—a national survey collating police records and surveys to victims— suggests that reporting of hate crimes to the police is also very low and has not improved for the past 12 years, consistently staying at around 50 per cent of the expected level.¹³ Religious hate crime reporting is especially low, and only an estimated 21 per cent of religiously motivated crimes are reported to the police.^{14 15} After receiving a report, the police can refer it to the CPS, which determines if it warrants a criminal offence; only two per cent pass this test to the prosecution stage¹⁶ (see figure 3).

The UK government has recognised the growing problem of hate, releasing an Action Plan in 2016 (refreshed in 2018).¹⁷ One of its aims is to increase reporting. While this is positive, reporting will remain low if victims do not think they will get justice.ⁱⁱⁱ Problems in prosecutions remain; 28 per cent of racially and religiously motivated offences closed last year without a suspect even being identified.¹⁸

ⁱⁱⁱ Significant work has been done to outline problems in access to justice more broadly, particularly for minority groups. An important example is the June 2019 report by the Muslim Women's Network on *Muslim Women's Experiences of the Criminal Justice System*.

In 2018, the government updated the Action Plan after little progress. Some interventions like the new hate crime awareness campaign are welcome. The push to raise awareness of offences is both a deterrent and can help improve reporting rates. But interventions lack coherence across all the stages of hate crime. Government needs to take the same attitude to hate crime as its CONTEST strategy does to counter terror: preventing hate crime, protecting the public through better preparations, and pursuing and prosecuting those culpable.

To meet this, government has three options at its disposal:

- Cut hate off at source by implementing new laws to tackle groups that spread hate;
- Prevent the growth of hate crime by better preparing for flashpoints, making communities feel safe wherever they are, online or offline;
- When hate does happen, strengthen existing laws to ensure equal protection for religious and racial characteristics, better protecting British Muslims who bear the brunt of hate in the UK.

“I have spoken out against those who spread anti-Semitism and anti-Muslim hatred...[but] Sadly we still hear incidents of intolerance, whether it's a migrant being told they don't belong, a disabled child being verbally abused, a Muslim woman having her veil torn off or anonymous keyboard cowards infecting the internet with hatred.”

Former Home Secretary Sajid Javid

FIGURE 1 Religious hate crime in the UK surged by 40 per cent between 2016-17 and 2017-18

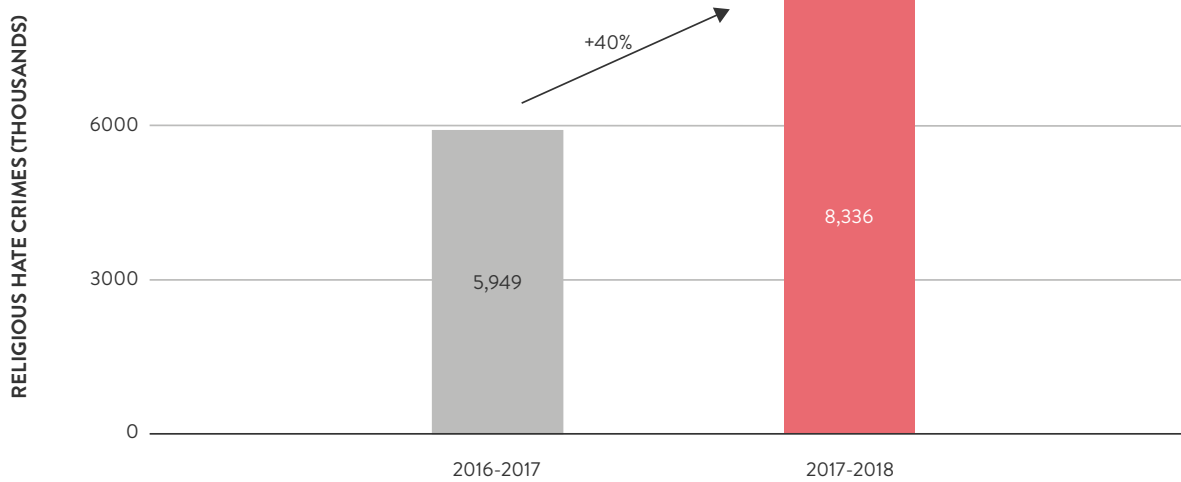


FIGURE 2 Hate crime towards Muslims has risen sharply over the last year and is the biggest driver for the rise in religious hate crimes. Most of the rise took place offline rather than online

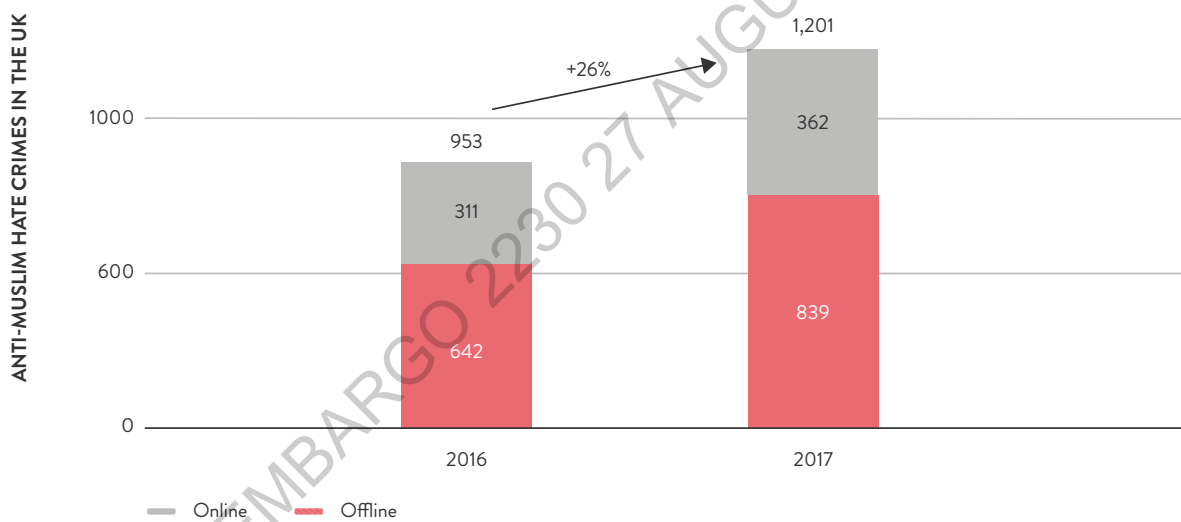
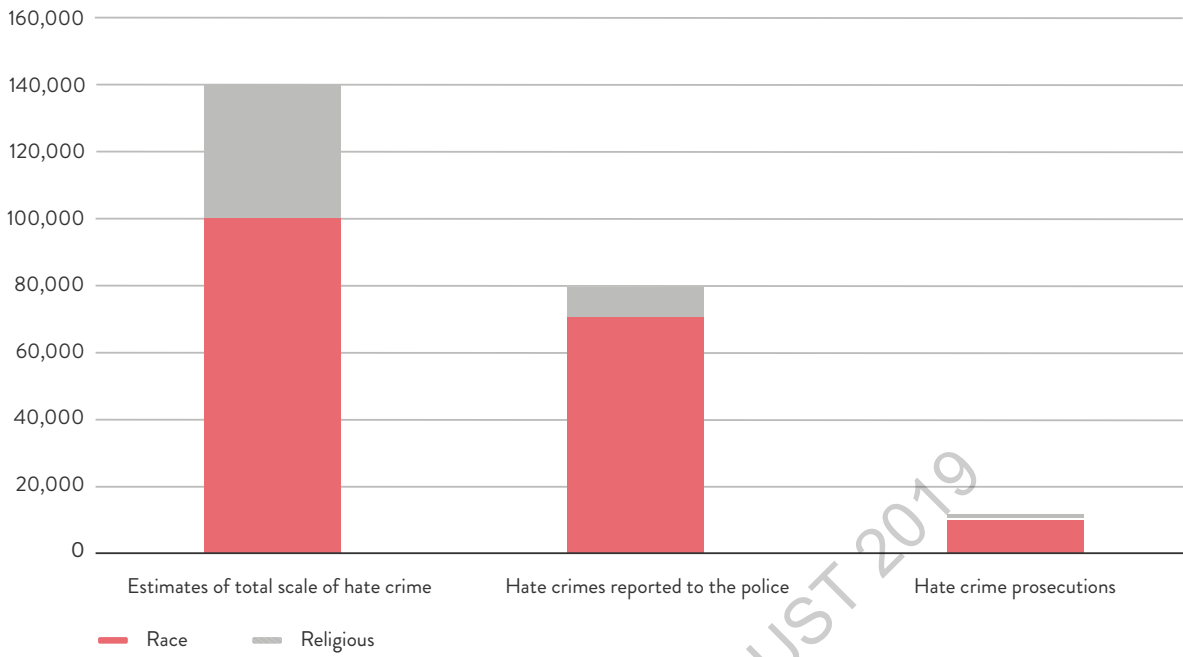


