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Free Speech & The Law

**“Hate Speech” &  
Non-Discrimination**

# **“Hate Speech” & Non-Discrimination**

*Free Speech & The Law*

*This is part of a series of guides produced by Index on Censorship on the laws related to freedom of expression in England and Wales. They are intended to help understand the protections that exists for free speech and where the law currently permits restrictions.*

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## Overview

Although there is no single “hate speech law” in the UK, nor any agreed international definition of the term, a number of laws forbid hatred or discrimination against individuals or groups, which can include things people say, based on colour, race, ethnicity and nationality, religion, and sexual orientation.

UK and European law allows free speech to be limited to protect people from suffering abuse on account of who they are. The criminal law and civil law in the UK have developed in such a way as to protect different characteristics differently. This guide will explore the laws that protect citizens against incidents of discrimination and hate in England and Wales that are most likely to encroach on an individual’s free expression rights. We also look at discrimination law, a type of non-criminal law, providing people with the means to sue individuals or organisations who discriminate against them because of certain “protected characteristics”.

## Hate Crimes

Hate crimes are generally understood to involve someone committing a crime who, in the course of doing so, demonstrates or is motivated by hostility towards someone based on certain characteristics. The UK’s criminal law currently responds to hate crime in three main ways:

1. Criminalising conduct, including expression, that is intended or likely to “stir up hatred” on grounds of race, or is intended to do so on grounds of religion or sexual orientation.
2. Creating separate “aggravated offences” for specific crimes which demonstrate or are motivated by hostility towards a person’s race or religion.
3. Giving courts greater sentencing powers if in committing the crime the perpetrator was motivated by hostility towards a person’s race, religion, sexual orientation, disability, or transgender status.

The police and Crown Prosecution Service record data on hate crimes for five protected characteristics: race, religion, sexual orientation, transgender status, and disability. However, as may be noted from above, there is inconsistency in the way these five characteristics are treated in the law. Other characteristics, such as gender and age, are not specifically protected by the criminal law. For example, there is no offence of stirring up hatred on the grounds of someone’s disability. The Law Commission (the statutory body in charge of reviewing the UK’s laws) is currently undertaking a review of the protections offered by hate crime legislation.

## Discrimination Law

The [Equality Act 2010](#) protects a greater range of characteristics than the hate crime legislation. The act protects people from discrimination (less favourable treatment) on grounds of their age, disability, gender reassignment, marriage and civil partnership, race, religion or belief, sex, or sexual orientation. It enables private individuals to sue a person or organisation for discriminating against them on the protected grounds in various contexts, including in employment (including from the application and recruitment stage), in the provision of services, and in education. If the court finds discrimination has occurred, then it can award damages (including for injured feelings), or order an injunction or declaration.

### **The difference between civil proceedings and criminal prosecutions**

Since crimes are viewed as harmful not only to individuals but also to communities, they are pursued and punishable by the state through the criminal justice system. Criminal prosecutions in England and Wales are pursued by government lawyers working for the Crown Prosecution Service, known as prosecutors. They are [tasked with delivering justice for and on behalf of their communities and upholding the rule of law](#) (the idea that a state should be governed by law, not the arbitrary decisions of individual government officials).

Prosecutors must identify cases that are worth pursuing in court, and conduct the case in court. In identifying cases to pursue, prosecutors must ensure the case has enough evidence, and that it is in the public interest to pursue it. Prosecutors will work closely with the police to build their case since the police will usually hold much of the evidence about a case. If a person is found guilty of a crime, they will usually undergo some sort of punishment, which could include prison time and/or a fine, and they may have to pay compensation to the victim.

Civil court proceedings are brought by private individuals. There is no state body pursuing these proceedings on behalf of individuals, even though the harmful act might be considered to be harmful to the community at large. The civil courts do not imprison people, but they can award compensation to the injured party (in the form of damages) and make public declarations (for example, that an act by a public body was illegal), and order people to do or refrain from doing certain acts. People pursuing civil proceedings will usually have to pay for their legal assistance, although they might receive legal aid, which will help pay for their legal costs, and if they win their case, they may have their legal costs paid for by the losing party.

