

Trans Equality Statement

Trans Equality Statement

The Trans Equality Statement replaces the CPS Transgender Equality Management Guidance first produced in 2006, and last updated in 2014 with community input. In 2018, community stakeholders told us that our management guidance had served its purpose and should be replaced by a much shorter, public-facing document which set out our key commitments and linked to relevant policy, guidance and research.

The aim of this Trans Equality Statement is therefore quite simple; to provide a brief overview of key CPS commitments to Trans equality to sustain the confidence of communities.

Prosecution Policy

The CPS aims to be a world-class, independent prosecuting authority which delivers a valued public service in England and Wales, driving improvements in the criminal justice system, promoting justice and the rights of victims and inspiring confidence in the communities we serve. The Code for Crown Prosecutors is the overriding document which governs our prosecution decision-making. It states:

“It is the duty of prosecutors to make sure that the right person is prosecuted for the right offence and to bring offenders to justice wherever possible. Casework decisions taken fairly, impartially and with integrity help to secure justice for victims, witnesses, defendants and the public. Prosecutors must ensure that the law is properly applied, that relevant evidence is put before the court and that obligations of disclosure are complied with.” [\[2.5\] Code for Crown Prosecutors](#)

Every decision to prosecute must meet the evidential and public interest tests set out in the Code. When considering the public interest in a prosecution, the Code states:

“It is more likely that prosecution is required if the offence was motivated by any form of prejudice against the victim’s actual or presumed ethnic or national origin, gender, disability, age, religion or belief, sexual orientation or gender identity; or if the suspect targeted or exploited the victim, or demonstrated hostility towards the victim, based on any of those characteristics.” [4.14 c)]

The CPS recognises that when misgendering is used as a deliberate tactic during the commission of an offence, it can form the basis of a transphobic hate crime. Involuntary ‘outing’ can also have significant consequences for the individual. Against this background, the CPS recognises the need for sensitivity in the use of appropriate terminology.

Prosecutors should address Trans victims, witnesses and defendants according to their affirmed gender and name, using that gender and related pronouns in all documentation and in the courtroom.

The National Police Chiefs’ Council (NPCC) and the CPS have agreed a common definition of hate crime which is:

“Any criminal offence which is perceived by the victim or any other person, to be motivated by a hostility or prejudice based on a person’s race or perceived race; religion or perceived

religion; sexual orientation or perceived sexual orientation; disability or perceived disability and any crime motivated by a hostility or prejudice against a person who is transgender or perceived to be transgender.”

The definition is wider than the legal definition to ensure that all relevant crimes that might amount to hate crimes are reported and investigated as such.

Our Public Statement on Prosecuting Homophobic, Biphobic and Transphobic Hate Crime clarifies:

“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.”

The public statement contains a number of commitments, including to:

- identify crimes involving hostility on the basis of transgender identity as early as possible;
- remind the court of its power to increase the sentence under section 146 of the Criminal Justice Act 2003 where there is evidence of hostility based on transgender identity or presumed transgender identity;
- work closely with the police, criminal justice agencies, academics, community stakeholders and other bodies to continuously refresh our understanding of transphobic crime and to improve our response to it;
- improve awareness of transgender hate crime; and
- acknowledge that in certain circumstances, breaches of section 22 of the Gender Recognition Act 2004 (officials disclosing protected information on gender status) could be motivated by hostility and be considered as hate crimes.

An additional resource available to assist CPS prosecutors is our [Homophobic, Biphobic and Transphobic Hate Crime – Prosecution Guidance](#).

Community Engagement

The CPS [Inclusion and Community Engagement Strategy](#) supports our values, vision and organisational priorities. It is underpinned by our responsibilities under the Human Rights Act 1998 and the Equality Act 2010. The CPS has worked for a number of years with a wide range of Trans organisations nationally and locally. These organisations have helped to inform our approach and to support Trans people through the criminal justice system, for example:

- through the development of up-to-date policy statements and legal guidance;
- delivery of training programmes with a clear focus on the victim's perspective; and
- as members of National and Local Scrutiny Involvement Panels, providing feedback on the prosecution of cases involving Trans victims and defendants.

We recognise the disproportionate impact that incidents relating to having a minority gender identity can have on young people. A third of respondents to a [Government Equalities Office survey](#) who were in education in the academic year 2016-2017 experienced a negative reaction to being, or people perceiving them to be LGBT. We also acknowledge the disproportionate impact that bullying based on Trans identity can have on young people. The [Stonewall School Report 2017](#) reported that nearly two in three (64%) of Trans pupils were bullied for being Trans at school. In 2015 the CPS worked in partnership with the National Union of Teachers, Gendered Intelligence, Stonewall, the Ministry of Justice and a number of LGBT groups to develop an LGBT Hate Crime Resource Pack for schools. The resource is currently being refreshed and will be published later in 2019.

Human Resources (HR)

The CPS approach to equality is grounded in, but not limited to, our responsibilities under the Human Rights Act 1998 and the Equality Act 2010. The Equality Act 2010 imposes a general duty on public authorities, including the CPS, to have due regard in all that we do to:

- eliminate discrimination, harassment and victimisation;
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

HR Advisors are available to provide any support needed to staff. There is relevant policy and guidance including Trans Guidance for staff, line managers and HR professionals.

Our absence policy clearly states that time off due to medical or surgical procedures relating to gender reassignment is to be treated equally to time taken off for illness or injury.

HR Advisors and line managers will be available to talk with the individual about their transition and how they want to manage the process of coming out to colleagues. Above all, we will ensure that the individual is comfortable with this process.

When a CPS member of staff is arranging their transition to their affirmed gender role, they will be asked whether they would like to be referred to in their affirmed gender identity, as transgender, Trans or non-binary, or simply as transitioning. The confidential Workplace Adjustment Passport will be used to ensure that all appropriate adjustments are recorded and points for consideration are agreed. Once a person has started to work permanently in their affirmed gender role, they should be referred to in accordance with their preferences.

July 2019