TABLE 1 The UK is not the only country facing a rise in hate crime, particularly for religion. Data recording in the EU is not always consistent for the motivations behind crimes

	Rise in Hate Crime	Rise in Religious Hate Crime	Rise in Anti-Semitic Attacks	Rise in Anti-Muslim Attacks
UK	17%	40%	16%	26%
US	17%	23%	37%	18.7%
Canada	47%	83%	64%	151%
France	No data available	No data available	74% ¹⁹	52%
Germany	No data available	No data available	20% ²⁰	No data available

FIGURE 3 While available estimates suggest that 21 per cent of hate crimes are religiously motivated, only two per cent make it to the prosecution stage



Chapter 2:

Cut hate off at source

Although authorities have expressed concern about the hatred emerging from nonviolent extremist groups, the grey area between counter-terrorism and hate crime laws makes it difficult to address them. Some far-right groups have exploited this loophole, despite ad-hoc attempts to curtail them.

In 2018, UK Border Force refused three anti-Islam activists entry to the UK. The activists, including the leader of far-right group Generation Identity (GI), had planned to speak at a rally at Speakers' Corner as part of a campaign entitled Defend Europe. Reasons for refusal included the distribution of racist materials and potentially violent content in planned speeches, and other actions that threatened UK society. Despite this, the GI leader's speech was still delivered by UK activists. GI continues to operate across the UK and Europe.

Similarly, in March 2018 far-right group Britain First's leaders were jailed for religiously aggravated harassment. Sentencing the leaders of Britain First, the prosecutor told the court that "these defendants were not merely exercising their right to free speech but were instead aiming religiously aggravated abuse at innocent members of the public".²¹ Both leaders have been suspended from social media, along with the main Britain First twitter account. But despite these actions and attempts to proscribe the group,^{iv} Britain First is still able to spread its hate via its website, YouTube and on the streets.

^{iv} Labour MP Louise Haigh led a call to proscribe Britain First due to supposed connections with Labour MP Jo Cox's murder in 2016. The perpetrator is thought to have shouted the words "Britain first" during the attack, while some claimed he was photographed attending a Britain First rally. But again, the clear link to violence was unproven.

TABLE 2 Action taken against the far right: shortfalls and solutions

Group Action	Government and Civil Society Action	Current Shortfalls	Proposed Solution
The Austrian leader of Generation Identity wanted to deliver a speech in the UK to a far-right audience	The Border Agency barred him from entering the UK on the grounds that his speech was likely to be damaging to social cohesion	However, Generation Identity England was invited by the BBC to comment after the Christchurch attack	Hate group designation would prevent Generation Identity from being broadcasted
Britain First leaders banged on the windows of the property of Muslim men they thought were connected to a rape trial and screamed “paedophiles” and “foreigners”	Britain First leaders were jailed for religiously aggravated harassment	However, Britain First is applying to register with the Electoral Commission in Northern Ireland	Hate group designation would suspend Britain First from the electoral roll

Despite acknowledgement from government and ad-hoc interventions, current law has been unable to stop these groups. This is because proscription is a counter-terrorism tool; this rightly gives a high bar to cross, evidenced by clear connection to violent acts. However, this leaves a gap in tackling groups that spread antipathy towards people of different race, religion, gender or nationality, specifically because of these characteristics, and who might inspire others to commit hate crimes via hate speech. A new law to designate such groups would allow government to tackle hate before it spreads.

SOLUTION

Implement a new law that makes up for the current gap, to designate groups that spread hate

A new law should lay out clear criteria that classifies hate groups. Despite the FBI²² and several US NGOs labelling^v and monitoring hate groups, no country has built a tool to tackle them. This would bring unity to ad-hoc approaches that have already been adopted, such as banning Britain First members from joining the Police or British Prison Service, or no-platforming at universities.

The government’s previous attempts to implement banning orders for extremist groups struggled with the difficulties of defining nonviolent extremism and understanding its harms.²³ Consuming nonviolent

extremist or hateful material does not inevitably lead to violence. However, as the judge who sentenced Darren Osborne for the 2017 Finsbury Park terror attack stated, Osborne’s obsessive viewing of videos from Britain First and other anti-Muslim figures had played a part in his desire to attack Muslims.²⁴ The government faces the difficult task of recognising the harms that hate groups can cause, even if it is not manifested in violence, without appearing to limit free speech or take draconian measures.

