



HATE CRIME

Public statement on prosecuting
homophobic, biphobic and
transphobic hate crime

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Introduction

Hate crimes often have a disproportionate impact on the victim because they are being targeted for a personal characteristic. We recognise that hate crime not only impacts the individual victim but also the wider community. Hate incidents as one-offs or a related series of events can send reverberations through communities, just as they can reinforce established patterns of prejudice and discrimination. This is why it is so important for hate crime to be prosecuted effectively.

Our policy is to:

- Identify crimes involving hostility on the basis of sexual orientation or transgender identity as early as possible.
- Build strong cases with our partners that satisfy the tests within the [Code for Crown Prosecutors](#).
- Remind the court of its power to increase the sentence under s.66 Sentencing Act 2020 (s.66 SA 2020) where there is evidence of hostility based on sexual orientation or transgender identity or presumed sexual orientation or transgender identity, including minor offending.
- Recognise that crimes of stirring up hatred based on the grounds of sexual orientation are by their very nature highly sensitive. For this reason, and to ensure a consistent approach, all such cases will be considered by our Special Crime and Counter Terrorism Division. No charges can be brought without the consent of the Attorney General.
- Support victims and witnesses to give their best evidence.
- Work closely with the police, criminal justice agencies, academics, community stakeholders and other bodies to continuously refresh our understanding of homophobic, biphobic and transphobic crime and to improve our response to it.
- Improve awareness of homophobic, biphobic and transgender hate crime.
- Monitor the implementation of this policy.

When deciding whether it is in the public interest to prosecute homophobic, biphobic and transphobic hate crimes, our prosecutors must have regard to the Code for Crown Prosecutors. The Code states that where the offence was motivated by any form of discrimination, including against the victim's sexual orientation or gender identity or whether the suspect demonstrated hostility towards the victim based on sexual orientation or gender identity, the presence of any such motivation or hostility will mean that it is more likely that a prosecution is required.

Monitored homophobic, biphobic and transphobic crime

In order to identify cases involving homophobic, biphobic or transphobic hostility, we have agreed with the police a shared definition. This definition is wider than the legal definition of a hate crime within the SA 2020 to ensure we capture all relevant cases:

“Any incident/crime which is perceived by the victim or any other person, to be motivated by hostility or prejudice towards a person because of their sexual orientation or transgender identity or perceived sexual orientation or transgender identity by the victim or any other person.”

It is important that relevant incidents are identified as hate crimes as early as possible. This will assist the police to obtain the best available evidence in order to support the aggravating factor at court and at sentence.

Once a case has been flagged as a hate crime and received by the CPS, it is CPS policy not to remove the flag for any reason other than administrative error. This signals the CPS commitment to treat all such crimes seriously and to accept the victim’s perspective, even where we are unable to identify sufficient evidence to prosecute the case as a hate crime.

The legal framework for homophobic, biphobic and transphobic crime

1. Sentence uplift under s.66

S.66 SA 2020 gives the court the power to increase the sentence of any offence that is aggravated by hostility on the grounds of sexual orientation or transgender identity. An offence will be homophobic, biphobic or transphobic if:

- At the time of committing the offence, or immediately before or after doing so, the offender demonstrated towards the victim of the offence hostility based on the sexual orientation (or the presumed sexual orientation) of the victim or the victim being (or being presumed to be) transgender; or
- The offence is motivated (wholly or partly) by hostility towards persons who are of a particular sexual orientation or who are transgender.

Both the SA 2020 and the police/CPS definition refer to hostility, not hatred. There is no statutory definition of hostility and the everyday or dictionary definition is applied, encompassing a broad spectrum of behaviour.

For more information about the nature of homophobic, biphobic or transphobic crime, see the related [prosecution guidance](#).

2. Stirring up hatred on grounds of sexual orientation

Part 3A Public Order Act 1986 covers stirring up hatred on the grounds of sexual orientation, whether towards persons of the same sex, the opposite sex, or both. As with all hate crime, any initial report to the police will be assessed by applying the police/CPS definition of what constitutes a hate incident/crime, before more detailed consideration of the evidence and charging options.

We acknowledge that people have a right to freedom of speech. It is essential that in a free, democratic and tolerant society that people are able to exchange views, even when these may cause offence.

However, we will balance the rights of an individual to freedom of speech and expression against the duty of the state to act proportionately in the interests of public safety, to prevent disorder and crime and to protect the rights of others.

Stirring up hatred is committed if a person uses threatening words or behaviour, or displays any written material which is threatening, if he intends thereby to stir up hatred on the grounds of sexual orientation. Threatening is the key word, and the offence is not committed by words or behaviour that is abusive or insulting. It covers behaviour such as making a speech, posting material online, displaying a poster, performing a play or broadcasting on the media.

Stirring up hatred on the grounds of sexual orientation is limited to threatening words or behaviour and we have to prove intent. Additionally, there is a freedom of expression defence contained in Section 29J, but no corresponding statutory defence for the racial offence. Any prosecution for the offence of stirring up hatred on the grounds of sexual orientation requires the consent of the Attorney General. For more information, see the prosecution guidance referred to above at page 2.

