

Section Five

Consequences of Sectarianism



Top Tip

Try and be as creative and imaginative as possible when using the legislation.

CfE Experiences & Outcomes: HWB 3-09a

Sectarianism and the Law

OUTCOME: To introduce the group to changes in the law in Scotland..

MATERIALS: Information on current legislation
Criminal Justice (Scotland) Act 2003 (section 74)
Employment Equality (Religion or Belief) Regulations 2003
Human Rights Act 1998
Scotland Act 1998
Football Banning Orders
Equalities Act 2010
Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012

METHOD:

- Ask participants if they are aware of how the law views sectarianism. Give a brief overview of current legislation. Use appropriate legislation highlighting section 74 of the Criminal Justice (Scotland) Act 2003.
- Ask participants to discuss the positive and negative implications that the legislation has on sectarian crimes.
- Introduce Football Banning Orders as a point of discussion. Again discussing what the positive and negative aspects of these are.

TIME: 30 minutes

The Law

Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012

The Bill for this Act of the Scottish Parliament was passed on 14 December 2011 and received Royal Assent on 19 January 2012. The Act criminalises behaviour which is violent, threatening, hateful or otherwise offensive. This can be anywhere but especially at football matches where it is also offensive to sing or chant sectarian songs. According to the Act it is also a criminal offense to threaten violence or make threats that are intended to incite another religion.

The jail term for a sectarian offence can be up to five years, but can also be more depending on the severity of the offence committed.

Types of offensive behaviour and communications:

- expressing or inciting religious, racial or other forms of hatred;
- threatening or offensive behaviour;
- threats of serious harm intended to cause fear and alarm, or reckless as to whether it does;
- implied threats (e.g. bullets or images depicting serious harm);
- it will be a defence that the behaviour was in the situation “reasonable”, to ensure that artistic performance etc. are excluded.

Equalities Act 2010

Legislation for the purpose of equal opportunities is reserved to the UK Government at Westminster. The Equality Act 2010 brought previous equality legislation into one place. The main purpose of this law is to ensure that people are not treated unfairly at work or when using services because of a 'protected characteristic'.

The protected characteristics named in the Equality Act 2010 are:

- age
- disability
- gender reassignment
- marriage and civil partnership
- pregnancy and maternity
- race
- religion or belief
- sex
- sexual orientation

Sectarianism can connect to religion or belief. This can be classed as a hate crime.

The Equalities Act also defines discrimination and sets out duties for public bodies.

The Act's definition of discrimination includes direct discrimination, indirect discrimination, harassment and victimisation. It is under equality legislation that people have a right not to be discriminated against in areas such as employment, education, access to goods and services and the exercise of public functions. The legislation also sets out enforcement procedures to help people to obtain their rights.

In addition to individual rights, equality legislation has introduced a public sector equality duty in order to make public authorities pro-active in tackling discrimination.

The public sector equality duty has a two tier structure – a general duty set out in the Equality Act 2010 and specific duties set out in Regulations made by Scottish Ministers. The purpose of the specific duties is to enable the better performance of the general duty.

The general duty in the Equality Act 2010 requires public authorities to have 'due regard' to the need to:

- a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act;
- b) advance equality or opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Specific Duties set out in Regulations made by Scottish Ministers and apply to many Scottish public authorities.

Football Banning Orders 2006

Football Banning Orders were introduced in the Police, Public Order and Criminal Justice (Scotland) Act 2006. (1 September 2006)

Football Banning Orders can ban violent or abusive trouble-makers from games and associated flashpoints, across the UK and abroad, for up to 10 years.

Football Banning Orders work in two ways:

1. A court can impose a banning order on an individual convicted of a football-related offence instead of, or in addition to, any sentence the court could impose for the offence. Banning Orders imposed following conviction can last up to 10 years.
2. A summary application can be made by a Chief Constable to the sheriff court for a football banning order to be imposed against an individual whose behaviour has given cause for concern, although there may not be enough evidence to mount a criminal prosecution. Banning orders imposed without conviction can last up to three years.

The orders can ban abusive trouble-makers not only from football grounds themselves but also from associated flashpoints, such as bars which are popular with fans, town centres or railway stations.