## What does international law say about hate crimes?

The UK ratified the [International Covenant on Civil and Political Rights](#) (ICCPR) in 1976. This is an international human rights treaty requiring the UK to respect and protect many human rights. Article 19 of the ICCPR sets out the right to freedom of expression, which includes the "freedom to seek, receive and impart information and ideas of all kinds". However, the right may be restricted to respect the "rights or reputations of others".

Article 20(2) of the ICCPR states:

"Any advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law."

Article 4 of the [Convention on the Elimination of Racial Discrimination](#), which the UK ratified in 1969, states:

"States Parties condemn all propaganda and all organisations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin...and:

- (a) shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as acts of violence or incitement to such acts."

The UN Special Rapporteur on freedom of expression issued [guidelines](#) on Article 19(3) of the ICCPR (restrictions on freedom of expression) in 2001. Regarding hate speech, these stated:

"The Special Rapporteur is aware of, and concerned by, the potential harm, whether psychological or physical, which can result from hate speech, in particular incitement to violence, heightened tensions between groups of different cultural, ethnic, racial and religious identities and the perpetuation of stereotypes.

In light of these concerns, the SR recognises that hate speech calls for reasonable restrictions which are necessary to prevent incitement to acts of imminent violence, hatred or discrimination on grounds, among others, of race, religion, colour, descent, or ethnic or national origin.

At the same time, the SR expresses concern about the possibility of such prohibitions being abused, particularly where respect for human rights and the

rule of law is weak and hate speech laws have been used in the past against those they were intended to protect.”

The Special Rapporteur recommended that any law prohibiting so-called hate speech should, at a minimum, conform to the following:

- I. No one should be penalised for true statements;
- II. No one should be penalised for the dissemination of hate speech unless it has been shown that the perpetrator had the intention to incite discrimination, hostility, or violence;
- III. The right of journalists to decide how best to communicate information and ideas to the public should be respected, particularly when they are reporting on racism and intolerance;
- IV. No one should be subject to prior censorship;
- V. Sanctions imposed by courts must be proportionate;
- VI. Crimes interfering with free expression rights must be narrowly defined in clear terms.

The treaty obligations set out in the ICCPR and the Convention on the Elimination of Racial Discrimination are duties with which the UK has agreed to comply. The Special Rapporteur’s guidelines outline how the UK should comply with its obligations under the ICCPR.

## **The European Court of Human Rights & The Human Rights Act**

The [European Court of Human Rights](#) has the power to review the UK’s laws and government actions and determine whether it has acted in accordance with human rights law. The European Court of Human Rights has considered a number of cases from the UK concerning people who were convicted of criminal offences over speech inciting hatred based on prejudice against a particular group.

The court has tended to rule that convictions for such speech do not violate a person’s free expression rights under Article 10 of the [European Convention on Human Rights](#) (ECHR). That is because, first, such expression goes against the ECHR’s core values of tolerance, social peace, and non-discrimination. These types of claims are therefore usually blocked by Article 17 of the ECHR, which says that nothing in the ECHR can be interpreted as giving a person a right to engage in activities “aimed at the destruction of any of the rights and freedoms” in the ECHR. Secondly, the court has often found that restrictions on free speech rights are justified on one of the grounds set out in Article 10(2) of the ECHR.

## Restrictions on free expression

Article 10(2) of the European Convention on Human Rights (ECHR) says that the right to freedom of expression "carries with it duties and responsibilities". Because of this, the right to free expression may be subject to restrictions and conditions that are necessary in a democratic society and are set out clearly in the law. Any restrictions must be for one or more of the following purposes: national security, public safety, territorial integrity, preventing crime or disorder, protecting health or morals, protecting the reputation or rights of others, preventing the disclosure of information received in confidence, and for maintaining the authority and impartiality of the judiciary.

Article 17 of the European Convention on Human Rights states: "Nothing in [the] 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."

