



# South Yorkshire and Humberside Hate Crime Scrutiny Panel

Annual Report 2009 - 2010



## **Contents of Annual Report**

1. Introduction from the Independent Facilitator
2. Introduction from the Chief Crown Prosecutors
3. What is the CPS?
4. Annual Report objectives
5. What are hate crimes?
6. Panel terms of reference
7. List of non-CPS members
8. Training for Panel members
9. Group hate crime performance data
10. Impact on CPS business
11. The way forward

## **1. Introduction from the Independent Facilitator**

I am pleased to introduce the second Annual Report from the CPS South Yorkshire and Humberside Hate Crime Scrutiny Panel (HCSP). This report follows a similar format to last year's and aims to give the reader an overview of the observations and recommendations made by the Panel over the 2009-10 financial year and the impact these have had on CPS business. For me, the Panel's feedback in relation to how the CPS communicates to victims key developments in their case stands out as having a real impact on improving public confidence in how the CPS deals with hate crime.

There have been some changes in Panel membership over the last year, which have seen some other community organisations join us, as well as the local Courts Service. We continue to aim towards a Panel that accurately reflects the wide range of concerns and experiences of our local communities.

I welcome the opportunity that the forthcoming evaluation brings to take stock of what works well and what could be improved and there will no doubt be exciting developments ahead as the Panel strives to be more effective and efficient.

**Ebrahim Dockrat MBE**

## **2. Introduction from the Chief Crown Prosecutors**

The HCSP for CPS South Yorkshire and Humberside continues to help us identify strengths and weaknesses in the way we handle hate crime cases. During the last financial year the Panel members have worked alongside us as critical friends to identify how we can improve upon the processes and practices that are in place locally. Panel members have also brought us closer to our diverse communities by sharing their experiences of working with us and challenging misconceptions.

In March 2010 the CPS published the Core Quality Standards (CQS), which outline the level of service that the public should expect from the CPS. CQS 12 states that: "We will engage with communities so that we are aware of their concerns when we make decisions". Working with the Panel helps us to fulfil this standard and it will become increasingly important if we are to understand the views and concerns of our communities and raise public confidence in our service.

We hope you will find this report, which summarises the Panel's main findings throughout the year, informative and we hope that it will provide reassurance to communities and criminal justice partners alike that we treat hate crime with the seriousness and sensitivity that it deserves.

**Barbara Petchey, Chief Crown Prosecutor, CPS Humberside**

**Naheed Hussain, Chief Crown Prosecutor, CPS South Yorkshire**

### 3. What is the CPS?

The Crown Prosecution Service (CPS) was set up in 1986 to prosecute criminal cases investigated by the police in England and Wales. The CPS is a department of central government which acts independently from the Government in accordance with statute<sup>1</sup>. The head of the CPS is the Director of Public Prosecutions (DPP), who has overall responsibility for the Service and its prosecutions. The Chief Executive, who is responsible for the administration of the CPS, assists the DPP. The DPP is superintended by the Attorney General who is accountable to Parliament for the CPS. The CPS is organised into 42 Areas across England and Wales matching police force boundaries. Each Area is headed by a Chief Crown Prosecutor who is responsible for the delivery of a prosecution service to his or her local community. Each Chief Crown Prosecutor is supported by an Area Business Manager, and their respective roles mirror, at a local level, the division of responsibilities between the DPP and Chief Executive. CPS South Yorkshire and Humberside are part of the Yorkshire and Humberside regional Group.

As the principal prosecuting authority in England and Wales, we are responsible for:

- Charging offenders in all but the most minor offences
- Providing advice on cases submitted by the police
- Where the decision is to prosecute, determine the charge in all but minor cases
- Preparing cases for court
- Presentation of cases at court.

The CPS works to prosecute cases firmly, fairly and effectively, where there is sufficient evidence to provide a realistic prospect of conviction and when it is in the public interest to do so. This is done by reviewing each case against the Code for Crown Prosecutors. The Code gives guidance on the principles to be applied when making decisions about prosecutions. It is designed to make transparent the principles applied when prosecuting crimes. The Code is a public document and is available in community languages, alternative formats and on our website at [www.cps.gov.uk](http://www.cps.gov.uk).

Although the CPS works closely with the police, we are independent of them. The independence of Crown Prosecutors is of fundamental constitutional importance. Casework decisions taken with fairness, impartiality and integrity help deliver justice for victims, witnesses, defendants and the public. More information about the CPS can be found on our website at [www.cps.gov.uk](http://www.cps.gov.uk).

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<sup>1</sup> Prosecution of Offences Act 1985

## 4. Annual Report objectives

The key objective of the Annual Report is to account for the actions taken by the Panel over the year, as well as highlighting any developments in relation to the operation or membership of the Panel. Information from the Annual Reports for each CPS Group will also be fed through to the Equality and Diversity Unit at CPS Headquarters, so that there is a national picture of what Panels are doing. This information will also be shared with all the CPS Groups, so that Panels can learn from the activities of their colleagues across the country.

