

1. HATE CRIME DIRECTED AT GYPSIES, ROMA or TRAVELLERS

For a case involving hostility towards Gypsies, Roma or Travellers to be flagged as racially aggravated on CMS it has to meet the following definition:

“...any **criminal offence** which is **perceived** to be motivated by hostility or prejudice towards a person because of their race or perceived race by the victim **or any other person.**”

The CDA 1998 and CJA 2003 define “racial group” as a “group of persons defined by reference to race, colour, nationality (including citizenship) or ethnic or national origins.” The definition is wide and victims may come within the definition under more than one of the references. Gypsies and some travellers, refugees or asylum seekers or others from less visible minorities would be included within this definition. While Romany Gypsies have long been recognised as a “racial group” (*Commission for Racial Equality v Dutton* [1989] QB 783), in more recent times and certainly since the first instance discrimination case of *O’Leary v Punch Retail* (HHJ Goldstein, Westminster County Court, 29 August 2000), Irish Travellers have also been considered a “racial group”. Whilst this has not been considered by an appellate criminal court, the O’Leary case is regarded as being persuasive if the point is ever taken.

Whilst there has been no case law around Roma in the UK, the European Court of Human Rights recognises that the community forms a distinct ethnic group and prosecutors are recommended to apply the definition provided by the legislation to argue for inclusion.

For flagging purposes, it is **not** necessary to have the evidence to prove the aggravating element. However, this will need to be gathered in order to prove the aggravating element for the purposes of CDA 1998 or CJA 2003. If a decision is made that there is insufficient evidence to prove the offence was aggravated within the meaning of CDA 1998 section 28, the case should nevertheless remain flagged on CMS.

2. EVIDENCE OF RACIAL AGGRAVATION

The Crime and Disorder Act 1998 (CDA 1998) created a number of specific offences of racially aggravated crime based on the offences of wounding, assault, damage, harassment and threatening/abusive behaviour. Monitoring had indicated that these types of crime were those most commonly experienced by victims of racial violence or harassment. The Act was amended in 2012, when new specific offences of stalking and harassment were created together with racially aggravated forms of the offences.

To prove that an offence is racially aggravated, the prosecution has to prove the “basic” offence followed by racial aggravation, as defined in section 28 CDA 1998. In addition, section 145 of the Criminal Justice Act 2003 (CJA 2003) also gives the court power to

enhance the sentence of **any other offence** that is racially or religiously aggravated. An offence will be racially aggravated if:

- at the time of committing the offence or immediately before or after doing so, the offender demonstrated towards the victim hostility based on the victim's membership (or presumed membership) of a racial group, **or**
- the offence was motivated (wholly or partly) by hostility towards members of a racial group based on their membership (or presumed membership) of that group.

Please Note: Both the definition and the legislation refer to **hostility, not hatred**. There is no statutory definition of hostility and the everyday/dictionary definition is applied. Hostility can be viewed as encompassing a broad spectrum from unfriendliness to hatred.

The two limbs within CJA 2003 and CDA 1998 use the same terminology. The demonstration of aggravation needs to occur at the time of the offence or immediately before or after. 'Immediately before or after' can encompass a period of up to 15 minutes: *R v Babbs [2007] EWCA Crim 2737*. An offence can be motivated by hostility in the absence of the target of that hostility and can impact on friends or associates or even members of the public.

3. VICTIM AND WITNESS SUPPORT

At the earliest opportunity, consider the need for special measures, particularly where the victim may feel especially intimidated due to the nature of the offending or the fact that the defendant is known to the victim. Consider holding an early special measures discussion with the police to identify the victim's needs/preferences in relation to special measures. Under the revised Victims Code victims of hate crime are defined as victims of the most serious crime and are entitled to an enhanced service.

4. ACCURATE RECORDING AND EFFECTIVE MONITORING

Flagging a case as a racial crime puts the prosecutor on notice that someone at some stage - victim, witness, police or prosecutor - has perceived that the incident that gave rise to the charge had a racial element.

Prosecutors must adopt a proactive approach to seeking further information from the police to help them to decide if a case may properly be prosecuted as a racially aggravated offence or if there is evidence that should be presented to the court at sentence.

The appropriate monitoring code can be found alongside other global monitoring flags on the following screens on CMS:

- Case Registration
- Pre-charge and Case Analysis

- Case Review
- Finalisation

It is important for case file notes to identify that the case is racially aggravated and for instructions to prosecuting advocates to make reference to any evidence of hostility at the earliest opportunity, usually first hearing. CMS letters are available for this. Where appropriate, evidence supporting the application of s145 of CJA 2003 should be highlighted to the court for the purposes of sentencing. The intention to do this should be recorded on CMS (charge and/or review screens). The Court's decision regarding a sentence uplift in cases with specific CDA 1998 charges or those where CJA 2003 s145 applies, should be clearly recorded on the HRS and the finalisation screen on CMS.

5. PRACTICE LESSONS

Be alert for so-called trigger events which can be international or domestic in nature. The EU referendum created hostility towards many EU nationals including those from the Roma community. Local consideration of planning applications for official Gypsy, Roma and Traveller sites and the use of unofficial encampments, can also trigger online and offline activity, some of which may become criminal. In addition, when reviewing cases consider the following: (The list is not exhaustive):

- a) **Incident - evidence of:**
- derogatory or racist abuse e.g. "gyppo", "pikey," "knacker";
 - threats of violence towards encampments involving criminal damage and arson;
 - reference to the holocaust such as gas; gas chambers; Nazi insignia such as swastikas used in graffiti;
 - cruelty, humiliation or degradation involved;
 - any focus on cultural identity e.g. caravan or trailer; gypsy chakra or wheel; horses;
 - reference to religion or assumed religion in connection with Irish Travellers and Roma.
- b) **Offenders - evidence of:**
- hostility displayed by the perpetrator;
 - previous incidents involving the victim and / or offender;
 - potential bad character application;
 - nature and location of previous incidents.
- c) **Race - consider:**
- what is the actual or perceived race involved?
 - was the offence(s) wholly or only in part motivated by hostility?

- charging the more serious intentional harassment, alarm or distress offence (s4A POA 1986) rather than the straightforward s5 (or the racially aggravated alternatives) where there is evidence of directed, racially abusive language;
 - was the actual/perceived race completely co-incidental?
 - is there evidence to suggest that this is **NOT** a hate crime?
- d) **Support needs - consider:**
- the need to address potential suspicion with which criminal justice system is viewed generally;
 - the need to take account of possible cultural clashes between the travelling life and that of the fixed time and place legal system;
 - the need for special measures on the grounds of fear or distress;
 - the need for further action or information from external partners Housing / Social Care etc;
 - any communication preferences;
 - the need for ongoing protection e.g. s5 or 5A Restraining Order (taking into account the victim's views), Criminal Behaviour Orders etc.
- e) **Views - consider:**
- Victim Personal Statement;
 - Views on safety of victim/family;
 - Community Impact Statement.

If the case needs strengthening regarding the evidence of hostility or victim support needs, provide a detailed action plan on the MG3.