Hate group status would help to bridge this gap. Hate group designation would be related to proscription criteria but focus on the impact of hate, rather than terrorism and violence. This coordination would improve effectiveness through a consistent benchmark for action. For example hate groups should always be prohibited from processions using Section 13 of the Public Order Act (1986). Unlike proscription, designation could be repealed and conditioned on reform, so groups would have less incentive to go underground and more incentive to improve their behaviour.

The below outlines our proposed mechanism and criteria for designating hate groups, based on existing UK government procedures for proscription. Such a designation could also be used to tackle Islamist groups, like Hizb ut-Tahrir Britain, which has been accused of spreading anti-Semitic and homophobic hate.^{vi25}

^v The Southern Poverty Law Group, for example, list 100 anti-Muslim hate groups active in the US.

^{vi} Our report *Narratives of Division: The Spectrum of Islamist Worldviews in the UK* provides an in-depth look at Hizb ut-Tahrir Britain’s public messaging.

TABLE 3 Hate group designation vs. proscription

HATE GROUPS

Hate group designation would link to hate crimes and speech

Offences would be civil not criminal

Designation would punish groups, not members

Conditions:

- Allowed to meet, support or campaign
- Not allowed to use media outlets, or speak at universities
- Not allowed to engage, work with or for public institutions

PROSCRIPTION

Proscription is a terror offence requiring proof of violence

Offences are criminal, punishable by prison

Proscription punishes leaders, members and supporters

Conditions:

- Not allowed to arrange, manage or address a meeting
- Not allowed to wear or display supportive materials
- Not allowed to belong to or invite support

POTENTIAL GROUPS

- Generation Identity
- Britain First
- Hizb ut-Tahrir Britain

QUALIFIED GROUPS

- Hezbollah, March 2019
- Al Muhajiroun, Jan 2010
- National Action, Dec 2016

Criteria

We define a hate group as:

- Spreading intolerance and antipathy towards people of a different race, religion, gender or nationality, specifically because of these characteristics
- Aligning with extremist ideologies, though not inciting violence (see Appendix, for examples of far-right and Islamist worldviews)
- Committing hate crimes or inspiring others to do so via hate speech
- Disproportionately blaming specific groups (based on religion, race, gender or nationality) for broader societal issues

Designation mechanism

Drawing the line between free speech and hatred remains a difficult task for policymakers, but lack of intervention has resulted in greater intolerance in public discourse. Based on existing procedures for

proscribing terrorist groups in the UK and mechanisms used by regulatory bodies such as the Charity Commission, we recommend that:

- Designation would sit alongside proscription but not be linked to violence or terrorism
- Powers to designate would, like proscription powers, fall under the Home Office’s remit
- If a group meets the criteria above, the Home Office would serve them with a notice of investigation
- Based on the Home Office investigation, the Secretary of State can consider designation and would bear ultimate responsibility for the decision
- The Secretary of State would inform parliament of a decision to designate through a written statement
- Groups could appeal the decision, which would temporarily suspend the process until review
- The Home Office could appoint an independent oversight committee of non-governmental experts to regulate decisions and ensure transparency, similar to bodies like the Animal Science Committee

Impact

- Under designation, hate groups would be impeded from appearing on media outlets or engaging with public institutions
- Like proscription, the list of designated hate groups would be publicly available to ensure coordination across institutions
- Related offences would be civil not criminal
- Unlike proscription, hate designation would be time-limited and automatically reviewed, conditioned on visible reform of the group

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Chapter 3:

Be better prepared for major events

Hate crime rises around major events. Data from Tell MAMA, the Community Security Trust (CST) and the CSEW all show clear spikes of hate crimes around the EU referendum and the three 2017 terror attacks.

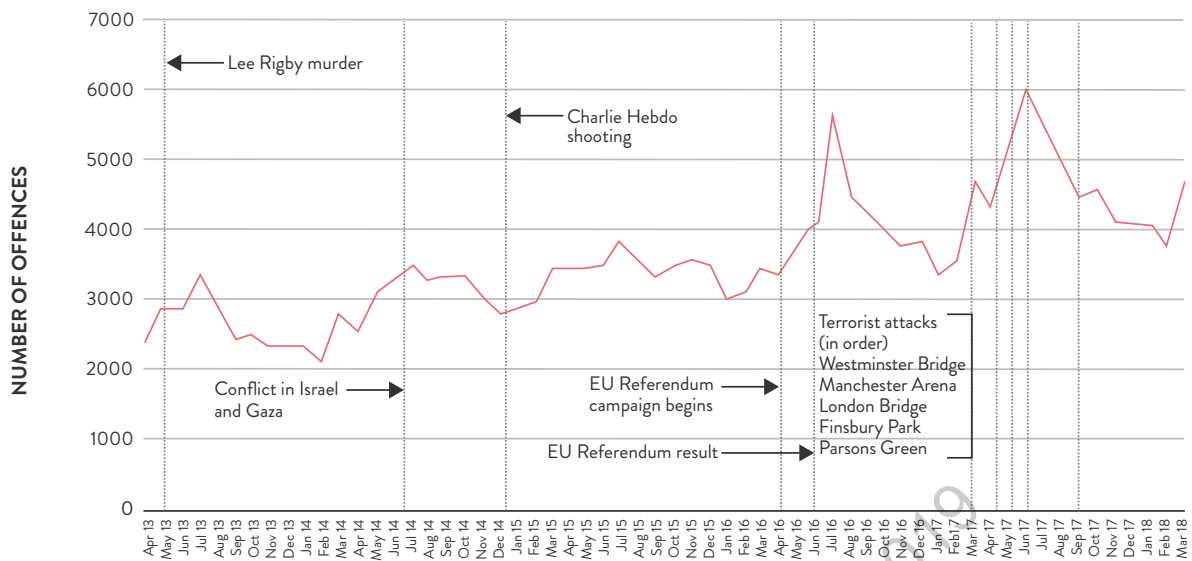
“National and global events have the potential to trigger short-term rises in hate crime and we saw this with the significant spike following the EU Referendum in 2016.”

Chief Constable Charlie Hall²⁶

Spikes are driven by online hate. Analysis by HateLab, a publicly funded research project, found that social media is usually the first forum to react to terror attacks. From a baseline of around 4,000 daily online hate-speech incidents, spikes of 25,000, 37,500 and 35,000 occurred after the Manchester, London Bridge and Finsbury Park terror attacks.²⁷ Online hate can be particularly galling as it intrudes into people’s private, protected space, heightening feelings of vulnerability.