## 5. What are hate crimes?

The CPS has produced separate policies and guidance for prosecutors in relation to the following hate crimes:

- Racist and religious
- Homophobic and transphobic
- Disability.

### **Racist and religious hate crime**

The CPS uses the definition of a racist or religious incident contained within the McPherson Report, which was published after the murder of Stephen Lawrence. This is: “any incident which is perceived to be racist or religious by the victim or any other person”. The Crime and Disorder Act 1998, as amended, creates a statutory definition of racial and religious aggravation, a range of racially or religiously aggravated offences and a duty for the court when sentencing to treat more seriously any offence (other than one charged as a specific racially or religiously aggravated offence) where there is evidence of racial or religious aggravation. The prosecutor must first prove that the offender committed the basic offence and then that the offence was racially or religiously aggravated.

### **Homophobic and transphobic hate crime**

A definition based on the McPherson definition has been adopted by CPS and this is: “any incident which is perceived to be homophobic or transphobic by the victim or any other person”. In April 2005 section 146 of the Criminal Justice Act 2003 was implemented. Section 146 of the Criminal Justice Act 2003 does not create any new offences but it imposes a duty upon the courts to increase the sentence for any offence aggravated by hostility based on the victim’s sexual orientation (or presumed sexual orientation). Section 146 does not, however, apply in cases where hostility is based on the victim’s gender identity or presumed gender identity.

## **Disability hate crime**

There is no statutory definition of a disability related hate crime, however, the CPS has adopted the following definition; “Any incident, which is perceived to be based upon prejudice towards or hatred of the victim because of their disability or so perceived by the victim or any other person”. In April 2005 the law was changed by section 146 of the Criminal Justice Act 2003. Section 146 did not create any new offences but it did impose a duty upon courts to increase the sentence for any offence aggravated by hostility based on the victim’s disability (or presumed disability). Therefore, when the court is deciding on the sentence to be imposed, it must treat evidence of hostility based on disability as something that makes the offence more serious. The court must also state that fact openly so that everyone knows that the offence is being treated more seriously because of this. The CPS therefore now has a duty to ensure that where there is evidence of such hostility, this is brought to the attention of the sentencing court.

## **6. Panel terms of reference**

CPS South Yorkshire and Humberside HCSP is a mechanism for ensuring transparency and accountability in decision-making in the area of racially and religiously aggravated, homophobic and disability hate crime. The Panel aims to contribute to raising the trust and confidence of our key stakeholders and communities of interest by facilitating a greater awareness and understanding of the decision-making processes of CPS via the scrutiny of randomly selected finalised racist, religious, homophobic and disability case files.

- To widen the understanding of the CPS decision-making processes in relation to hate crime
- To review and scrutinise randomly selected finalised racially and religiously aggravated, homophobic and disability case files
- To identify issues, common themes and trends in the decision-making process, looking in particular at the impact of decision-making on communities of interest
- To make reports and recommendations to the CPS Group Strategy Board in connection with issues arising from the review and scrutiny of case files
- To increase CPS South Yorkshire and Humberside Area performance on racially and religiously aggravated, homophobic and disability hate crime by acting as a critical friend in the area of hate crime training, development and delivery.

## **7. List of non-CPS members**

Ebrahim Dockrat – Independent Facilitator  
John Burke - Dial Doncaster  
Jon Lancaster – MENCAP  
Hafeas Rehman - Taxi Drivers' Association  
Hal Barraclough - a;gender  
Joanne Harris - Hull Churches Housing Association  
Maxwell Senior - Safer Communities Partnership  
Gary pounder - Hull Asylum Seekers Support Group  
Muna Faraj - Remington Youth & Community Centre  
Tina Landale – Independent Legal Advisor  
Sarah Johnson – Deputy Independent Legal Advisor  
DS Steve Talbot - South Yorkshire Police  
Andrew Pagram - Humberside Police HQ  
Philip Houlden - Court Services  
Andrew Davison - Justices Clerk

## **8. Training for Panel members**

Following a review of the Panel membership in October/November 2008 a number of training needs were identified and a development meeting took place on 30 July 2009. Community Involvement Panel members were also invited to attend to expand their knowledge and awareness of casework and to afford an opportunity for cross panel networking. The programme covered the following:

- A refresher walk through of the criminal justice system from arrest to court
- CPS hate crime policies
- The Community Prosecutor Approach
- A guide to sentencing issues
- Clarification of the purpose of the Panel and the role of the Panel members
- Guidance on disseminating lessons learned/service improvements to the public
- Agreeing a strategy for dissemination.

