

# USING CRIMINAL AND CIVIL LAW TO DEAL WITH ORGANISED RACIST ACTIVITY

## INTRODUCTION

Organised groups and their members must operate within the law, even if they are registered with the Electoral Commission as a political party. This section sets out some of the criminal and civil laws you may be able to use to tackle racist behaviour by groups or individuals.

The list is not exhaustive – for example, it doesn't cover some of the more commonly known offences, such as assault, actual bodily harm, or grievous bodily harm, which are all important – and, in most cases, you will need to get legal advice about the particular circumstances you are dealing with.

Decisions on whether to prosecute are made by the Crown Prosecution Service (CPS), after a person has been charged by the police. A better knowledge of the legal context will enable local authorities, community groups and others to help the police and the CPS to identify the most appropriate charges, and to understand any action they might take.

Local partners can also play an important part in monitoring organised racist activity, identifying trends, coordinating a local response to increases in racist behaviour, and making sure that victims get the support they need. Close cooperation between local partners will be important, involving formal partnership structures, such as local strategic partnerships or crime and disorder partnerships, where appropriate.

## CRIMINAL LAW

### Public Order Act 1986

#### Riot (Section 1)

This is committed when 12 or more people use violence, or threaten to use violence, for a common purpose in a way which would make someone who was present fear for their safety. The maximum sentence is ten years' imprisonment.

#### Violent disorder (Section 2)

This is committed when three or more people use violence, or threaten to use violence, in a way that would make someone who was present fear for their safety. The maximum sentence is five years' imprisonment.

## Affray (Section 3)

This is committed when a person uses violence, or threatens to use violence, in a way that would make someone who was present fear for their safety. The maximum sentence is three years' imprisonment.

## Fear or provocation of violence (Section 4)

This is committed when a person:

- a. uses threatening, abusive or insulting words or behaviour towards someone; or
- b. distributes or shows someone writing, a sign or another image which is threatening, abusive or insulting.

And one of the following also applies:

- when that person intends to make someone believe that immediate violence will be used against them or against someone else; or
- when that person intends to provoke someone to use immediate violence; or
- it must be likely that the person believes that violence will be used or be provoked.

The maximum sentence is six months' imprisonment or a fine of £5,000, or both.

## Intentional harassment (Section 4A)

This is committed when a person:

- a. uses threatening abusive or insulting words or behaviour, or disorderly behaviour; or
- b. displays writing, a sign or another image which is threatening, abusive or insulting.

And when the person intended to, and does, cause someone else harassment, alarm or distress.

The maximum sentence is six months' imprisonment or a fine of £5,000, or both.

## Harassment, alarm or distress (Section 5)

This is committed when, within the hearing or sight of someone who is likely to be caused harassment, alarm or distress, a person:

- a. uses threatening, abusive or insulting words or behaviour or disorderly behaviour, or
- b. displays writing, a sign or another image which is threatening, abusive or insulting

And when one of the following applies:

- that person intended or was aware that his or her words or behaviour, or the writing, sign or image were threatening, abusive or insulting; or
- that person intended or was aware his or her behaviour was disorderly.

The maximum sentence is a fine of £1,000.

## Incitement to racial hatred (Sections 17 – 19)

This is committed when a person:

- a. uses threatening, abusive or insulting words or behaviour; or
- b. publishes, distributes or displays threatening, abusive or insulting written material

And when:

- the person either has the intention of stirring up racial hatred; or
- it is likely that racial hatred would be stirred up by the person's actions because of the particular circumstances.

Racial hatred means hatred of a group of people defined by colour, race, nationality or ethnic or national origins. A prosecution for incitement to racial hatred may only be brought with the permission of the Attorney General.

Local authorities and community groups may be able to advise on:

- the effect that the words or behaviour will have in a particular area;
- the state of race relations in a specific locality;
- the susceptibility of a particular community or section of the community to be stirred up by such words or behaviour, especially when the words or behaviour appear to be directed at a religious group; and
- in a specific case, whether certain words were insulting.