Researchers at the LSE show these events lead to inflated levels of hate crimes against Muslims for up to three weeks.²⁸ This is backed up by Tell MAMA’s analysis, which found hate crime begins online in the 48 hours after an event, before spreading offline.²⁹ This may be due in part to Islamist-inspired terror attacks attracting more media coverage than other attacks, and for longer.³⁰

FIGURE 4 The number of racially or religiously aggravated offences recorded by the police by month³¹



Source: Police recorded crime, Home Office

After an online spike, hate flows into the public, threatening individuals and institutions. Poor preparation could further entrench withdrawal, impede integration and mask individuality. The UK government reacted well to the Christchurch attack by doubling funding to protect religious spaces in preparation for the inevitable offline growth in hate. The Places of Worship scheme is designed to protect spaces that are home to minorities. But without visible responses communities can be left feeling vulnerable. This strategy does nothing to show that minorities are safe and welcome in all public spaces.

SOLUTION

Develop an emergency response to online hate after flashpoints, alongside tech companies

The Online Harms White Paper is an encouraging first step to prevent harm from hate speech. Our Institute has previously published on the importance of a new approach to regulating internet companies that is fit for the modern world.³² Adopting this approach will be vital in preparing for rapid responses to flashpoints and to mitigate the harms caused by surges in online hate.

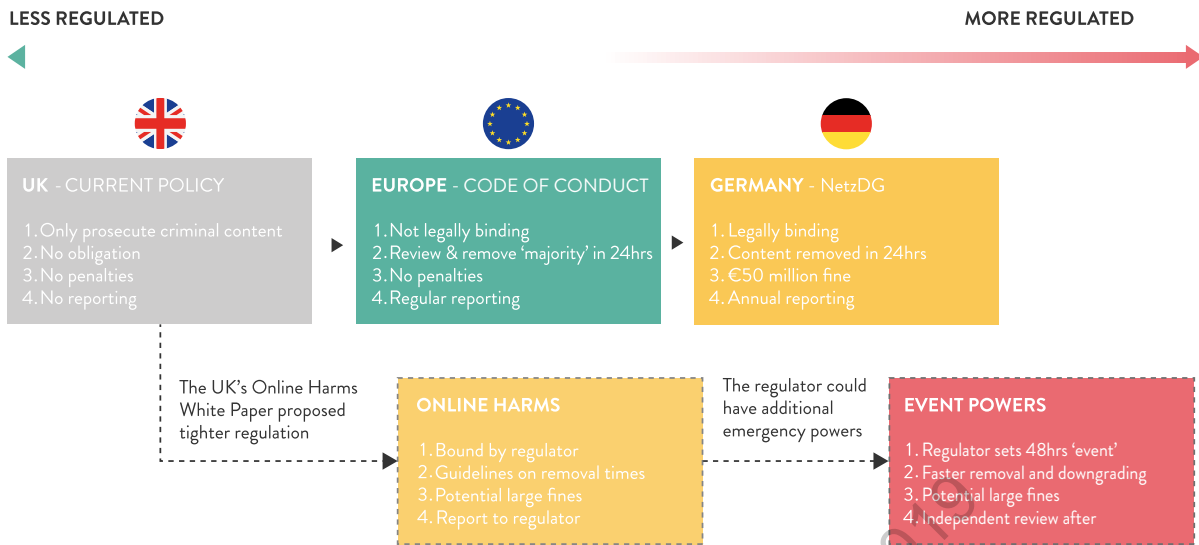
Government should work with tech companies, using their expertise to inoculate against the harm online hate causes after major incidents.

Discussion should begin by identifying a shared goal in tackling flashpoints, starting from a precautionary position that acknowledges the harms of hate. Any measures taken to reduce hate in flashpoints – for example more aggressive content removal or increased downranking for a specified period through additional emergency algorithms – would need to establish consensus on the trade-off between potential harm from hate and restrictions on free speech. It would also need to confront issues of capability, such as detecting and assessing content at scale and speed.

There are already goals for turnaround times. In 2017, half of the violent extremist content on YouTube was removed in two hours.³³ The European Commission has called for a one-hour removal time for extremist and terror content.³⁴ This paper outlines how to define the grey space of what counts as hatred, particularly against religion, which will further help to clarify how companies should act.

Beyond how tech companies respond is the question of which incidents are significant enough to prompt a change in how content is handled, and for how long. This call is likely to be beyond the core activities of any new tech regulator, and could instead be handled by government's existing emergency response apparatus or a new government body with powers to deem an incident major. To guard against excessive use of these powers, there could be an automatic time limit

FIGURE 5 Current and proposed regulation to prevent online harms



1: Legal status, 2: Removal time, 3: Fines and punishments, 4: Reporting requirements

(for example 48 hours after an event) and a process to review previous designations. This should explore whether the criteria for designation were correct and followed, and whether compliance or 'best effort' was acceptable. Such a joint response could avoid potentially less democratic measures, such as the Sri Lankan government's blocking of all social media following the April 2019 bombings.

When hate moves offline, broaden current government efforts and reserve funding to visibly protect minorities in all public spaces

While some events are unpredictable, others like elections are known in advance. The government's "It's not just offensive. It's an Offence" campaign is a good place to start.³⁵ Around democratic events these campaigns should be expanded and pushed to the forefront. The UK needs to be prepared for an inevitable spike around its proposed departure date from the EU, and elections or a referendum around then.

Government should increase visible policing to help people feel secure. Plans to increase policing to respond to hate surging in the event of a No Deal Brexit need to be replicated for other major incidents.

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Chapter 4:

When hate does happen, prosecute it more effectively

Legislation around hate crime remains patchy.

Prosecutions, especially for religious hate, are challenging because of a high burden of proof, inconsistent legal definitions and poor data collection.^{vii} By ensuring prosecutions reflect the rise in incidents, government can prove its commitment to a cohesive society.^{viii}

There are several laws to prosecute hate crime. The Crime and Disorder Act (CDA) (1998) covers existing criminal offences like assault or harassment if they are motivated by racial or religious reasons. Because of their divisive motivation, they carry higher sentences than the same non-aggravated offence.³⁶ Sections 145 and 146 of the Criminal Justice Act can also increase sentences if motivation by hate can be proven. Incitement to racial hatred is prosecuted under the Public Order Act (POA) 1986, while religious hatred is covered under the same Act as amended by the Racial and Religious Hatred Act 2006.