### Case study: [Norwood v. United Kingdom](#)

Mark Norwood was a regional organiser for the extreme right-wing political group, the British National Party. In 2003, he tried to persuade the European Court of Human Rights that it should support his right to freedom of speech by letting him put up a poster in his living room window, with an image of the Twin Towers in flames and the words "Islam out of Britain – Protect the British People." It also featured a symbol of a crescent and star (a symbol associated with Islam) in a prohibition sign.

Norwood had been convicted of an offence under Section 5 of the [Public Order Act 1986](#) (discussed below) as aggravated by Section 31 of the [Crime and Disorder Act 1998](#), which together criminalise displaying, with hostility towards a racial or religious group, any writing, sign or other visible representation which is threatening, abusive or insulting, within the sight of a person likely to be caused harassment, alarm or distress by it. Norwood was fined £300. He appealed his conviction to the High Court, which [dismissed his appeal](#). Lord Justice Auld held that the poster was "a public expression of attack on all Muslims in this country, urging all who might read it that followers of the Islamic religion here should be removed from it and warning that their presence here was a threat or a danger to the British people."

Norwood then took his case to the European Court of Human Rights in Strasbourg, arguing that his conviction violated his right to free expression under Article 10 of the ECHR.

He argued, quoting a [judgment in a previous freedom of speech case](#), that “free speech includes not only the inoffensive but also the irritating, contentious, eccentric, heretical, unwelcome and provocative, provided that it does not tend to provoke violence.” Norwood also argued that “criticism of a religion is not to be equated with an attack upon its followers” add said he lived in a rural area and did not think any Muslim person had seen the poster.

The court did not agree and the case was declared “inadmissible”. They looked to Article 17 of the ECHR, which they said was designed to prevent people with “totalitarian aims” of exploiting the human rights in the ECHR “in their own interests”. They said Norwood’s poster:

“amounted to a public expression of attack on all Muslims in the United Kingdom. Such a general, vehement attack against a religious group, linking the group as a whole with a grave act of terrorism, is incompatible with the values proclaimed and guaranteed by the Convention, notably tolerance, social peace and non-discrimination.”

Since Norwood’s display of the poster was an “act aimed at the destruction” of ECHR rights, it was contrary to Article 17 ECHR and it was not protected by Article 10.

When UK courts are deciding on human rights issues, the [Human Rights Act](#) says they must “take into account” any judgments handed down by the European Court of Human Rights. There have been various debates about what “taking into account” really means, but the upshot is that what the European Court of Human Rights says on human rights issues is very impactful. It means that courts in England and Wales will generally adopt the approach taken by the European Court of Human Rights unless there is a good reason not to.

# Hate crimes explained

## Stirring up hatred on racial, religious, or sexual orientation grounds

UK law criminalises conduct that is likely or intended to “stir up” racial hatred, or that involves threatening behaviour that is intended to stir up hatred on grounds of religion or sexual orientation.

“Conduct” includes the use of hateful words, but also a broad range of expression, such as displays of text, books, banners, photos and visual art, the public performance of plays and the distribution or presentation of pre-recorded material. In all three cases, a magistrate can grant the police a warrant to enter and search premises to locate any material that incites hatred on racial, religious or sexual orientation grounds.

### Acts intended or likely to stir up racial hatred

The offence of stirring up racial hatred, located in Section 18 of the [Public Order Act 1986](#), is set out below:

- A person who uses threatening, abusive or insulting words or behaviour, or displays any written material which is threatening, abusive or insulting, is guilty of an offence if—
  - a) he intends thereby to stir up racial hatred, or
  - b) having regard to all the circumstances racial hatred is likely to be stirred up thereby.

## The patchwork history of the “stirring up” offences

The “stirring up” offences were established in the wake of decades of efforts to challenge discrimination in the UK. The offence of incitement to racial hatred was originally enacted in the [Race Relations Act 1965](#) before migrating to the [Public Order Act 1986](#). It was joined by the new offences of incitement to religious hatred in 2006, and incitement to hatred on sexual orientation grounds in 2008. The legislation has developed in a piecemeal way, and as barrister Ivan Hare QC points out, “[i]n the course of the debates about the introduction of each of these offences, no coherent account has been given as to why protection against incitement to hatred should be confined to the three characteristics of race, religion and sexual orientation.”