An order can have far wider implications than merely stopping people from attending games – an offender subject to an order can find that their personal liberty is severely restricted – they may be prevented from travelling abroad, and can be excluded from many public places.

Criminal Justice (Scotland) Act 2003

The Criminal Justice (Scotland) Act 2003 is a wide-ranging act covering a variety of criminal justice-related issues. It includes a section 74, a provision on offences aggravated by religious prejudice.

Section 72 (2) specifies that an offence is aggravated by religious prejudice if:

- a) at the time of committing the offence or immediately before or after doing so, the offender evinces towards the victim (if any) of the offence, malice or ill-will based on the victim's membership (or presumed membership) of a religious group, or of a social or cultural group with a perceived religious affiliation; or
- b) the offence is motivated (wholly or partly) by malice or ill-will towards members of a religious group, or of a social or cultural group with a perceived religious affiliation, based on their membership of that group.

Section 75 (6) provides that membership of a group includes association with members of that group, and 'presumed' membership is the presumption of the offender that the person(s) is a member of a particular group.

'Religious group' is defined at Section 74 (7) as being; 'a group of persons defined by reference to their:

- a) religious belief or lack of religious belief;
- b) membership of or adherence to a church or religious organisation;
- c) support for the culture and traditions of a church or religious organisation; or
- d) participation in activities associated with such a culture or such traditions.

Section 74 provides that where a criminal offence is aggravated by religious prejudice the court must take into account that aggravation when determining the appropriate sentence for the criminal offence. An aggravated offence can attract a higher penalty than the offence committed without aggravation. This is because the court must take into account the proved aggravation when selecting a sentence. It should be noted that the initial offence must be proven to have occurred before the aggravation can be taken into consideration. There is no standalone offence of religious prejudice. However, it is not necessary for the aggravation to be corroborated (that is, two sources of evidence). A single source of evidence is sufficient proof of the aggravation although corroboration is still required for the offence itself.

Employment Equality (Religion or Belief) Regulations 2003

The EU Directive (2000/78/EC) of 27 November 2000 (known as the Framework Directive or the Employment Directive) established a general framework for equal treatment in employment and occupation. It provides for equal treatment in employment on grounds of religion or belief, sexual orientation, disability and age. Directives must be transposed into national law, and the UK complied with this requirement by making the Employment Equality (Religion or Belief) Regulations 2003 (SI 2003/1660), which came into force in Scotland, England and Wales in December 2003 (Northern Ireland having prohibited religious discrimination since 1989).

The Regulations make it unlawful to discriminate on grounds of religion or belief in employment and vocational training. They prohibit direct discrimination, indirect discrimination, victimisation and harassment.

Religion or belief is defined in Regulation 2 as meaning any religion, religious belief or similar philosophical belief.

Direct discrimination occurs where a person is treated less favourably than another on grounds of religion or belief. Indirect discrimination occurs where a provision, criterion or practice, which is applied generally, puts persons of a particular religion or belief at a disadvantage and cannot be shown to be a proportionate means of achieving a legitimate aim. Victimisation occurs where a person receives less favourable treatment than others by reason of the fact that he has brought (or given evidence in) proceedings, made an allegation or otherwise done anything under or by reference to the Regulations. Harassment occurs where a person is subjected to unwanted conduct on grounds of religion or belief with the purpose or effect of violating his dignity, or creating an intimidating, hostile degrading, humiliating or offensive environment for him.

Not all differences of treatment on grounds of religion or belief are unlawful. There are exceptions for differences of treatment related to national security and positive action, and for the protection of Sikhs on connection with requirements as to the wearing of safety helmets. Regulation 7 provides an exception where being of a particular religion or belief is a genuine and determining occupational requirement for a post if it is proportionate to apply the requirement in the particular case. Regulation 7 also provides an exception for employers with an ethos based on religion or belief where being of a particular religion or belief is a genuine occupational requirement for a post and it is proportionate to apply the requirement in the particular case.

The Regulations provide remedies for individuals, including compensation, by way of proceedings in employment tribunals and in the county or sheriff courts. There are special provisions about the burden of proof in those cases in regulations 29 and 32, which transfer the burden to a respondent to a case once a complainant has established facts from which a court or tribunal could conclude, in the absence of an adequate explanation, that an act of discrimination or harassment has been committed by the respondent.

