

# Response to Online Harms White Paper

July 2019

## About the National Secular Society

1. The National Secular Society works for the separation of religion and state, and for equal respect for everyone's human rights so that no one is either advantaged or disadvantaged on account of their beliefs. We regard secularism and freedom of expression as essential features of a fair and open society.

## Opening remarks

2. We welcome the opportunity to respond to the Online Harms White Paper. The National Secular Society works to challenge extremism and hatred, which are forces that pose a serious threat to social cohesion, equality, democracy and liberty. We therefore welcome many of the actions the government proposes to take to tackle online radicalisation and extremism.
3. While we consider most of the proposals in the White Paper beyond our remit, we would like to respond to the specific section on Hate Crime (pp. 68-69, paragraphs 7.16-7.19), as there are elements of this section that causes us some concern.

## Definintion of 'hate crime'

4. The White Paper defines 'hate crime' in paragraph 7.16 as follows:

*"Hate crimes include crimes demonstrating hostility on the grounds of an individual's actual or perceived race, religion, sexual orientation, disability or transgender identity."*

Paragraph 7.16 also states: *"...the government has made clear that offending online is just as serious as that occurring offline"*.

5. We are concerned that these statements are causing, and will continue to cause, confusion as to what constitutes a 'hate crime'.
6. It is clear to us that incidents of assault, vandalism, harassment and other crimes in which a specific victim is targeted because of their perceived race, religion, sexual orientation, disability or transgender identity fit comfortably within this definition. However, there appear to be other incidents where simply the act of "demonstrating hostility" towards an individual because of one of the characteristics listed above are reported as hate crimes, and may subsequently be treated as hate crimes by police.
7. Because "demonstrating hostility" is a very broad term, treating all incidents in which an individual demonstrates hostility toward another individual based on the above

characteristics as hate crimes in and of themselves has the potential to severely affect freedom of speech.

8. For example, a Christian who preaches that gay people will go to Hell could be charged with a hate crime, because this could be considered “demonstrating hostility” toward gay people, even if a particular gay person is not specifically targeted. This would curtail freedom of expression and freedom of religion or belief.
9. Likewise, a person who strongly criticises religion in a blog is at risk of being charged with a hate crime, because this could be considered “demonstrating hostility” toward religious people. This would again lead to a severe chilling of freedom of expression.
10. The statement that “offending online is just as serious as that occurring offline” makes it even more likely that incidents in which individuals “demonstrate hostility” toward people with one of the listed characteristics could be treated as hate crimes. This is because offenders are far more limited in what they can do to commit a hate crime online than offline. It is impossible to assault a person or vandalise their property online, for example.
11. Therefore, the statement that “offending online is just as serious as that occurring offline” could easily be interpreted as making ‘hostile’ statements online, such as via a video, blog or social media, is in itself criminal.
12. One example of this is the case of a man, thought to be Terence Howarth, who was arrested on suspicion of committing a hate crime after publishing a video on Facebook of himself making fun of Islamic prayer in a hospital prayer room. Inspector Stuart Maley-Jones, of Greater Manchester Police’s Bolton District, commented:

*“Hiding behind a computer screen does not equate to being above the law and I would like to take this opportunity to stress that we are committed to bringing those who spread hatred in this way to justice.”<sup>1</sup>*

It is clear from this statement that the very act of mocking Islamic prayer via Facebook was considered by the police a hate crime in itself. We find it extremely concerning that a man could be arrested for merely mocking religious practices; in the video, he did not at any point call for any crimes to be committed to Muslims, and did not appear to commit any other acts that could be considered criminal such as vandalism.

13. It should be noted that numerous threats of death and violence were publically made towards Terence Howarth via Facebook since the incident. This included posts that shared Howarth’s home address and encouraged people to seek out Howarth and assault him. The NSS reported these comments to Greater Manchester Police, but to our knowledge no action was taken. We are deeply concerned that the police appeared more interested in arresting a man for publishing a video mocking religion than arresting those who make serious and credible threats of death and violence.

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<sup>1</sup> <https://theworldnews.net/gb-news/man-30-arrested-on-suspicion-of-inciting-racial-hatred-after-inflammatory-video>

## Fulfilling the duty of care

14. We are very concerned by this statement in 7.19 regarding some of the areas the regulator is expected to include in a code of practice:

*“Guidance to companies to outline what activity and material constitutes hateful content, including that which is a hate crime, or where not necessarily illegal, content that may directly or indirectly cause harm to other users – for example, in some cases of bullying, or offensive material.”*

15. We find it troubling that a government regulator will expect online platforms to control and censor “not necessarily illegal” content, as this could overly restrict freedom of expression. It seems disproportionate that an online platform could potentially break the law for failing to censor content that is not illegal.

16. We are particularly concerned about the inclusion of “offensive material” in the examples of “not necessarily illegal” content that companies may be forced to censor. Whether or not material is “offensive” is an entirely subjective matter.

17. For example, certain references to religion can be regarded as “offensive” or “blasphemy” by some religious people. Censoring all content that could be considered “offensive” to some religious people would severely restrict freedom of expression, including the freedom to criticise or satirise religion. It would essentially act as a de-facto blasphemy law.

18. This proposal could also restrict freedom of religion or belief. Many religious organisations and individuals express views that others may find offensive. A religious group that says only opposite-sex marriage is valid may offend LGBT people, or a religious group may offend another religious group by expressing differing opinions on doctrine. Freedom of religion or belief crucially includes non-belief; an atheist could offend a religious person by expressing their non-belief in God. Censoring non-illegal “offensive” content could result in a curtailment of freedoms of both religious and non-religious people.

19. We are also concerned about the implications of this statement referring to the areas where the government expects the regulator to include in a code of practice:

*“An expectation that companies will continually review their efforts in tackling hateful material and adapt their internal processes accordingly, to drive continuous improvement.”*

While this may seem benign and even positive at face value, compelling companies to demonstrate “continuous improvement” could simply result in companies becoming increasingly censorious in order to avoid penalties from the regulator, creating greater and greater restrictions on free expression. It may encourage companies to develop a ‘knee jerk reaction’ to certain content. For example, if a particular issue becomes prominent in the media, companies may decide to increase censorship of content relating to that issue simply as a reaction to the social climate.

20. For this reason, if demonstrating “continuous improvement” is to be an area that companies must comply with, it must include a demonstration of protecting free speech and balancing this against other concerns, rather than merely increasing censorship.
21. Whilst it is necessary to confront and challenge hateful speech and behaviour, efforts to do so must not undermine the precious and essential fundamental right to speak freely. The Government must not treat the civil liberties of British citizens as an afterthought in its efforts to tackle online harms.

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*This consultation was prepared by  
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