

HATE CRIME

What it is and how to support
victims and witnesses



Introduction

This guide is about hate crime and how to help those who may be victims of this kind of offending behaviour. It is designed for people working in voluntary organisations, as well as frontline staff in health, housing or social welfare – in fact anyone who might be the first to hear about an incident. It accompanies a [guide to hate crime](#) for people who may be victims or witnesses of such offences.

This guide includes information on:

- [Recognising hate crime](#)
- [Recording and reporting hate crime](#)
- [Prosecuting hate crime](#)
- [Supporting victims and witnesses](#)
- [Some examples of successful prosecutions](#)

Recognising hate crime

The term ‘hate crime’ can be used to describe a range of criminal behaviour carried out by one or more perpetrators, such as verbal abuse, intimidation, threats, harassment, assault and bullying, as well as damage to property. . It can also include ‘mate crime’, where the perpetrator can be a friend, carer or acquaintance, and befriends someone to exploit this ‘friendship’ for financial gain or some other criminal purpose.

The law protects people against discrimination, prejudice and hostility directed towards disability, ethnicity, gender identity, nationality, race, religion or sexual orientation. These are aspects of a person’s identity described in the law on equality as ‘**protected characteristics**’.

The following definition has been agreed between the Police and the CPS for identifying cases involving hostility based on protected characteristics:

“Any criminal offence which is **perceived** by the victim or **any other person**, to be motivated by **hostility or prejudice**, based on a person’s disability or perceived disability; race or perceived race; or religion or perceived religion; or sexual orientation or perceived sexual orientation or a person who is transgender or perceived to be transgender.”

The offender may assume something about the victim that is wrong. This doesn’t matter, because the hostility is still there, based on the characteristics that the offender has targeted.

There is no legal definition of hostility so the CPS uses the everyday understanding of the word which includes ill-will, spite, contempt, prejudice, unfriendliness, antagonism, resentment and dislike.

Do you or your client think that hostility might have played any part in the incident(s) complained of?

WHAT IS HATE CRIME?

Hate crimes create **fear** and **humiliation**.

They are mostly about **hostility** which can be described as:

spite **antagonism**
aggression **ill-will**
prejudice **confrontation**

WHERE CAN IT HAPPEN?



Face to face



In writing



Online or on social media

RECOGNISING HATE CRIME

It's the things people **do**:



threats



physical harm



damaging property



harassment/ bullying

& **why they do it**

Hostility based on:

disability
sexuality
nationality
ethnicity
religion
gender identity
race

Think you've seen, heard or experienced a hate crime?

Report it to the police.



Phone 101, 999 or contact stophateuk.org

Recording and reporting hate crime

When an incident is first reported, it will be recorded as a hate crime if the victim or witness or any other relevant person (including, for example, an investigating officer, or CPS lawyer) considers that there was an element of hostility involved.

This perception-based test focuses for the most part on the subjective view of the victim. It arises from the Stephen Lawrence Inquiry Report and a perception at the time that the police and others failed to recognise and treat complaints of racist abuse and harassment seriously.

Once recorded as a hate crime, the police will look for and identify evidence in support of this perception. This requires an objective assessment to ascertain whether there is enough evidence to satisfy a court that the suspect demonstrated hostility or was motivated by hostility towards one of the protected characteristics.

It is not always possible to bring a hate crime prosecution. This is because:

- There might not be enough evidence to allow the case to be prosecuted
- Even where there is enough evidence to prosecute in relation to the crime committed, there might not be enough evidence to show that it was linked to hostility and should be prosecuted as a *hate crime*.

However, it is always important to report a hate incident to the police so that it can be investigated and recorded. This helps to build up a picture of what is going on locally and what can be done to prevent it.

Why should a hate crime be reported quickly?

Some crimes will have a time limit for prosecution. It is therefore important to report an incident as soon as possible after it has happened so that the police have sufficient time to fully investigate and gather all relevant evidence of hostility. If evidence of hostility is found, it can be presented to the court so that, on conviction, the court can be asked to pass a longer or more severe sentence as a result. This is known as '**sentence uplift**'.

Prosecuting hate crime

The legal framework for hate crime prosecutions is provided by the Crime and Disorder Act 1998 and the Criminal Justice Act 2003. These two Acts operate differently but deal with the issue of hostility in a similar way. Both Acts provide for longer and more severe sentences when hostility is present.

The **Crime and Disorder Act 1998** (CDA 1998) contains a number of specific offences of racially and religiously aggravated crime based on the offences of wounding, assault, damage, stalking, harassment and threatening or abusive behaviour. To prove that such offences are racially or religiously aggravated, the prosecution has to prove the 'basic' offence followed by racial or religious aggravation, as defined in section 28 CDA 1998.

The **Criminal Justice Act 2003** (CJA 2003) gives the court power to enhance the sentence of any offence that is racially or religiously aggravated (section 145) or aggravated by reason of disability, sexual orientation or gender identity (section 146).

The relevant provisions within the CJA 2003 and CDA 1998 use the same terminology in setting out aggravation:

- at the time of committing the offence or immediately before or after doing so, the offender demonstrated towards the victim hostility based on the victim's membership (or presumed membership) of (specified group(s)) **or**
- the offence was motivated (wholly or partly) by hostility towards members of a (protected characteristic) based on their membership (or presumed membership) of that (specified groups(s)).