Human Rights Act 1998

The Human Rights Act 1998 (HRA) incorporates the rights and freedoms set out in the European Convention on Human Rights into UK law. The rights protected include Article 9, freedom of thought, conscience and religion, and Article 14, prohibition of discrimination. Article 9 protects the freedom of thought, conscience and religion, and includes the freedom to change your religion or belief, and to manifest your beliefs, either alone or with others, in public or in private, through worship, teaching, practice and observance. Whilst freedom of thought, conscience and religion are absolute rights and not subject to any limitations, the freedom to manifest one's religion or beliefs can be limited on the grounds listed in Article 9 (2), which essentially relate to public interest considerations.

Article 14 does not provide a general right to freedom from discrimination. It provides that the rights and freedoms set out in the convention are open to all without discrimination on, among other things, religion.

Section 6 of the Human Rights Act makes it unlawful for a public authority to act in a way which is incompatible with the Convention right. A public authority includes a court and any person who exercises functions of a public nature, for example, the police, hospitals, schools, local authorities etc.

Scotland Act 1998

The Scotland Act is the law which enacted devolution by creating the Scottish Parliament and the (then) Scottish Executive. In doing this specific obligations were placed on them to observe and uphold human rights. They are also permitted to encourage equal opportunities.

Section 29 specifies:

1. An Act of the Scottish parliament is not law in so far as any provision of the Act is outside the legislative competence of the Parliament.
2. A provision is outside that competence so far as any of the following paragraphs apply:
 - d) it is incompatible with any of the Convention rights or with Community Law. This means that any law passed by the Scottish Parliament must comply with human rights (as defined in the Human Rights Act) or the law can be challenged in court as being ultra vires).

Section 57 further states:

‘(2) A member of the Scottish Executive has no power to make any subordinate legislation, or to do any other act, so far as the legislation or act is incompatible with any of the Convention rights or with Community law.’

This means that the Scottish Executive (now called the Scottish Government) must ensure that all rules, regulations and other subordinate legislation also comply with human rights. Section L2 of Schedule 5 provides that the power to legislate on equal opportunities is reserved to the UK Parliament at Westminster so the Scottish Government cannot introduce, and the Scottish Parliament cannot pass, equal opportunities legislation. Equal opportunities means the prevention, elimination or regulation of discrimination between persons on grounds of, amongst other things, religious beliefs. There are exceptions to this reservation which mean that the Scottish parliament and Scottish Ministers have competence over the encouragement of equal opportunities and the observance of the equal opportunity requirements. Equal opportunity requirements are the legal requirements. Parliament and ministers can exhort public authorities and others to adopt equal opportunity policies. The exceptions also mean that they can develop schemes to secure the better provision of services to groups who may be the subject of discrimination or legislate to require certain public authorities and office holders to have due regard to equality law.



Top Tip

Ensure the facilitator has prior knowledge of the Ladder of Prejudice before facilitating the group.

CfE Experiences & Outcomes: HWB 3-01a
HWB 3-02a
HWB 3-04a
HWB 3-05a
HWB 3-09a

The Ladder of Prejudice

OUTCOME: To create an awareness of prejudice, and how it can impact on society.

MATERIALS: Ladder of Prejudice picture (on flipchart paper)
Pens
Dotted stickers

METHOD:

- Introduce the Ladder of Prejudice and explain how each stage relates to the next. Encourage participants to make suggestions at each level. Promote discussion whilst writing each topic down and explain how seemingly 'normal' actions could be seen to be prejudiced and have negative implications.

Points of consideration:

- Speech (banter, slagging, name-calling, joking, talking behind people's back).
- Avoidance (leaving people out, not socialising with them, lack of contact).
- Discrimination (isolate people, segregation, different services, different opportunities).
- Physical attack (perhaps discuss case studies, violent attacks).
- Free speech (preaching from Ku Klux Klan, neo-Nazis).
- Extermination (discuss Holocaust or another topic if appropriate). Further information can be obtained from www.rossel.net/Holocaust06.htm

