

Policy for Prosecuting Cases of Homophobic and Transphobic Hate Crime

Equality and Diversity Impact Assessment Report

BACKGROUND

The Policy for Prosecuting Cases of Homophobic Hate Crime was first launched in November 2002. The concluding paragraph of the policy statement states: *'The CPS intends to review this public statement regularly, so that it reflects current legislation and social perspectives.'* The CPS Business Plan 2007-2008 states that the Homophobic Crime Policy will be updated by July 2007.

The 2002 policy statement pre-dates statutory charging and the No Witness No Justice programme as well as other legislative changes, the most significant of which are:

- section 146 Criminal Justice Act 2003 (in force from 4 April 2005), which requires the courts to treat as an aggravating feature – for sentencing purposes - hostility based upon the sexual orientation (or presumed sexual orientation) of the victim;
- section 46 Youth Justice and Criminal Evidence Act 1999 (in force from 7 October 2004) which gives the courts the power to restrict media reports about certain adult witnesses. Applications will often be appropriate where witnesses fear “outing” and/or victimisation as a result of their details being reported in the media;
- Gender Recognition Act 2004 (in force April 2005) which allows people to apply for a gender recognition certificate and, if successful, to obtain a birth certificate in their acquired gender;
- Sexual Offences Act 2003 (in force 1 May 2004) which repealed, amongst other things, sections 12 and 13 Sexual Offences Act 1956 (buggery and indecency between men). The definition of rape was widened to include those who have surgically reconstructed male and female genitalia where a person has undergone gender reassignment surgery.

The revised policy statement takes these legislative changes into account and emphasises the CPS' commitment to deal effectively with cases of homophobic and transphobic hate crime. The policy statement is linked to the CPS' strategic theme of inspiring the confidence of the communities we serve and championing justice and the rights of victims. It sits within the CPS PSA targets set in the 2004 Spending Review which are:

- to improve the delivery of justice by increasing the number of crimes for which an offender is brought to justice; and
- to reassure the public, by reducing the fear of crime and anti-social behaviour, and building confidence in the CJS without compromising fairness.

In recent years, the CPS has developed domestic violence and racially and religiously aggravated crime prosecution policies (the latter is currently being reviewed to comply with legislative requirements). The policy for prosecuting crimes against the older person is currently being developed. This policy statement enables homophobic and transphobic hate crime to be equally recognised in line with other offences that are aggravated by racial or religious hostility or hostility based on disability.

The scope of this Equality and Diversity Impact Assessment (EDIA) is confined to the work and consultations undertaken by the CPS.

METHODOLOGY

The methodology applied in this impact assessment was based on:

- internal consultation, including the CPS Staff Networks: NBCPA, LGBT Network and Enable;
- consultation via a working group with community stakeholders;
- wider public consultation;
- analysis of qualitative responses;
- analysis of available data on the CPS COMPASS Case Management System (CMS) in relation to cases prosecuted to date.

The total number of homophobic crime cases recorded by the CPS increased from 317 cases in 2004-05 to 822 cases in 2006-07. This is a substantial increase but it is important to note that in 2004-05 the recording of homophobic crime was neither comprehensive nor in place across all 42 CPS Areas).

Whilst the volume of homophobic crime cases increased in 2005-06, unsuccessful outcomes remained constant. However, in 2006-07, unsuccessful outcomes fell to 26.5% from 29%.

Victim and witness difficulties account for approximately a quarter of all unsuccessful homophobic crime cases. Difficulties encountered include the following:

- the key victim and/or the key witness did not support the case;
- the prosecution deemed it inappropriate to compel the victim and/or witness to attend court and give evidence;
- the victim refused to give evidence or retracted his/her statement;
- other witness(es) refused to give evidence or retracted;
- the victim failed to attend unexpectedly;
- other civilian witness (es) failed to attend unexpectedly.

In 2005-06, the CPS also undertook a special themed review on the handling of homophobic crime; each of the 42 Areas was required to develop and implement an action plan to improve outcomes for homophobic crime in 2006-07. Arising from this review, 4.8% of Areas were rated green on handling of

homophobic crime; 59% of Areas were rated amber green; 36% of Areas were rated amber red. Areas implementing action plans focused on improving performance. A progress check is now underway in 2007-08. This progress check will review Areas' homophobic crime performance data for 2006-07 compared with their performance in 2005-06. At the time of the progress check: 64% of Areas were rated green; 9.5% of Areas rated amber green; 4.7% of Areas rated amber; and 14.2% of Areas rated red. Three Areas (7%) did not receive a rating as they handled less than five cases of homophobic crime during 2006-07 and therefore the review of performance outcomes for 2005-06 and 2006-07 is statistically insignificant due to the small number of cases involved in 2006-07.

In 2007, the CPS commissioned an EDIA on the charging process for hate crimes, including homophobic crime, for the period 2005-06 and 2006-07, with respect to gender, ethnicity and age of the defendant. The results indicated that there were some differences by gender: female suspects were more likely to be charged or finalised by a decision such as a caution; male suspects were more likely to have incomplete cases. The results for homophobic crime by ethnicity are too small in number for any significance to be read into the charging differences due to the very small numbers of such cases for non-white suspects. Analysis of the charging process by age showed considerable differences, although, in the case of prolific priority offenders these are not significant because of small numbers:

- young offenders were less likely to be charged;
- persistent young offenders were very much more likely to be charged and much less likely not to be prosecuted on evidential grounds;
- prolific priority offenders were much more likely to be charged but there were small numbers involved and this is not significant.