## Criminal Damage Act 1971

Criminal damage is committed when a person:

- a. intentionally or recklessly destroys or damages property and at the same time either intends to endanger someone's life or is reckless about putting that person's life in danger; or
- b. threatens someone with destruction or damage to their property or another person's property; or
- c. threatens someone that he or she will destroy or damage their property in a way which he or she knows will endanger the life of that person or the life of another person.

The maximum penalty is ten years' imprisonment.

## Crime and Disorder Act 1998

### Racially or religiously aggravated offences (Section 28)

An offence is racially or religiously aggravated if:

- a. when a person committed the offence, or just before or after they committed it, he or she showed hostility based on the victim's membership (or presumed membership) of a racial or religious group;

- b. the offence was motivated by hostility towards members of a racial or religious group based on their membership of that group

Offences that may be racially or religiously aggravated include:

- Common assault
- Actual bodily harm
- Grievous bodily harm
- Malicious wounding
- Criminal damage
- Fear or provocation of violence
- Harassment or alarm

Racially or religiously aggravated offences may be committed when damage is caused to places of worship, or when homes or community buildings are sprayed with racist graffiti, or when rubbish is dumped (racially or religiously aggravated criminal damage); or when individuals are subjected to racist attack (racially or religiously aggravated assault). Sentences may be increased by:

- Maximum 2 years - Common assault
- Maximum 7 years - Actual bodily harm
- Maximum 7 years - Grievous bodily harm
- Maximum 7 years - Malicious wounding
- Maximum 14 years - Criminal damage
- Maximum 2 years - Fear or provocation of violence
- Maximum 2 years - Harassment or alarm

## Anti-Social Behaviour Orders (Section 1)

An Anti-social Behaviour Order (ASBO) can be obtained by a local authority or by the police to stop someone from continuing with specific anti-social behaviour. It can be applied for if a person has acted in an anti-social way which caused or was likely to cause harassment, alarm or distress, and when the order is needed to protect people from further anti-social acts. The application is made to a magistrates' court.

ASBOs may be useful in dealing with low-level harassment or nuisance, but should not be used as a substitute for other, more serious criminal offences, such as racially or religiously aggravated assault or criminal damage.

## Protection from Eviction Act 1977

### Unlawful harassment of a residential occupier (Section 1)

This is committed when a person:

- a. acts in a way which is likely to interfere with the peace or comfort of the someone living in a residence or members of his or her household, or

- b. persistently withdraws or withholds services reasonably required for living in the residence

And when he or she intends to make the person living in the residence leave the premises or intends to stop communal facilities and services.

This law could be used to tackle racist behaviour that is designed to harass and intimidate people, but that doesn't amount to a public order offence or a racially or religiously aggravated offence. For example, this law could be used when people are repeatedly subjected to racist leafleting, abuse, graffiti, dumping of rubbish or noise. The maximum sentence is two years' imprisonment or a fine of £5,000, or both.

## **Protection from Harassment Act 1997**

Harassment is committed when someone follows a course of behaviour that causes alarm and distress and they know it will cause alarm or distress. There is a civil remedy for this offence and damages can be awarded for distress, financial loss or the breach of a court injunction. Harassment is also a criminal offence, which carries a maximum sentence of five years' imprisonment or a fine of £5,000, or both.

## **Malicious Communications Act 1988**

### **Sending letters with intent to cause distress (Section 1)**

This is committed when a person sends someone a letter or an article which contains an indecent or offensive message or threat or information which the sender knows is untrue. The sender must also intend to cause distress or anxiety to the person who receives the letter. The maximum penalty is a fine of £2,500.

## **Telecommunications Act 1984**

### **Obscene, offensive or annoying telephone calls (Section 43)**

This is committed when a person:

- a. sends a message or anything else by telephone which is grossly offensive, indecent, obscene or menacing in character; or
- b. sends a message by telephone, which he or she knows to be false, to cause annoyance, inconvenience or anxiety to someone else, or persistently uses the telephone system for that purpose.

The maximum sentence is a fine of £1,000.