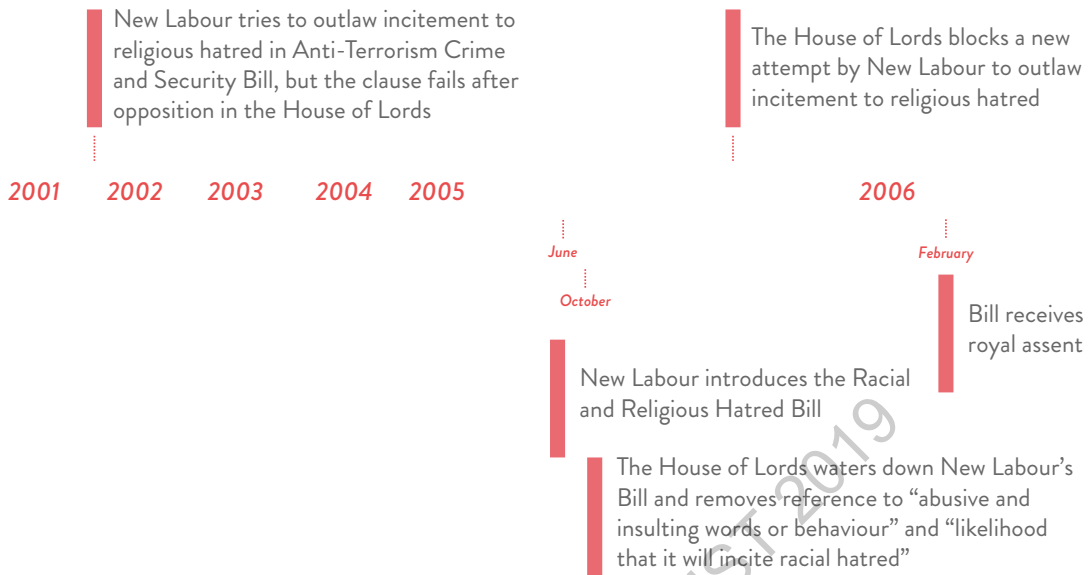
The CDA gives equivalent language to prosecute for both racially or religiously aggravated offences. In the POA, however, the language for incitement, and therefore burden of proof, is different. This is affecting prosecutions; from 2007 to 2012 there were 42 guilty verdicts for racial incitement to hatred, while there were only nine for religious incitement to hatred.³⁷

^{vii} This may be because crimes can be recorded as being motivated by several factors. One study showed that more than half of religious hate crimes reported to the police were also recorded as race hate crimes. While the Home Office acknowledges multiple motivating factors, they fail to provide a breakdown in their official statistics.

^{viii} Prosecutions are only one part of a victim's journey toward justice. Others have done important work on victim support, restorative justice and general awareness of criminal proceedings in minority communities.

FIGURE 6 New Labour tried to increase protections for religious hatred, which were ultimately thwarted by Conservatives in the House of Lords

THE PASSAGE OF RACIAL AND RELIGIOUS HATRED ACT 2006



In the wake of 9/11, concerned with a spike in hate crime, the Labour government tried to increase protections for religion through the Racial and Religious Hatred Bill (2006) (figure 6). Opponents of the Bill were concerned that the proposal would limit freedom to criticise or joke about religion. In the face of a public campaign, the Lords again watered down clauses, limiting protections to “threatening words or behaviour”. But lawyers warned that free speech provisions in the RRHA were so broad that prosecutors would be deterred from bring forward a case of religious incitement.³⁸

These objections led to difference in defining religious incitement and a high bar of evidence to prove it. Besides the ability to ridicule, insult and abuse, the added need to prove intent and motivation behind an attack is a much higher evidence bar to cross, which is not the case for racial incitement.

To prosecute a crime the CPS has a two-stage test. The first looks to see whether there is enough evidence for both the basic crime the attack and the aggravating offence racial or religious motivation. The second is whether there is public interest in bringing the case forward.

The lack of legal definitions for terms like “hatred” and “hostility” make this first stage difficult. The Lifecycle of a Hate Crime project concluded that “it is not always clear what types of conduct and language will amount to ‘hostility’”.³⁹ Juries are hesitant to label attacks as racially motivated when they might have occurred in the “heat of the moment”, despite the impact and the reasoning for the attack being the same.⁴⁰ This spontaneous nature makes people wary of labelling perpetrators as racists, hindering prosecutions.

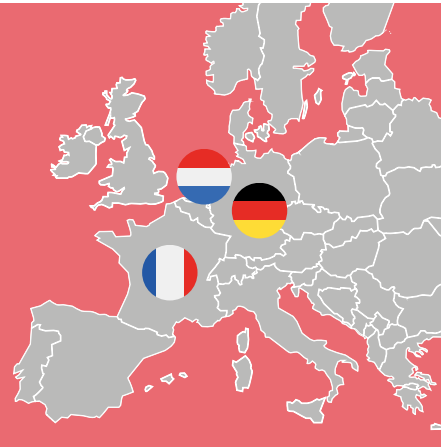
FIGURE 7 Without clear definitions of what constitutes threatening words, and the need to prove motivation, the barrier to prosecute using the CPS two-stage test is very high for religious hate crimes

Race	Strength of language	Religion	Strength of language
No need to prove intent		Need to prove intent	
Includes threatening, abusive and insulting words or behaviour		Only includes threatening words or behaviour	

FIGURE 8 Other European countries also struggle to balance free speech and hate

In Germany hate crimes are only recorded if they have political motivation.

High-profile cases for religious hate in France against far-right National Rally leader Marine LePen, and the Netherlands against Party for Freedom leader Geert Wilders, failed to result in prosecutions. In both cases judges called their words offensive, and borderline illegal, but protected by free speech provisions.



Muslims are the most likely to suffer from this disparity. Given the increased freedom to criticise religion, it is possible the law is being exploited to criticise Islam as a proxy for immigrants or different ethnicities. For example, in 2007 Law Lords ruled that “bloody foreigner” and saying “get back to your own country” could amount to racial abuse.⁴¹ But far-right activists continue to denigrate Muslims, claiming that they are “invading” the UK and calling for them to “remigrate” [sic] and go back to their own countries. This leaves Muslims in the UK bearing the brunt of hate that should be illegal.

“Islam has contributed nothing but terror, barbarism and genocide, the world would be a much safer place without it.”

Jayda Fransen, former deputy leader of Britain First⁴²

A recent government review highlighted the harms experienced by British Muslims from hate.⁴³ Hate crime can drive individuals and groups to normalise fear, adjusting their behaviour to avoid hate. Some research points to the acute vulnerability of Muslim women to harassment, due to the visible nature of some Muslim dress and a perceived weakness of women by attackers.⁴⁴ As Muslims disproportionately suffer from hate, they are more likely to employ safety mechanisms.

Key to understanding anti-Muslim hatred is focusing on the harm it causes people. Hindus, Sikhs and non-Muslims of south Asian origin are often also wrongly targeted with anti-Muslim hatred. This frequent confusion of race and religion dispels any myth that there is no racial element to Islamophobia.

Current debates have focused too much on semantics and not enough on lived experiences. Recognising anti-Muslim hatred is not about restricting free speech, but acknowledging the harm that British Muslims are experiencing. Clear, agreed examples of hate perpetrated against religious minorities (like the IHRA definition of anti-Semitism) that take racial elements into account can help support prosecutions and make the public better aware of tropes. Government recognition of the IHRA definition has not restricted free speech.