The passage of the [Racial and Religious Hatred Bill](#) in 2006, which introduced the new offence of inciting religious hatred, was particularly controversial. The offence was introduced largely to offer greater protection to Muslims in the wake of reprisals after the September 2011 attacks in 2001. However, broadcasters, authors and a range of other secular and non-secular groups expressed concerns the offence would [limit their free speech rights](#). The then Executive Director of the National Secular Society argued the “inevitable consequence of this proposed legislation would be to protect religious dogmas and beliefs from insult and mockery.”

English PEN and a number of free expression groups lobbied for further amendments to protect free speech from inappropriate use of the act.

### **The PEN amendment**

Section 29J of the [Public Order Act 1986](#) (the so-called “PEN amendment”) states that the rules on public order must not be applied “in a way which prohibits or restricts discussion, criticism or expressions of antipathy, dislike, ridicule, insult or abuse of particular religions or the beliefs or practices of their adherents, or of any other belief system or the beliefs or practices of its adherents, or proselytising or urging adherents of a different religion or belief system to cease practising their religion or belief system”.

## How do the stirring up offences work?

### Racial Hatred

Racial hatred is defined in the [Public Order Act 1986](#) as "hatred against a group of persons defined by reference to colour, race, nationality (including citizenship) or ethnic or national origins." Sections 18 to 23 of the Public Order Act 1986 set out several specific acts where racial hatred is likely to be stirred up. The following acts are therefore crimes, if (and only if) by doing them, the perpetrator intends to stir up racial hatred, or, given all the circumstances, the act is likely to stir up racial hatred:

- Using threatening, abusive, or insulting words or behaviour
- Displaying, publishing, or distributing written material which is threatening, abusive, or insulting
- Public performance of a play involving the use of threatening, abusive, or insulting words or behaviour
- Distributing, showing, or playing a visual or sound recording which is threatening, abusive, or insulting
- Broadcasting a programme involving threatening, abusive, or insulting visual images or sounds

The term "written material" refers to "any sign or visible representation" and therefore includes imagery, paintings or other forms of physical artistic expression.

Remember that to be a criminal offence, the perpetrator must have acted with *intent* to stir up racial hatred, or it must have been *likely* that their action(s) would have caused racial hatred to be stirred up. For the offence of using words or behaviour that are threatening, abusive, or insulting, the alleged offender has a defence if:

- It cannot be proven that their actions were intentionally threatening, abusive or insulting and the accused was not aware they might be so received;
- It can be proven that the action took place inside a private dwelling and that the accused had no reason to believe that their words or actions would be heard or seen by persons outside it.

### **Case study: Inciting racial hatred**

Lawrence Burns was a member of National Action, a far-right neo-Nazi terrorist organisation based in the UK. He operated a Facebook account under an alias, onto which he posted virulently racist updates, comments, and links, aimed primarily at Afro-Caribbean and Jewish communities. His messages promoted militant action against them, with the aim they should be eliminated, to make way for "an advanced warrior race consisting of white men and women". Material found on Burns' laptop showed material that extolled Adolf Hitler as "the ultimate being" and which expressed other anti-Semitic views. He was [charged with stirring up racial hatred](#) by publishing written material, contrary to Section 19(1) of the Public Order Act 1986 (count 1).

In May 2015, Burns made a speech during a demonstration staged outside the United States embassy in London. He said that non-white immigrants were "rapists, robbers, and murderers" and Jewish people were "parasites and bankers" who wanted to create a "mongrelised" race. The speech was filmed and posted on YouTube. For this, Burns was charged with stirring up racial hatred through words or behaviour, contrary to Section 18(1) of the Public Order Act 1986 (count 2).

Burns' defence was that his Facebook comments were intended to be "private banter" and his speech – while not private banter – was not intended to stir up racial hatred and was not likely to do so. The jury found him guilty on both counts.