# CIVIL LAW

## ACTION BY MEMBERS OF THE PUBLIC

### Claims

#### Nuisance

An occupier of property can take action through the courts to sue someone for interfering with the use or enjoyment of his or her property. Examples of nuisance might include:

- Dumping of rubbish: racist groups might dump rubbish as part of a campaign of harassment and intimidation.
- Deliberately playing loud music or encouraging dogs to bark so as to cause a disturbance to another person.

#### Damage to property

A claim can be made against those who damage private property. This could be used against those who vandalise property solely used by people from a particular racial or faith group, such as community centres, places of worship or cemeteries.

#### Trespass

Any person who has an interest in land can sue people who trespass on the property. This could be used against those who trespass on religious or community buildings, for example, to harass and abuse staff, worshippers and users.

#### Assault and battery

Assault is intentionally causing a person to fear that physical harm will be caused to him or her. Battery is intentionally inflicting physical harm to a person. In a civil court, these require a much lower burden of proof than in a criminal court – ‘balance of probabilities’ rather than ‘beyond reasonable doubt’ – which means they are easier to prove.

#### Injunctions

Members of the public can apply to the courts for an injunction to prevent damage occurring – for example to prevent nuisance. Injunctions may be used when organised racist groups plan marches to intimidate and harass individuals around their homes or property. A person applying for an injunction must have a connection to the land the injunction refers to.

It is important to remember that freedom of peaceful assembly and association is a right under Article 11 of the Human Rights Act, although this does not apply if there is an intention to cause harassment, intimidation or violence. Evidence of this intention would assist applications for an injunction.

## ACTION BY LOCAL AUTHORITIES

### General powers

Section 222 of The Local Government Act (2000) gives local authorities a general power to bring or participate in civil proceedings when they are important for promoting or protecting the interests of the residents in their area. Under Section 2 of the Act, local authorities also have a power to do anything which they consider is likely to promote or improve the economic and social wellbeing of their area.

In exercising these powers, local authorities are also subject to the race equality duty, under Section 71 of the Race Relations Act (1976), which gives public authorities, including councils, schools and other educational institutions, a general duty to promote race equality when carrying out of their functions. This means they must pay due regard to the need to:

- eliminate unlawful racial discrimination;
- promote equality of opportunity; and
- encourage good race relations.

### Civil actions

#### Noise nuisance

Local authorities have the power to serve a notice on someone to stop causing a nuisance and to prosecute him or her for breach of the notice. Local authorities can also obtain injunctions to stop noise or seize equipment.

#### Dumping of rubbish

Local authorities have the power to serve notices, prosecute and/or to seek an injunction against the dumping of rubbish. This could be a useful tool to use against racist organisations that dump rubbish as part of a campaign of harassment or intimidation.

#### Trespass

Local authorities can obtain injunctions to bar perpetrators of harassment and abuse from council premises. If they enter council premises, they will then be trespassing.

### Specific powers

As housing providers, local authorities have specific powers to evict tenants for breach of tenancy conditions, to stop them causing a nuisance or annoyance to neighbours.

Under Section 144 of the Housing Act 1996, local authorities can apply to the court for an order enabling them to evict a tenant when the tenant, or a person living or visiting the tenant's home, has been causing or is likely to cause a nuisance or annoyance.

Under Section 152 of the Housing Act 1996, local authorities can apply to the court for an injunction to stop a person from engaging in or threatening to engage in conduct that is likely to cause nuisance or annoyance to residents of a council house or their visitors .

Schedule 2 of the Housing Act 1988 gives local authorities discretion to repossess a property if a tenant or someone who lives with the tenant or visits him or her has been convicted of an offence that was committed in the property or in the immediate vicinity.

Section 1 of the Protection from Eviction Act 1977 makes it an offence to evict someone unlawfully from residential premises. It is also an offence for someone who intends to make a person give up all or part of the house of flat where they live to do anything to interfere with that person's peace or comfort. Normally the local authority will bring charges for harassment and unlawful eviction. The maximum sentence for this offence is imprisonment for two years or a fine of £5,000, or both.