SOLUTION

Clarify legal definitions and therefore the conduct that amounts to religious hate crime

It is clear from the disparity in the different rates of racial and religious prosecutions that the law is inconsistent. The UK government has tasked the Law Commission with reviewing the adequacy of protection of hate crime legislation.⁴⁵ This will assess whether the law is effective in protecting all groups from hatred. Others have pointed to similar issues for hate against women⁴⁶ or the disabled.⁴⁷ The Commission must see how this review can strengthen laws on religious hatred to reflect and address the increase in incidents.

Laws can be strengthened by defining terms like “hatred”, “hostility” and “grossly offensive”. This would make the evidence bar more consistent but make it clearer to assess the underlying evidence. This should be done with the aim of levelling the playing field for religiously and racially motivated hate. This is clearly

TABLE 4 Stages of religious hate crime prosecution

	REPORTING	LEGISLATION	PROSECUTION
SHORTFALLS	A very low percentage of victims of religious (and other) hate crime report it to the police	Definitions do not have legal consensus There is a lower legal bar for religious incitement compared to race	Juries struggle labelling perpetrators as racist for 'heat of the moment attacks' and lack of admissible evidence
STRENGTHS	The government has pledged to invest in measures to increase hate crime reporting in its latest Action Plan 2018	Law is equal for racially and religiously aggravated offences	Strong system in place with police being aware of need to flag hate crimes to prosecution and recollect necessary evidence
POLICY RECS	Conduct review into why reporting of religious hate crime is low and how harm and discrimination affect it	Legislation for religious and racial incitement should be equalised Definitions should be strengthened and clarified	Prepare a systematic program of education and research to inform CPS and juries on impact of harm and how it can be presented as evidence in court

supported by a majority of the British public. Sixty-five per cent say government should take stronger action to prevent discrimination on the grounds of faith.⁴⁸

The UK is not the only country suffering from a rise in hate crime, but recording practices and definitions vary across Europe. Consistent definitions can help tackle an international phenomenon. Government should prioritise sharing its strengthened protections through the OSCE's Democratic Institutions and Human Rights Office, helping their work supporting lawmakers, police and prosecutors across Europe.

Provide guidance to the CPS and juries on the harms of hate crime, to better meet the public interest case of prosecuting hate crimes

In other areas of law, we rightly curtail free speech when it harms individuals. But there needs to be greater understanding of the harms of hate, particularly religious hate, in affecting integration, peoples' personal lives or their chances of professional success.

Muslims suffer disproportionately from hate crime, and the disparity between race and religion in legal protection leaves them especially vulnerable. This

disparity can fuel distrust in the UK legal and political system, exposing a cleavage for divisive groups to exploit. The government's Online Harms White Paper is welcome, but the biggest growth of hate crime has been offline.⁴⁹

A review of offline harms should inform clearer guidance on the harms of hate crime for juries and the CPS to better make the public interest case. Juries and the CPS struggle to identify the intent behind hate crimes and the balance with free speech. Clearer understanding of the harm hate causes will raise the public interest case by showing how potential incitement is motivated by the desire to divide and restrict social cohesion.

Government has struggled with the political and practical implications of recognising an official definition of Islamophobia. While that debate will continue, the combination of stronger legal definitions and greater understanding of harm overall can better protect the UK's minority communities. This is the acknowledgement and constructive response from government UK Muslims need, without being drawn into partisan debate.

Conclusion

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This report is part of the Institute's broader work on the threat of extremism to UK society, and complements recent reports on the narratives of divisive Islamist-inspired and far-right groups.

It has set out three responses government must take to stem the increasing threat of hate in Britain. By implementing new laws, we can tackle groups that perpetuate hate, and rein in the permissive environment that allows it to become mainstream. Next, by being better prepared for flashpoints, government can cut hate off at source before it has a dangerous impact. Finally, by strengthening existing laws, we can address the inequality in prosecutions between religious and racial hatred, of which UK Muslims often bear the brunt. The public are behind stronger action. No less than 79 per cent think government should have a zero-tolerance approach to hate crime.⁵⁰ Removing the threat of hate is vital to cohesive communities.

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Notes






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TABLE A1 A range of positions from mainstream to extreme on four key narratives of the far right

	Islam vs. the West	Victimisation	Anti-Establishment	Justification of Violence
Mainstream	 Sees no conflict between being British and Muslim	Does not believe people are discriminated against for being white	May criticise but does not reject wider political system	Does not condone violence
	 Criticises some aspects of Islam and multiculturalism	Believes political correctness can make it harder to be white	Believes certain 'elites' are responsible for an unjust system	Provides some justification for violence
	 Believes in protecting British culture against multiculturalism	Believes that society is privileging minority groups ahead of white people	Accuses the 'elites' of betraying the 'people'	Argues that violent action is sometimes justified to achieve change
	 Sees Islam as a growing and violent threat	Believes Britain is becoming unsafe for white people	Advocates drastic changes to the democratic system which it sees as corrupt	Openly supports individuals and groups who have committed acts of violence
Extreme	 Believes that the Christian West should unite against Islam	Believes there is a global conspiracy to replace the white race	Advocates complete overhaul of political system and rejection of democracy	Urges people to fight to defend their religion or culture with force

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TABLE A2 A range of positions from mainstream to extreme on six key Islamist narratives

	Victimisation	'Good' Muslim vs. 'Bad' Muslim	Islam vs. the West	Delegitimising the Government	The Centrality of Islam in Politics	Justification of Violence
Mainstream	 Raises awareness of anti-Muslim incidents	Does not label Muslims with different views as disloyal	Sees no conflict between being Muslim and British	May criticise but does not reject the political system	Sees Islam as a spiritual guide, which may influence political views	Makes no attempt to justify violence
	 Sometimes uses alarmist rhetoric about anti-Muslim discrimination permeating society	Occasionally questions motives of Muslims with different views	Highlights distinct Muslim and Western identities but sees no clash	Takes a strong stance against existing policies but open to engagement	Sees Muslim identity as a reference point for activism	Provides some justification for violence
	 Sees victimisation as a consequence of a security state	Regularly portrays some Muslims as being against fellow Muslims	Emphasises tensions between West and Muslim world	Sees little value in engaging with a system seen as against Muslims	Believes Islam should have a central role in politics	Openly supports violent international groups
	 Sees victimisation as systemic and inevitable	Uses hostile language against Muslims seen as traitors	Portrays West as antagonistic towards Muslims	Actively seeks to delegitimise gov't in eyes of Muslims	Supports Islamic governance or a unified authority over Muslim states	Believes violent jihad can be justified
Extreme	 Believes in a global conspiracy against Muslims	Classifies all Muslims who do not hold same views as apostates	Perceives inherent unresolvable conflict between Islam and West	Rejects Western democratic model and advocates complete overhaul	Advocates a global Islamic caliphate	Directly encourages violence