## 9. Group hate crime performance data

CPS South Yorkshire and Humberside are both high achieving Areas in terms of performance in relation to racist and religious crime and homophobic crime. South Yorkshire has exceeded the targets set by CPS Headquarters in all aspects of hate crime and Humberside has exceeded the targets in all but disability hate crime. Both Areas have success rates for all types of hate crime that are higher than the national averages. The following tables are taken from the national performance figures for 2009-2010:

### Successful outcome rate

Type of hate crime	Target	South Yorkshire	Humberside	National
	per cent	Per cent	Per cent	per cent
Racist & religious	82	87.1	93.8	82.4
Disability	80	91.7	78.6	75.7
Homophobic	82	90	94.1	80.6

### Number of defendants prosecuted

Type of hate crime	South Yorkshire	Humberside	National
	No.	No.	No.
Racist & religious	280	162	12,131
Disability	12	14	638
Homophobic	20	17	1,152

## 10. Impact on CPS business

A general point which was addressed related to whether prosecutors are carrying out their duty to remind the court that when sentencing for a hate crime they must increase the sentence because of the aggravating element and must state in open court that they have done so, along with stating what the sentence would have been but for the aggravation. A note has gone out to all lawyers requesting that the following information is endorsed on the file:

- Whether the court announced that it has uplifted sentence as a result of the hate crime element
- What the sentence would have been without the hate crime element
- Note instances where the court fails to do this.

Furthermore, the Witness Care Unit now includes information about sentence uplift in the letter to the victim of a hate crime explaining the outcome of the case.

The Panel has identified that the duty to continuously review a case is paramount. A number of opportunities to rectify early mistakes were missed in a number of cases because of an apparent absence of continuous review. Feedback has been given to specific prosecutors when the Panel thought it was necessary and after further investigation.

In the Panel's view, conciseness and simplicity in victim letters is the key to success. Standard paragraphs are generally unhelpful because they are often not relevant to the explanation. The Panel recommended that the inclusion of standard paragraphs should be monitored to ensure that they are being used appropriately. In response to this recommendation, all lawyers were issued with clear guidance that with immediate effect standard paragraphs are no longer to be used. The District Crown Prosecutor drafted one short paragraph which should be used to briefly explain the role of the CPS. This has led to some improvement in the quality of letters sent to victims.

Panel members raised concern about an apparent lack of support for victims with learning difficulties. This included whether intermediaries were being deployed in all cases which warranted them and one case in particular where the complainant had been subjected to a very lengthy interview without a break. This concern was raised with the relevant police force and the CPS worked with police colleagues to develop a briefing document which has now been placed on the force intranet to assist police officers dealing with such cases.

Issues concerning lack of efficiency and expedition in case management have also been raised. Panel members felt in some instances unnecessary delays have had an adverse impact on the outcome of a case. In these cases, individual feedback was provided to the staff involved in order to improve future performance.

Specifically in terms of casework Panel members advised that where lawyers have concerns that there might be difficulties at trial with the racially aggravated version of the offence, they should not hesitate to charge the simple version of the offence as well. A note was circulated to all lawyers

and their managers to discuss this issue and emphasise this learning point with their staff. By placing appropriate charges before the courts we ensure that more offences are brought to justice potentially resulting in greater victim satisfaction.

Arising from Panel discussions and actions falling to the police, a meeting was convened with South Yorkshire Police to explore joint training in relation to the identification of disability hate crimes, the investigation required, interviewing techniques and increasing public confidence in reporting hate crimes. As a result of these discussions the CPS is now working with the police to develop and deliver hate crime training.

On occasion there is insufficient evidence for the CPS to charge a defendant in the first instance and sometimes additional evidence comes to light after a defendant has been charged which undermines the prosecution case. The Panel has praised the CPS for making the decision not to charge or to discontinue a prosecution in such circumstances as proceeding with evidentially weak cases leads to disappointment for the victims and undermines public confidence.

In some of the cases scrutinised by the Panel the victim, who is a vital witness, withdraws their support for the prosecution for a variety of reasons. In such cases, the CPS must decide whether to discontinue the case or whether to continue with the prosecution regardless of the victim's wishes, which can result in the victim being compelled to attend court to give evidence. This decision requires a great degree of sensitivity and involves weighing up the reasons for the victim not wishing to proceed against the wider public interest. The Panel has commended the CPS on the decision not to compel reluctant victims to attend court in specific cases because attending court would have a significant detrimental impact on the victim.

## **11. The way forward**

Due to changes in the local CPS structure, an evaluation of both Panels within the Yorkshire and Humberside Group will take place between August and September in order to look at possible options for ensuring the Panels are as effective and efficient as possible.

We would like to thank all those involved in HCSP meetings for their continued support and commitment.

**If you would like further copies of this report or if you require this report in an alternative format please contact:**

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