There is currently no offence of stirring up hatred on the grounds of transgender identity.

3. The Gender Recognition Act 2004

We acknowledge that in certain circumstances, breaches of s.22 of the Gender Recognition Act 2004 could be motivated by hostility and be considered as hate crimes.

It is an offence under this section of the law, for a person who has acquired 'protected information' in an 'official capacity' to disclose the information to any other person. Protected information under the law relates to information regarding the gender status of the individual before his or her acquired gender. Where the victim perceives a disclosure to be, at least in part, motivated by hostility on the grounds of transgender identity, the police should seek evidence of such hostility, which may be used by the court to increase any sentence under s.66 SA 2020.

4. Those affected by homophobic, biphobic and transphobic crime

The Public Order Act 1986 confirms that "hatred on the grounds of sexual orientation" means hatred against a group of persons defined by reference to sexual orientation whether towards persons of the same sex, the opposite sex or both. The CPS policy relating to sexual orientation therefore covers hostility towards lesbian, gay, bisexual and heterosexual people.

Trans or transgender are terms for people whose gender identity does not correspond with their birth gender. The terms 'transgender' and 'transgender identity' are used in the hate crime legislation and include references to being transsexual, or undergoing, proposing to undergo, or having undergone a process or part of a process of gender reassignment.

Gender identity is one of the most commonly used terms to acknowledge the gender spectrum. It includes those who identify as male and female and incorporates intersex, gender nonconforming or gender variance, for example those who might identify as non-gender, non-binary or gender fluid as well as those within the gender reassignment definition in the Equality Act 2010.

Where there is no or insufficient evidence to prove the element of hostility based on sexual orientation or transgender identity, prosecutors may still be able to draw the attention of the court to any other relevant statutory aggravating features at sentencing.

Younger people can often face a range of challenges when engaging with issues around personal identity and we will be alert to all the circumstances, including the particular impact for the younger victims of these offences.

Offending behaviour

Hate crime can take many forms, ranging from verbal abuse to physical and sexual assault and can include encouraging others to commit acts of violence, threats, criminal damage, harassment, stalking and anti-social behaviour. Incidents can be one-off events or form part of a series of repeated and targeted offending. The hostility may be targeted at individuals, groups, those associated with such groups, or property e.g. homes, places of work or worship, and community venues. Hate crime can occur anywhere.

Hostility and hatred might be based on misconceptions about the individual's characteristics. However, there is no need to confirm a victim's personal characteristics in order to prosecute a hate crime. Evidence of hostility based on the perpetrator's presumption of the victim's sexual orientation or transgender identity is sufficient.

We recognise that the victims of hate crime can be repeatedly targeted. We will encourage the police to investigate any previous incidents or allegations. We will bring charges that reflect the overall picture of offending or if possible make a [bad character application](#) to the court to present evidence of previous conduct towards the victim or others.

We recognise that people can be targeted for a combination of reasons, including disability, race and religion, in addition to their sexual orientation or transgender identity. Prosecutors will consider the most appropriate charges and apply to courts for an appropriate increase in sentence, based upon all relevant aggravating features.

Reporting hate crime

It is important that all hate crime incidents are reported to the police whether it's a one off or part of a pattern of repeat offending.

It is for the police to investigate the incident and to decide whether to refer the case to the CPS for a decision on whether to charge the suspect and, if so, with what offence.

The reluctance of some people to report homophobic, biphobic or transphobic incidents that they experience or witness may stem from intimidation or fear of outing. In cases of attempts at extortion and blackmail targeted at victims due to their actual or perceived sexual orientation or transgender identity, we will make sure victims are properly supported to aid a successful prosecution.

Some victims and witnesses may also fear becoming the subject of a police investigation and possible prosecution because of where they were or because of the activity they were engaged in when a crime was committed against them. Although the CPS cannot guarantee that people who commit offences will not be prosecuted, we will consider such offences in the context of what else occurred, such as a more serious crime.

Internet and social media

Hate crime can be perpetrated online or offline, or there can be a pattern of behaviour that includes both. The internet and social media in particular have provided new platforms for offending behaviour and our [revised guidance on the prosecution of cases involving social media](#) provides more detail.

In approaching online hate crime, we will:

- Recognise that modern communications technology provides opportunities for hate crime.
- Understand the internet and the changing nature of social media platforms as well as their community standards and policies for taking down material.
- Be familiar with the relevant law and referral systems.
- Be alert to the need to identify originators as well as amplifiers or disseminators.
- Prosecute complaints of hate crime online with the same robust and proactive approach used with offline offending, whilst recognising that children may not appreciate the potential harm and seriousness of their communications.
- Consider the potential impact on a targeted individual or community.
- Treat online complaints as seriously as offline complaints and encourage all to be reported to the police.

As with all hate crime offences the police will be required to seek a charging decision from us.

Criminal investigation

We adopt a proactive approach and will seek further evidence where necessary from the police, to assist in the identification of evidence of hostility or an intention to stir up hatred, to support a prosecution for a hate crime offence or an application to increase sentence.