Burn's four-year sentence was cut following an appeal, although appeal court judge Mr Justice Phillips noted : "whilst freedom of speech is a fundamental freedom of our society, [Burns'] conduct in this case went far beyond what was regarded as acceptable. It was designed publicly to promote racial hatred, to mobilise the applicant's listeners, and to encourage them to move from ideas into action."

## **Insulting, threatening and abusive**

The meaning of “threatening, abusive, or insulting” is not defined in the legislation. The meaning is likely to be interpreted by the courts in the same way that they interpret the phrase “threatening, abusive, or insulting” for the Intentional Harassment, Alarm and Distress under Section 4A [Public Order Act 1986](#). Please see the [Public Order guide](#) for more guidance on what these words mean.

In a 1973 case, the United Kingdom’s highest court ruled that “insulting” should be given its “ordinary meaning” – and whether words or behaviour is insulting is a question to be determined on a case-by-case basis by a jury. The same approach applies to the words “offensive” and “abusive”. Where swear words are coupled with racial slurs, it seems that this is “almost undeniably abusive” (see [Director of Public Prosecutions v Humphrey \(2005\)](#)).

## **Possession of racially inflammatory material**

A person who has in their possession written material or a recording of sounds or visual media which is threatening, abusive or insulting commits an offence if they intend to distribute, publish, show, or display the material, and they intend to stir up racial hatred (or such stirring up is likely) in so doing. It is a defence to this crime if the accused is not aware they have the material in their possession and had no reason to suspect it was threatening, abusive, or insulting.

If a police officer has reasonable grounds for believing racially inflammatory material will be found at certain premises, a magistrate can issue a warrant for the search those premises.

## **Religious hatred and hatred on grounds of sexual orientation**

It is an offence under Section 29B of the [Public Order Act 1986](#) for an individual to use threatening words or behaviour, or display any written material which is threatening, that is intended to stir up hatred on the grounds of religion or sexual orientation.

Hatred on sexual orientation grounds is defined in the legislation as “hatred against a group of persons defined by reference to sexual orientation (whether towards persons of the same sex, the opposite sex or both”, (Public Order Act 1986, Section 29AB). Religious hatred is defined in the legislation as “hatred against a group of persons defined by reference to religious belief or lack of religious belief”, (Public Order Act 1986, Section 29A).

It is important to note that the offences related to hatred of religious groups or sexual orientation are more narrowly defined than racial hatred offences in two specific ways.

First, unlike racial hatred offences, offences related to hatred of religious groups or on sexual orientation grounds apply only where the words, images or conduct are "threatening". No offence is committed by using words, images or behaviours that are merely insulting or abusive. An act is likely to be considered "threatening" if it is clearly intended to place people in fear for their safety or wellbeing. Words or actions that are intended or likely to upset, shock or offend are unlikely to count as "threatening".

Secondly, a person must intend to stir up religious hatred or hatred on sexual orientation grounds. The mere likelihood that a person's act *might* stir up hatred, or even the fact that it did, is not sufficient for a conviction in respect of religion and sexual orientation.

The fact that only threatening conduct that is intended to stir up hatred on the grounds of religion or sexual orientation is criminalised means that a narrower range of conduct is prohibited on these grounds, and, conversely, a broader range of conduct is prohibited in the context of race. Regardless, if it can be shown that a person intended to stir up hatred on the grounds of religion or sexual orientation by doing any of the following, their behaviour will be a crime unless a defence applies:

- Using threatening words or behaviour
- Displaying, publishing, or distributing written material which is threatening
- Public performance of a play involving the use of threatening words or behaviour
- Distributing, showing, or playing a visual or sound recording which is threatening
- Broadcasting a programme involving threatening visual images or sounds

#### **Discussion of marriage and sexual practice is not a hate crime**

The Public Order Act 1986 [provides that](#) the discussion or criticism of "marriage which concerns the sex of the parties to marriage" and "sexual conduct or practices or the urging of persons to refrain from or modify such conduct or practices" shall not be taken of itself to be threatening or intended to stir up hatred.