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- 1 Kim Sadique, James Tangen & Anna Perowne, "The importance of Narrative in Responding to Hate Incidents Following 'Trigger' Events", Tell Mama UK, November 2018, accessed July 2019, <https://tellmamauk.org/wp-content/uploads/resources/TellMAMA - Report.pdf>
- 2 "How can we build community cohesion when hate crime is on the Rise?", All Party Parliamentary Group on Hate Crime, page 4, February 2019, accessed July 2019, <http://www.appghatecrime.org/wp-content/uploads/2019/02/APPG%20on%20Hate%20Crime%20Report%20Hate%20Crime%20and%20Community%20Cohesion.pdf>
- 3 Vikram Dodd, "Far right may exploit Brexit tensions says UK counter-terror chief", Guardian, 23 January 2019, accessed July 2019 <https://www.theguardian.com/uk-news/2019/jan/23/no-deal-brexite-incredibly-damaging-security-says-uk-counter-terror-head-neil-basu>
- 4 "Hate Crime Operational Guidance 2014", College of Policing, page 101, May 2014, accessed July 2019 <https://www.college.police.uk/What-we-do/Support/Equality/Documents/Hate-Crime-Operational-Guidance.pdf>
- 5 "What is hate crime?" Metropolitan Police, accessed July 2019 <https://www.met.police.uk/advice/advice-and-information/hco/hate-crime/what-is-hate-crime/>
- 6 "Understanding Hate Incident Patterns After the Westminster Terrorist Attack of the 22nd of March 2017. Building a Pattern of Community Resilience Against Hate – What Worked?", Tell Mama UK, 4 December 2018, accessed July 2019 <https://tellmamauk.org/understanding-hate-incident-patterns-after-the-westminster-terrorist-attack-of-the-22nd-of-march-2017-building-a-pattern-of-community-resilience-against-hate-what-worked/>
- 7 "Antisemitic Incidents Report 2018", Community Security Trust, 7 February 2018, accessed July 2019, <https://cst.org.uk/news/blog/2019/02/07/antisemitic-incidents-report-2018>
- 8 "Thousands protest against anti-Semitism in France", BBC, 19 February 2019, accessed July 2019, <https://www.bbc.co.uk/news/world-europe-47300117>
- 9 Daniel Wighton, "Refugees in Eastern Germany '10 times more likely' to be hate crime victims: report", The Local de, 27 February 2019, accessed July 2019, <https://www.thelocal.de/20190227/report-refugees-in-the-former-east-are-ten-times-more-likely-to-be-victims-of-hate-crimes>
- 10 "2017 Hate Crime Statistics", FBI, Fall 2018, accessed July 2019, <https://ucr.fbi.gov/hate-crime/2017/topic-pages/incidents-and-offenses>
- 11 "Canada hate crimes up 47% as Muslims, Jews and black people targeted", Guardian, 29 November 2018, accessed July 2019, <https://www.theguardian.com/world/2018/nov/29/canada-hate-crimes-rise-muslims-jews-black-people>
- 12 Charlotte Greenfield & Praveen Menon, "Before Mosque attacks, New Zealand failed to record hate crimes for years", Reuters, 30 March 2019, accessed July 2019, <https://www.reuters.com/article/us-newzealand-shooting-intelligence-anal/before-mosque-attacks-new-zealand-failed-to-record-hate-crimes-for-years-idUSKCN1RB0PW>
- 13 "Hate Crime, England & Wales 2017/18, Statistical Bulletin", Home Office, 16 October 2018, accessed July 2019 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/748598/hate-crime-1718-hosb2018.pdf
- 14 "Hate Crime, England & Wales 2017/18, Statistical Bulletin", Home Office, 16 October 2018, accessed July 2019 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/748598/hate-crime-1718-hosb2018.pdf
- 15 "Hate Crime Annual Report 2017-18", Crown Prosecution Service, October 2018, accessed July 2019, <https://www.cps.gov.uk/sites/default/files/documents/publications/cps-hate-crime-report-2018.pdf>
- 16 "Policy & CPS Relations", Crown Prosecution Service, December 2018, accessed July 2019, <https://www.cps.gov.uk/legal-guidance/police-and-cps-relations>

- 17 HM Government, "Action Against Hate The UK Government's plan for tackling hate crime – 'two years on'", October 2018, accessed August 2019, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/748175/Hate_crime_refresh_2018_FINAL_WEB.PDF
- 18 "Hate Crime Annual Report 2017-18", Crown Prosecution Service, October 2018, accessed July 2019, <https://www.cps.gov.uk/sites/default/files/documents/publications/cps-hate-crime-report-2018.pdf>
- 19 "Rapport 2019 Du Collectif Contre L'islamophobie En France", CCIF, 15 March 2019, accessed July 2019, <http://www.islamophobie.net/?p=28718>
- 20 David Rising, "Anti-Semitic crime in Germany up, amid uptick in hate crimes", Associated Press, 14 May 2019, accessed July 2019, <https://apnews.com/8d3e58df90b64e8b9d2d68611421079>
- 21 Kevin Rawlinson, "Britain First leaders jailed over anti-Muslim hate crimes", Guardian, 7 March 2018, <https://www.theguardian.com/world/2018/mar/07/britain-first-leaders-convicted-of-anti-muslim-hate-crimes>
- 22 "Does the FBI investigate hate groups in the United States", FBI, accessed July 2019, <https://www.fbi.gov/about/faqs/does-the-fbi-investigate-hate-groups-in-the-united-states>
- 23 "Ministers 'struggle to define extremism'", BBC, 22 July 2016, accessed July 2019, <https://www.bbc.co.uk/news/uk-36858631>
- 24 Kevin Rawlinson, "Darren Osborne jailed for life for Finsbury Park terrorist attack", Guardian, 2 February 2018, accessed July 2019, <https://www.theguardian.com/uk-news/2018/feb/02/finsbury-park-attack-darren-osborne-jailed>
- 25 Luciana Berger, MP referred to Hizb ut-Tahrir as an "anti-Semitic and homophobic organisation": Luciana Berger, former Labour MP, statement in Parliamentary Hansard, 17 April 2018, <https://hansard.parliament.uk/Commons/2018-04-17/debates/9D70B2B4-39D7-4241-ACF8-13F7DFD8AEB2/Anti-Semitism?highlight=hizb%20ut%20tahrir%20semitism#contribution-C1B5E17C-F421-400F-ABFF-357AC2ABAADO>
- 26 "UK Police prepare for any post-Brexit disorder, urge 'temperate' communication", Reuters, 4 April 2019, accessed July 2019, <https://uk.reuters.com/article/uk-britain-eu-security/uk-police-prepare-for-any-post-brexit-disorder-urge-temperate-communication-idUKKCN1RG0VO>
- 27 Prof Matthew Williams. Prof Pete Burnap & Sefa Ozalp, "Examining online hate", Economic & Social Research Council, 17 January 2019, accessed July 2019, <https://esrc.ukri.org/news-events-and-publications/news/news-items/examining-online-hate/>
- 28 Ria Ivandic, Tom Kirchmaier and Stephen Machin, "Amplifying Islamophobic hate crime: UK media in the wake of terror attacks", Blog London School of Economics, 9 May 2019, accessed August 2019, <https://blogs.lse.ac.uk/politicsandpolicy/the-media-in-the-wake-of-terror-attacks/>
- 29 Kim Sadique, James Tangen & Anna Perowne, "The importance of Narrative in Responding to Hate Incidents Following 'Trigger' Events", Tell Mama UK, November 2018, accessed July 2019, <https://tellmamauk.org/wp-content/uploads/resources/TellMAMA-Report.pdf>
- 30 Ria Ivandic, Tom Kirchmaier & Stephen Machin, "Amplifying Islamophobic hate crime: UK media in the wake of terror attacks", London School of Economics Blogs, 9 May 2019, accessed July 2019, <https://blogs.lse.ac.uk/politicsandpolicy/the-media-in-the-wake-of-terror-attacks/>
- 31 "Hate Crime Annual Report 2017-18", Crown Prosecution Service, October 2018, accessed July 2019, <https://www.cps.gov.uk/sites/default/files/documents/publications/cps-hate-crime-report-2018.pdf>

