



Joint Guidance for Candidates in Elections



College of Policing

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1. Following the recommendation by the Committee for Standards in Public Life, the National Police Chiefs' Council, the Electoral Commission, the College of Policing and the Crown Prosecution Service have jointly developed guidance about behaviour which candidates in elections may experience during a campaign which is likely to constitute a criminal offence.
2. There is no requirement or expectation for a person reporting an allegation of crime to have knowledge of the criminal law. This guidance is intended simply to assist candidates to recognise conduct which may or may not be caught by the criminal law, in order to inform and assist them in any contact they have with the police and potentially the wider criminal justice system. In any circumstance where a candidate in an election believes that a criminal offence has been committed, they are encouraged to report it to the police.
3. The police are responsible for investigating an allegation that a criminal offence has been committed. Following investigation, the decision whether to charge a person with a criminal offence lies either with the police or the CPS: [the Director's Guidance on Charging 5th edition](#) sets out the detail of the process of making a charging decision. Any decision to prosecute must be taken in accordance with the [Code for Crown Prosecutors](#). A prosecution may only be commenced where (i) there is sufficient evidence for a realistic prospect of conviction for the offence alleged, and (ii) a prosecution is required in the public interest. The police may only submit a case to the CPS for a charging decision where they themselves are satisfied this two-stage test is met.
4. This guidance cannot cover every eventuality but intends to address in outline some of the possible criminal offences a candidate in an election may encounter. This guidance should not be treated as legal advice nor is it meant to be an exhaustive account of these areas of law.

Public order offences

5. These offences contrary to the Public Order Act 1986 relate to threatening, abusive or insulting words or behaviour, or distribution or display of visible representations, which:
 - a. Are likely to cause fear of, or to provoke, immediate violence: [section 4](#)
 - b. Intentionally cause harassment, alarm or distress: [section 4A](#)
 - c. Are likely to cause harassment, alarm or distress (threatening or abusive only words or behaviour only): [section 5](#).
6. It is a defence to section 4A and section 5 for the accused to demonstrate that their conduct was reasonable, which must be interpreted in accordance with the freedom of expression and other freedoms. If these freedoms are engaged, a justification for interference (by prosecution) with them must be convincingly established. A prosecution may only proceed if necessary and proportionate.

7. For further details, see the CPS published guidance [here](#).

Criminal damage

8. Where a person destroys or damages any property belonging to another person, they are guilty of [criminal damage](#) if they intended by their actions to destroy or damage the property, or if they were reckless in doing so, contrary to section 1(1) Criminal Damage Act 1971. “Reckless” means proving that the person foresaw a risk that the property would be destroyed or damaged and nonetheless went on unreasonably to take that risk. The defence of [lawful excuse](#) is available if a suspect honestly believes that a person, who would be entitled to consent to the destruction or damage, had actually consented or would have consented to it, or that the destruction or damage was in order to protect other property which was in need of immediate protection and the means of protection was reasonable. An aggravated form of the offence is committed if the suspect intends or is reckless as to whether life will be endangered by the destruction or damage to property.

Assaults

9. In ascending order of seriousness, the most common offences of assault are: battery; assault occasioning actual bodily harm; inflicting grievous bodily harm; causing grievous bodily harm with intent to do so. The [CPS legal guidance](#) outlines these offences and the considerations relevant to deciding the level of charge. [Self-defence](#) or defence of another is a defence to a charge of assault, where a person honestly (even if mistakenly or unreasonably) believes in the need to defend themselves or another and uses reasonable force on the facts as they believe them to be.

Harassment and stalking offences

10. The [offence of harassment](#) contrary to the Protection from Harassment Act 1997 is committed where a person engages in a course of conduct which amounts to the harassment of another person, and they know it amounts to harassment or they ought to know. “Course of conduct” is a fact-specific assessment. It requires behaviour on more than one occasion but this need not be the same behaviour on each occasion. A phone call, face-to-face meeting, e-mail or tweet are different types of behaviour, but when taken together could be considered to amount to a course of conduct depending on factors such as the number of occasions and the period over which this took place. Behaviour which begins as a legitimate complaint or inquiry may turn into harassment if unreasonably prolonged or persistent. Conduct which is targeted at a small group of people can also amount to harassment, for example behaviour towards a campaign team intended to influence the candidate.
11. Again, it is a defence to prove the conduct was reasonable which must also be interpreted in accordance with the freedom of expression and other freedoms. If these freedoms are engaged, a justification for interference with them (by prosecuting) must be convincingly established. A prosecution may only proceed if necessary and proportionate.