This provision seeks to ensure that views critical of same-sex marriage or sexual conduct generally are not criminalised under the hate offences.

## Religious and racially aggravated offences

The [Crime and Disorder Act 1998](#) introduced a new series of “racially or religiously aggravated” crimes. These are the existing crimes such as assault or damage to property, but which are perceived to be motivated by hostility or prejudice based on a person’s race or religion (or perceived race or religion). They carry higher sentences than the underlying crimes.

In addition to higher sentences for the specific racially or religiously aggravated crimes, [Section 145 of the Criminal Justice Act 2003](#) provides for increased sentences for any other crimes that are found to be racially or religiously aggravated. If the offence was racially or religiously aggravated, the sentencing judge must say so in open court and take that factor into account when handing out a sentence. It is the sentencing judge’s decision by how much (if any) to increase a sentence if there is found to be a religious or racial aggravation.

[Section 146 of the Criminal Justice Act 2003](#) applies if the perpetrator of an offence was motivated by hostility based on a person’s sexual orientation, disability, or status as a transgender person. The court must treat that motivation as an aggravating factor for the purposes of imposing an appropriate sentence.

### Racially or religiously aggravated Public Order offences

Certain public order offences can be racially or religiously aggravated. These offences are explained more fully in our [Public Order guide](#). These offences criminalise certain types of speech, written material, and behaviour, and so may have free speech implications. It is worth noting, however, that the European Court of Human Rights has consistently ruled that expressions of religious and racial hate are not protected by Article 10 of the ECHR because they are incompatible with the convention’s fundamental values, including tolerance, social peace, and non-discrimination.

The racially or religiously aggravated public order crimes include:

**Fear or Provocation of Violence - Section 4 – Public Order Act 1986**

- Using threatening, abusive, or insulting words or behaviour in such a way as to make a person think unlawful violence will be used against them imminently or to provoke violence.
- Distributing or displaying material which is threatening, abusive, or insulting in such a way as to make a person think unlawful violence will be used against them imminently or to provoke violence.

If charged as a “racially or religiously aggravated” crime, this offence carries a maximum penalty of two years’ imprisonment and a fine. Without aggravation, the maximum sentence is six months imprisonment and a fine.

**Intentional Harassment, Alarm or Distress - Section 4A – Public Order Act 1986**

- Using threatening, abusive or insulting words or behaviour, or disorderly behaviour, or
- Displaying material which is threatening, abusive, or insulting.

With the intent and result of causing someone alarm, harassment, or distress.

A person has a defence if they were inside a dwelling and had no reason to believe their words or material would be seen or heard by someone outside. They also have a defence if they can argue their conduct was “reasonable.”

Similar to the above, the maximum sentence for this racially or religiously aggravated offence is two years’ imprisonment plus a fine.

**Case study: Racially aggravated intentional harassment**

John Keogh, 74, told an Afro-Caribbean member of staff in a south London betting shop that “When Brexit comes you will be gone” and he [used a racist slur](#) against her. Keogh was apparently angry that his winnings had been placed on the counter and not in his hand. Keogh pleaded guilty to the racially aggravated charge of using threatening, abusive, and insulting words with intent to cause alarm, distress, and harassment contrary to Section 31(1)(b) of the Crime and Disorder Act 1998 and Section 4A of the Public Order Act 1986. He was ordered to pay £600 in legal costs and compensation and was given a 10-week 8pm to 6am curfew as part of a community order.

### **Case study: Harassment because of someone's sexual orientation**

In July 2019, a [38-year-old woman was arrested](#) under Section 4A of the Public Order Act 1986 for shouting homophobic abuse at people taking part in a Pride march in London. Footage posted on social media showed the woman, who was wearing a black niqab, shouting "shame on you" to participants – one of whom was wearing a rainbow flag – passing by. She also shouted "God created Adam and Eve, not Adam and Steve. Shame on you, shame on all of you. Shame on you, you despicable people."