The Ladder of Prejudice

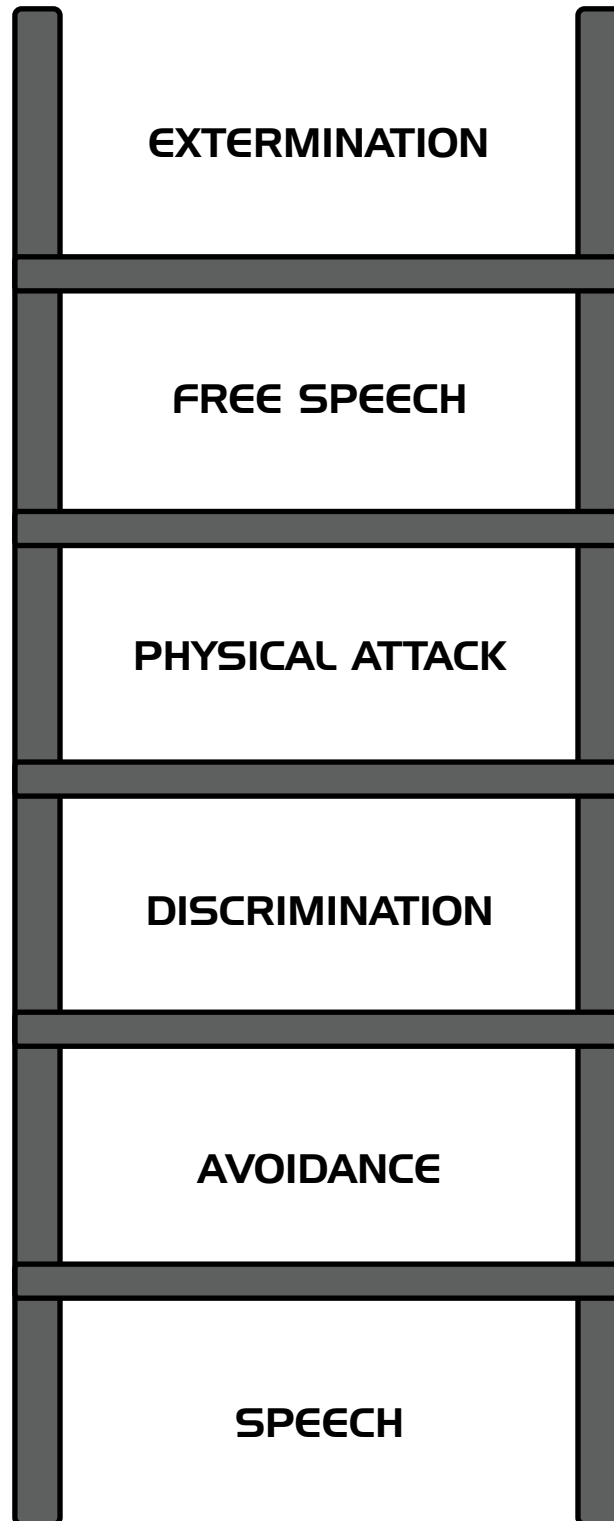
METHOD:

- Once the sections have been filled in give the participants sticky dots and ask them to put them on things that they have done either recently or in the past. Share your own experiences and participate too.
- Make connections with history and how the Ladder of Prejudice is a useful tool in displaying how prejudice can develop from seemingly trivial actions. Explain where the Ladder of Prejudice came from. (The Ladder of Prejudice is taken from a book by Gordon W. Allport 'the nature of prejudice', whereby he describes the idea of a ladder of negative actions that spring from prejudice).

TIME:

40 minutes

The Ladder of Prejudice





Top Tip

Adapt worksheet as necessary.

Can link into Ladder of Prejudice.

CfE Experiences & Outcomes: HWB 3-01a
HWB 3-02a
HWB 3-04a
HWB 3-16a

Excuses, Excuses

OUTCOME: To highlight participants responsibility for their own behaviour and actions.

MATERIALS: Excuses worksheet
Pens

METHOD:

- Ask the group individually to tick off a list of excuses they use or have used, for their behaviour/actions (if you do not want to personalise it, you could read out the statements and ask if participants know people who use or have used these excuses).
- Discuss with the group what excuses they or people they know have used (these can then be displayed on the wall). Points for discussion could include, for example, was the behaviour pre-planned or opportunistic.