12. The [offence of stalking](#) is committed when the harassment amounts to stalking, a non-exhaustive list of examples of which are:
 - a. Following a person;
 - b. Contacting, or attempting to contact, a person by any means;
 - c. Publishing any statement or other material –
 - i. Relating or purporting to relate to a person; or
 - ii. Purporting to originate from a person;
 - d. Monitoring the use by a person of the internet, email or any other form of electronic communication;
 - e. Loitering in any place (whether public or private);
 - f. Interfering with any property in the possession of a person;
 - g. Watching or spying on a person.

13. For further details, see the CPS published guidance [here](#).

Hate Crime

14. Sections 28 to 32 of the [Crime and Disorder Act 1998](#) provides that, where a series of existing offences – including assault, criminal damage, stalking, harassment and public order offences – are committed, and such an offence (i) was motivated by hostility to race or religion, or (ii) was accompanied by hostility to race or religion proximate to the commission of the offence, that a separate racially or religiously aggravated offence is committed attracting a greater penalty. For further details, see the CPS published guidance [here](#).

15. For those offences not covered but where hostility or hostile motivation towards race or religion is [present](#), or hostility or hostile motivation towards disability, sexual orientation or transgender is [present](#), this must be treated as an aggravating factor at sentence and stated as such in open court: sections 145/146 Criminal Justice Act 2003.

Communications Offences

16. [Section 1](#) of the Malicious Communications Act 1988 and [section 127](#) of the Communications Act 2003 criminalise the sending of certain communications including those alleged to be indecent, grossly offensive or menacing.

17. “Menacing” means creating a sense of apprehension or fear in the likely recipient. There is a high threshold to meet the objective test of whether or not the communication is “grossly offensive”. A prosecution is only viable where the communication in question crosses the high threshold necessary to protect freedom of expression, even unwelcome freedom of expression, particularly in the course of robust political debate. Communication which is merely any one of the following, is likely to be protected as freedom of expression:
 - a. Offensive, shocking or disturbing; or
 - b. Satirical, iconoclastic or rude comment; or
 - c. The expression of unpopular or unfashionable opinion about serious or trivial matters, or banter or humour, even if distasteful to some or painful to those subjected to it; or

- d. An uninhibited and ill thought-out contribution to a casual conversation where participants expect a certain amount of repartee or “give and take”.
18. A prosecution is only likely to be viable where a communication goes beyond the above. This is with reference to “contemporary standards... the standards of an open and just multi-racial society”, assessing whether the particular message in its particular context is “beyond the pale of what is tolerable in society”.
19. For further details, see the CPS published guidance [here](#).

Election offences

20. The provisions of the Representation of the People Act 1983 (RPA 1983) provides for the offence of making or publishing a false statement of fact about a candidate’s personal character or conduct, contrary to [section 106](#).
21. The false statement must be in relation to the candidate’s personal character or conduct, rather than their political views, reputation or criticism of their public acts. It is a defence for the maker to show they had reasonable grounds for believing and did believe that the statement was true. The offence is only committed where it is “for the purpose of affecting the return of any candidate at the election” and therefore only relates to conduct during an election period. Note that the RPA 1983 provides for other offences for misconduct during an election period.

Conclusion

22. The application of the law is in each case fact- and context- sensitive which must be borne in mind when applying general guidance to real life situations. Most of the words which constitute the key elements of these offences (e.g. threatening; hostility; intention; course of conduct; grossly offensive) are not terms of art and have no specific legal meaning. Their ordinary, everyday meaning applies which may assist consideration of whether an offence has been committed or not.
23. If a candidate in an election believes that a criminal offence has been committed, they are encouraged to report it to the police, but this guidance may assist when a candidate has contact with the police or the wider criminal justice system.
24. The CPS has also issued [additional information](#) for parliamentarians on responding to intimidating behaviour.
25. Please visit for further information <https://www.cps.gov.uk/verbal-abuse-and-harassment-public>