In some cases, we may advise the police to follow up other possible lines of enquiry. This might include looking at previously reported incidents involving the same victim, or the same suspect. It may also involve seeking information or evidence from other agencies such as specialist support groups and relevant community groups.

There is no need to make enquiries as to the sexual orientation or gender identity of a complainant. The focus of an investigation should be on identifying the evidence of intent to stir up hatred on the grounds of sexual orientation, to support a hate crime prosecution, or hostility in support of an increase in sentence under s.66 SA 2020.

Charging decisions

When making charging decisions relating to homophobic, biphobic or transphobic crime, as in all cases, prosecutors must apply the [Code for Crown Prosecutors](#).

Bail

If there is a risk of danger or threats or repeat offences, we will seek to protect victims and witnesses by applying to the court to remand the defendant in custody where appropriate,

or by asking the court to impose conditions on bail where possible (for example, not to approach any named person or to keep away from a certain area).

Prosecution and sentencing

In prosecutions involving homophobic, biphobic and transphobic hostility, we will build cases that present evidence based on these aggravating factors where possible.

We will remind the court of its powers to increase the sentence under s.66. The [Sentencing Council Guidelines](#) provide an offence by offence basis on the way in which the s.66 uplift is determined. We shall draw the court's attention to a [Victim Personal Statement](#) (VPS), which gives victims an opportunity to describe the effects of the crime upon them, express their concerns and indicate whether or not they require any support. Making a VPS is entirely optional. Victims are entitled to choose whether they would like to read their VPS aloud in court, whether they would like someone else to read it aloud or whether it should be played back, if recorded, for them. A [Community Impact Statement](#) may also be made to show the impact of offending on the wider community, including the lesbian, gay, bisexual or transgender community.

We have a responsibility to assist the court in sentencing. Prosecutors will apply for appropriate additional or ancillary orders, including restraining orders and compensation for loss, injury or damage. We will always have regard to the victim's needs, including the question of their future protection.

The court has a duty to give reasons for, and explain the effect of, the sentence that it imposes.

Withdrawal

Sometimes, a victim will ask the police not to proceed any further with the case or will ask to withdraw the complaint. We will consider the impact on the victim of not proceeding, including the risk of further harm to the victim, however this does not necessarily mean that the case will automatically be stopped. Applying the Code for Crown Prosecutors, we will prosecute all cases where there is sufficient evidence; it is in the public interest to do so and there are no factors that prevent us from doing so.

Case progress – information for victims

Information on how victims of crime are kept informed of case progress can be found in the [Code of Practice for Victims of Crime](#).

Victims' Right to Review

For qualifying decisions, if a victim requests a review of our decision not to bring proceedings, or to end all proceedings, we will look again at the decision to establish if it was correct. For information on how to ask for a review of a decision see the [Victims' Right to Review guidance](#).

Support

It is important to note that the majority of homophobic, biphobic and transphobic hate crime prosecutions result in a guilty plea from defendants, reducing the need for victims and witnesses to give evidence in court. However where victims and witnesses are required to give evidence, we are committed to supporting them to give their best evidence.

Victims of hate crime are entitled to enhanced support services. Victims who are intimidated can be supported by applications to the court for [Special Measures](#). Special Measures are a series of provisions that help 'vulnerable' and 'intimidated' witnesses give their best evidence in court and help to relieve some of the stress associated with giving evidence. Special measures can include the use of screens in court so the victim or witness does not have to see the defendant, or giving evidence from a separate courtroom via a video link. These measures can help reduce stress and anxiety. Automatic reporting restrictions apply to persons under the age of 18 in cases in the Youth Court and to victims of rape and other serious sexual offences, irrespective of age. [Reporting Restrictions](#) can also be applied for in other circumstances, if specific criteria are satisfied, to protect the identity of the victim.

More information can be found on the [Victim and Witness section of the CPS website](#).

Equality Duty

We are a public authority for the purposes of equality legislation. This policy and our related legal guidance form a key part of our efforts to meet our obligations under the Public Sector Equality Duty to eliminate unlawful discrimination, harassment and victimisation of people due to their sexual orientation or gender identity and to promote equality and good relations.

Working with stakeholders

We work locally and nationally, with the police and other partners who have a role in addressing hate crime, as well as with individuals, community groups and academics with experience and expertise in relation to hate crime. This ensures that we are able to continuously refresh our understanding of the nature of homophobic, biphobic and transphobic offending and can improve our response to it.

Monitoring and Implementation

We will monitor our performance through our Hate Crime Assurance Scheme, under the oversight of our hate crime governance structures. We will also receive feedback on our performance through our local and national panels that provide scrutiny of CPS cases, decisions and policies.

Our Hate Crime Annual Report provides transparent accountability in respect to our performance.

It should be noted that the CPS can only monitor the work of the CPS.



Hate Crime Webpage

We have created a [hate crime page on the CPS website](#), to provide more detail on the CPS approach to hate crime. The webpage includes the following information on homophobic, biphobic and transphobic crime:

- The legal context of homophobic, biphobic and transphobic crime
- What happens if a victim withdraws or no longer wishes to give evidence
- Sentencing
- Implementation of the CPS Policy