TIME: 40 minutes

EXCUSES, EXCUSES

- It was just banter
- I was pissed/stoned
- I was bored
- Everyone else was doing it
- They deserved it
- Nobody got hurt anyway
- I don't remember
- They provoked me
- It was too easy a chance to miss
- It feels good to get something over on someone
- You have to grab what you can out of life
- No-one's ever done me any favours
- I was just getting my own back
- It should be legal anyway
- It wasn't planned
- I get a real buzz from doing it
- I would have looked weak if I hadn't done it
- Any other you have used



Top Tip

The group can either use their own experiences or someone else's.

CfE Experiences & Outcomes: HWB 3-01a
HWB 3-02a
HWB 3-04a
HWB 3-09a
HWB 3-16a

Experiences of Sectarian Offences

OUTCOME: To explore the effects sectarian crime has on the individual and the communities we live in.

MATERIALS: Copy of handout
Pens

METHOD:

- Give participants a copy of the handout and ask them to think back over their lives to a time when they have experienced sectarian behaviours or crimes towards them. Have them write these experiences down on the handout (the group can also use someone else's experiences to avoid personalising it).
- It can also be done as a group exercise, brainstorming a particular offence or behaviour.
- Use this exercise to discuss how the effects on individuals who have experienced sectarian crime or behaviours can continue after the event and how some can be long term.

TIME: 30 minutes

Experiences of Sectarian Offences

Think back over a time in your life when you, or someone close to you, experienced or witnessed sectarian incidents.

Write down these experiences.

OFFENCE AGAINST ME	EFFECT ON ME
1.	At the time: Afterwards:
2.	At the time: Afterwards:



Top Tip

Before using this exercise as a whole make sure of the suitability for your group, especially regarding the Twitter examples.

CfE Experiences & Outcomes: HWB 3-00a

Social Media and Sectarianism

OUTCOME: To raise awareness of an individual's Digital Footprint and the consequences of posting sectarian material online through discussion.

MATERIALS: Flipchart
Pens
Access to videos: 'Digital Footprint', 'Consequences' and 'Anonymity'

METHOD:

- Ask the group what social media they use and who they think can see what they post. Use the flipchart to take a note of their answers. (The grid on the following page could also be used to do this in pairs).

Discussions around the following questions:

- What does sectarianism on social media look like? (use examples of tweets if appropriate for the group)
- Is social media a new space for sectarianism?
- What do you do if you see sectarian comments online?
- Should there be consequences for posting sectarian material online? What should they be?

- Following discussion watch 'Anonymity' video and look back at the notes from the original question – have they changed their opinion of who can see what they post?

TIME: 30 minutes

Social Media and Sectarianism

NOTE: The 'Digital Footprint' video features Police Scotland providing information on what happens to what is posted online and what the consequences are for posting sectarian material online. The 'Consequences' and 'Anonymity' videos feature other young people and their thoughts on sectarianism and social media.

What is social media and how do we use it?

SOCIAL MEDIA WEBSITES:	HOW DO WE USE THEM?
WHO CAN SEE MY POSTS?	WHAT ARE THE DANGERS?

 **Kevin Kennedy** @KevinKennedy Follow

Heading to mass on paddys day because your a [#proudatholic](#) [#fucktheprods](#) [#hontheparish](#)

Reply Retweet Favorite More

FAVORITES
6 

3:49 AM - 17 Mar 2013



 **Kevin Kennedy** @KevinKennedy Follow


Ash Wednesday. Otherwise known in Protestant communities as "spot the Fenian day"

Reply Retweet Favorite More

RETWEETS 14 FAVORITES 24 


8:57 AM - 5 Mar 2014

 #FuckthePope 



 **John O'Connell** @JohnOConnell · Mar 3


Fucking February was gash, March has been even shiter [#fuckthepope](#)

Collapse Reply Retweet Favorite More

FAVORITES
2 


1:05 PM - 3 Mar 2014 · Details

 #Upthera 

 **Kevin Kennedy** @KevinKennedy · Mar 3

Every now and again, I'll remember that I'm a quarter Irish and just feel sick [#UpTheRa](#)

Collapse Reply Retweet Favorite More

FAVORITE
1 

2:28 PM - 3 Mar 2014 · Details

 **Kevin Kennedy**

i made a comment asking is any taigs were killed in the helicopter crash hahaha xxxxxxx

1 hour ago · Like ·  1