To date, transphobic crimes have not been recorded separately on CMS, but have been recorded under the Homophobic Crime 'flag'. Plans are underway to introduce a separate Transphobic Crime 'flag' on to CMS in 2008. As part of plans to introduce the recording of transphobic crime, the CPS has sought advice from a:gender on monitoring the gender identity of victims of transphobic crime.

CONSULTATION AND INVOLVEMENT

A working group was formed to oversee the revision of both the policy statement and the accompanying guidance. The working group met on two occasions and had a number of representatives from recognised LGBT support and advocacy groups. Many of the working group had been involved in drafting the original policy statement and guidance in 2002 and the continuity that they brought to the work was beneficial.

The first revision of the policy statement was sent to the working group for their comments in March. These comments were collated and then considered by the working group at a consultation meeting held in April.

Following the meeting in April a second revision of the policy statement was prepared which went out to wider public consultation. This consultation took place during the latter part of April and most of May. It was specifically targeted at LGBT contacts known to the Equality and Diversity Unit. Notice of the consultation (and copies of the associated documents) was also placed on the CPS website. The consultation was not specific to determining positive or adverse equality impacts of the policy. Seventeen responses were received from both internal and external stakeholders which informed the development of the policy statement.

A third revision of the policy statement was prepared, incorporating relevant amendments resulting from the wider consultation. A second consultation meeting was then held with the working group in June during which the third revision was considered, taking into account the comments from the wider consultation group. The final version of the revised policy statement was approved by the DPP in July and then forwarded to the Attorney General.

The revised policy statement and guidance will be launched at an event scheduled for 27 November at which the Director, Solicitor General and CPS Homophobic Crime Co-ordinators will be present.

Training sessions for recently appointed Homophobic Crime Co-ordinators are planned.

ASSESSMENT AND ANALYSIS

Positive Impact

The CPS recognises the importance of, and the need for, consistent decision-making. The criminal law exists in part to protect those who are the victims of unlawful conduct by others and the role of the CPS is to apply the criminal law and prosecute individuals where the tests set out in the Code for Crown Prosecutors are satisfied.

The development of the policy has involved a range of community groups working together to prepare a clear policy statement setting out how the CPS will handle cases of homophobic and transphobic crime. These community groups have worked together to share advice about how best to support people who become involved in the prosecution process.

The policy statement proactively promotes LGBT equality and ensures CPS compliance with the Equality Act (Sexual Orientation) Regulations 2007 which make it unlawful for a public authority involved in providing goods, facilities and services to discriminate on the grounds of sexual orientation.

The policy positively impacts on furthering equality in the provision of services to LGBT victims and witnesses and ensuring that the specific needs of LGBT victims and witnesses are addressed by prosecutors.

The policy statement ensures that offences aggravated by hostility based on sexual orientation or gender identity are brought in line with other offences that are aggravated by racial or religious hostility or hostility based on disability and ensures greater awareness of the hate crime agenda generally both internally and externally.

The policy statement clearly outlines the support available for victims and witnesses, addressing issues of anonymity, reporting restrictions and the assistance available through the Prosecutor's Pledge, Code of Practice for Victims of Crime, Witness Care Units and Special Measures.

The policy statement makes clear that perpetrators of this type of offence could come from any community and that the CPS will firmly prosecute such cases regardless of the ethnicity, gender or disability status of the perpetrator.

The policy statement also recognises the multiple discrimination that victims of homophobic crime may experience based on gender, ethnicity, age, religion or belief, or disability.

Adverse Impact

Some consultees expressed reservations about the length and language of the policy statement and indicated that there should be a more accessible version for members of the public.

The consultation revealed that there was dismay amongst members of the trans community that section 146 of the Criminal Justice Act 2003 has been drafted in such a way as to exclude crimes aggravated by hostility based on gender identity. Trans people are not, therefore, afforded the protection offered to lesbian and gay people by this legislation.

Concerns were also raised during the consultation about disclosure of a person's gender history during the investigative or court process. Section 22 of the Gender Recognition Act makes it an offence to disclose information about an application for a Gender Recognition Certificate or information which concerns the person's gender before it becomes the acquired gender. It is not an offence, however, if this disclosure is in accordance with a court order, for the purposes of court proceedings or for the prevention or investigation of crime. It was thought that the possibility of disclosure of previous gender history might deter some trans people from reporting crimes.

RECOMMENDATIONS

A leaflet summarising the key messages from the policy statement should be prepared.

It is intended to bring the lacuna in section 146 to the attention of those responsible for drafting the appropriate legislation for amendments to be made.

The concerns regarding section 22 of the Gender Recognition Act have been specifically addressed in the guidance to accompany the policy statement (paragraphs 14.9 and 14.10). This should be clearly flagged to relevant audiences when the policy statement is being promoted.

Data on charges and prosecution outcomes should continue to be analysed each quarter to identify any disproportionate impact on particular groups and communities.

**Equality and Diversity Unit
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