32 Chris Yiu, *A New Deal for Big Tech: Next-Generation Regulation Fit for the Internet Age*, Institute for Global Change, 1 November 2018, accessed July 2019, <https://institute.global/insight/renewing-centre/new-deal-big-tech>

33 Susan Wojcicki, “Official Blog – Expanding our work against abuse of our platform”, YouTube Google Blog, 4 December 2017, <https://youtube.googleblog.com/2017/12/expanding-our-work-against-abuse-of-our.html>

34 Paresh Dave, “YouTube, under pressure for problem content, takes down 58 million videos in quarter”, Reuters, 13 December 2018, accessed in July 2019, <https://uk.reuters.com/article/us-alphabet-google-youtube/youtube-under-pressure-for-problem-content-takes-down-58-million-videos-in-quarter-idUKKBN1OC2F6>

35 “It’s Not Just Offensive. It’s an Offence”, HM Government, accessed July 2019, <https://hatecrime.campaign.gov.uk/>

36 The Minister of State for the Home Department listed the legislation prosecutions are brought under for perpetrators of hate crime and racist abuse, HC Deb, 15 July 2016, Accessed July 2019. <https://www.theyworkforyou.com/wrans/?id=2016-07-08.42267.h&s=public+order+act+1986+prosecutions#g42267.r0>

37 The Minister of State, Ministry of Justice, listed the number of defendants and outcomes of trials under sections 18, 19, 20, 21, 22, 29B, 29C, 29D, 29E and 29F of the Public Order Act 1986, HL Deb, 2 April 2014, accessed July 2019, <https://www.theyworkforyou.com/wrans/?id=2014-04-02a.208.1>

38 “Religious hatred a crime from October, but exemptions are wide”, The Register, 13 September 2007, accessed July 2019, https://www.theregister.co.uk/2007/09/13/religious_hatred_act/

39 Mark A Walters, Susann Wiedlitzka and Abenaa Owusu-Bempah with Kay Goodall, “Hate Crime and the Legal Process – Options for Law Reform”, University of Sussex, October 2017, accessed July 2019 <http://www.sussex.ac.uk/law/research/projects/lifecycle-hate-crime/publications>

40 Mark A Walters, Susann Wiedlitzka and Abenaa Owusu-Bempah with Kay Goodall, “Hate Crime and the Legal Process – Options for Law Reform”, University of Sussex, October 2017, accessed July 2019 <http://www.sussex.ac.uk/law/research/projects/lifecycle-hate-crime/publications>

41 Richard Holt, “saying ‘bloody foreigner’ is ruled racist”, The Telegraph, 28 February 2007, accessed July 2019, <https://www.telegraph.co.uk/news/uknews/1544050/Saying-bloody-foreigner-is-ruled-racist.html>

42 Jayda Fransen (@jaydafransen), “Islam has contributed nothing but terror, barbarism and genocide, the world would be a much safer place without it”, GAB post, <https://gab.com/jaydafransen/posts/17437532>

43 Olivia Hambly, Joanne Rixom, Sivani Singh & Tamsyn Wedlake-James, “Hate crime: a thematic review of the current evidence”, Home Office, October 2018, accessed July 2019, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/748140/hate-crime-a-thematic-review-of-the-current-evidence-oct2018-horr102.pdf

44 Neil Chakraborti, Jon Garland & Stevie-Jade Hardy “The Leicester Hate Crime Project: Findings & Conclusions”, University of Leicester, September 2014, accessed July 2019, <https://www2.le.ac.uk/departments/criminology/hate/documents/fc-full-report>

45 “Hate Crime” The Law Commission, accessed July 2019, <https://www.lawcom.gov.uk/project/hate-crime/>

46 Maya Oppenheim, “Misogyny hate crime law necessary in light of attacks on women, say campaigners”, Independent, 14 January 2019, accessed July 2019, <https://www.independent.co.uk/news/uk/home-news/misogyny-hate-crime-police-chiefs-letter-catcalling-a8726081.html>

47 “Does the law work for disabled people?”, Parliament, 22 January 2019, accessed July 2019, <https://publications.parliament.uk/pa/cm201719/cmselect/cmcompetitions/759/75907.htm>

48 Steve Ballinger, “Integration Green Paper: an important foundation for an ‘all of us’ approach, British Future, 14 March 2018, accessed July 2019, <http://www.britishfuture.org/articles/integration-green-paper-a-foundation-for-an-all-of-us-approach/>

49 “Religious hate crimes; rise in offences recorded by police”, BBC, 16 October 2018, accessed July 2019, <https://www.bbc.co.uk/news/uk-45874265>

50 Steve Ballinger, “Integration Green Paper: an important foundation for an ‘all of us’ approach, British Future, 14 March 2018, accessed July 2019, <http://www.britishfuture.org/articles/integration-green-paper-a-foundation-for-an-all-of-us-approach/>

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