Although the Crime and Disorder Act 1998 did not create a specific aggravated public order offence on grounds of sexual orientation, the police can charge this individual with a (non-aggravated) Section 4A intentional harassment charge. If she is found guilty, and the court also thinks she was motivated by hostility towards the victims' perceived sexual orientation, then under Section 146 of the Criminal Justice Act 2003, the court will have to treat that as an aggravating factor for sentencing.

### **Harassment, Alarm or Distress - Section 5 – Public Order Act 1986**

- Using threatening, abusive or insulting words or behaviour, or disorderly behaviour, or
- Displaying material which is threatening, abusive, or insulting

Within the hearing or sight of a person likely to be caused harassment, alarm or distress thereby.

Where the offender and the victim are both inside a dwelling, no offence is committed. The offender may also have other defences such as being inside a dwelling and having no reason to believe anyone would hear or see his conduct, or that the conduct was "reasonable."

When charged as a racially or religiously aggravated offence, the maximum sentence is a fine. A lesser fine can be imposed if the offence is not racially or religiously aggravated.

## **Where will a criminal trial for stirring up hatred take place?**

Criminal trials in England and Wales take place either in the Crown Court or the magistrates' court. The more serious crimes take place in the Crown Court and are called "indictable" offences. The less serious crimes take place in the magistrates' court are "summary" offences. The "incitement to hatred" crimes are known as "either-way" offences, meaning trials can take place either in the Crown Court or the magistrates' court. There will be a court hearing to decide where the trial will take place. If convicted of a summary offence, the perpetrator of a racial incitement crime may face up to six months' imprisonment (or twelve months for hatred on grounds of religion or sexual orientation), a fine or both. The more serious indictable offences will be tried by a jury, but on conviction, offenders face up to seven years' imprisonment, a fine or both. All prosecutions must be approved by the Attorney General (the government's chief law officer).

# Discrimination

## The Equality Act 2010

The [Equality Act 2010](#) prohibits discrimination, both by public bodies or private individuals (including companies and organisations), based on certain characteristics. The prohibited conduct defined in the Equality Act 2010 includes direct and indirect discrimination, as well as harassment and victimisation. The Equality Act 2010 does not create criminal offences – it gives people the ability to sue another person for discriminating against them. Breaches of the relevant provisions can only result in declarations or mandatory orders and the award of damages.

The Equality Act 2010 prohibits discrimination on the grounds of one or more of nine "protected characteristics". These are:

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

Under the act, discrimination involves treating someone less favourably than others because of their protected characteristic. It also includes applying a discriminatory practice against someone, which puts them at a disadvantage because of their protected characteristic. Harassment entails engaging in "unwanted conduct" relating to a protected characteristic, with the effect of violating a person's dignity or creating an intimidating or hostile environment for them. Victimisation is where a person is the subject of reprisals for bringing or assisting with an Equality Act claim.

## Overview of types of discrimination under the Equality Act 2010

- Direct discrimination
  - Treating someone less favourably because of a protected characteristic
  - Indirect discrimination
  - Applying a practice or policy that puts a person at a disadvantage because of their protected characteristic
- Harassment
  - Engaging in unwanted conduct related to a protected characteristic with the purpose or effect of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for them
- Victimisation
  - Subjecting someone to a detriment because they pursued or assisted with civil proceedings under the Equality Act 2010

In a civil case under the Equality Act 2010, the judge will determine, looking at all the evidence, whether it is more likely than not that the alleged perpetrator discriminated against the claimant (in any of the ways listed in the Act). If so, they may make the perpetrator pay compensation to the injured party, or order them to do something or refrain from doing something.

### **Case study: Social work student unfairly expelled from course**

A [man who was expelled](#) from a university social work course after a series of Facebook posts in which he called homosexuality as a 'sin' and 'wicked' won an appeal against the decision to remove him.

The Court of Appeal ruled that the process used by the University of Sheffield process to remove devout Christian Felix Ngole from the MA in social work course "flawed and unfair" to him.

This court ruled the decision was a disproportionate restriction on Ngole's freedom of expression.