How can hostility be proved?

Evidence of hostility might include words or actions at the time of the offence, or just before or just after it happened.

Words might be abusive towards the personal characteristic or presumed personal characteristic, and action or behaviour might, for example, target something specific to the personal characteristic or presumed personal characteristic, such as a hijab, a yarmulke or a mobility aid.

It might be that the offender has done this kind of thing before, or has expressed prejudice towards people who share the personal characteristic in question, either online, with neighbours and friends or with other potential witnesses. It can be helpful to keep a log or a diary of incidents, taking photos of any damage.

By examining its casework, the CPS has identified some common features or behaviour that can be seen in hate crime offending, and can help shine a light on the offender's motivation and point to evidence of hostility:

- there may have been previous incidents of a similar nature
- opportunistic offences become systematic
- triggers such as world or domestic incidents involving violence
- holidays or events associated with religious or cultural activity
- incidents may escalate in severity and frequency
- false accusations of the victim being a paedophile or a terrorist
- sustained attacks and excessive violence
- cruelty, humiliation and degrading treatment
- aggressive mocking leading to physical assault
- stalking and harassment
- disclosure of prohibited information under the Gender Recognition Act 2004

Gathering all relevant information is very important and is a matter for the police.

The Code for Crown Prosecutors

The Code for Crown Prosecutors sets out the principles that prosecutors apply when making decisions about prosecutions. A copy can be found on the CPS website at www.cps.gov.uk.

The Code states that prosecutors must be satisfied that:

- there is a realistic prospect of conviction; **and**
- it is in the **public interest** to prosecute.

If the offence was motivated by hostility and there is enough evidence then it is more likely that a prosecution will be in the public interest. The law provides the framework and previous court decisions are influential in helping decide cases. However, every case will depend on its own individual circumstances and there is no guarantee of a successful outcome.

Other crime involving hate

Stirring up racial and religious hatred and hatred based upon sexual orientation are offences under the **Public Order Act 1986** (POA 1986). The offence of stirring up racial hatred under sections 17 to 29 POA 1986 differs in its legal elements from the offences of stirring up religious hatred and hatred based upon sexual orientation under sections 29A to 29N POA 1986. Further information about these offences is available at www.cps.gov.uk.

Stirring up racial hatred is committed when someone says or does something (including posting material online, displaying a poster, performing a play or broadcasting on the media) which is threatening, abusive or insulting, and the person either intends to stir up racial hatred or makes it likely that racial hatred will be stirred up.

Stirring up religious hatred or hatred on the grounds of sexual orientation is committed if a person uses threatening words or behaviour or displays any threatening written material (including posting material online, displaying a poster, performing a play or broadcasting on the media), and intends to stir up religious hatred or hatred on the grounds of sexual orientation.

The offences of stirring up religious hatred or hatred on the grounds of sexual orientation contain a freedom of expression clause to balance the right to free speech with the duty of the state to protect the rights of others and to act proportionately in the interests of public safety to prevent disorder and crime. There is no similar freedom of expression clause for stirring up racial hatred. By way of example:

- section 29J POA1986 provides that, as to stirring up religious hatred, nothing in the Act "... prohibits or restricts discussion, criticism or expressions of antipathy, dislike, ridicule, insult, or abuse of particular religions, or the beliefs or practices of its adherents."
- section 29JA provides that, as to stirring up hatred on the grounds of sexual orientation "for the avoidance of doubt, the discussion or criticism of sexual conduct or the urging of persons to refrain from or modify such conduct or practices shall not be taken of itself to be threatening".

Stirring up hatred means more than just causing hatred, and is not the same as stirring up tension. It must be a hatred that manifests itself in such a way that public order might be affected. The offences that have been successfully prosecuted go well beyond the voicing of an opinion or the causing of offence.

When considering whether or not to prosecute stirring up offences, there is a need to bear in mind that people have a right to freedom of speech. It is essential that in a free, democratic and tolerant society, people are able to exchange views, even when these may cause offence. The issues involved in such cases are highly sensitive and charges for stirring up hatred require the consent of the Attorney General in addition to the consent of the Crown Prosecution Service.

Supporting victims and witnesses

It is important that the police assess the needs of the victim as soon as possible. If, for instance, a **registered intermediary** is needed to carry out the **Achieving Best Evidence** interview, the police will need to contact the Witness Intermediary Service (WIS), which is operated on behalf of the Ministry of Justice (MoJ) by the National Crime Agency (NCA).

This request needs to be made as early as possible because the WIS needs time to 'match' a registered intermediary with the necessary skills to communicate with the individual needs of the victim. RIs need to develop a working relationship with the victim and require a minimum of 15 working days to complete a full assessment and finalise their report to make meaningful recommendations to the court. After charge, the police should hold early special measures discussions with the CPS, who will in turn apply to the court.

Witness Care Units (WCU) are run jointly by the police and CPS and will provide core services to all witnesses. The victims of hate crime may be eligible for an enhanced service, depending on the circumstances. There may also be specialised services in your areas to which the WCU can refer your client.

Additionally, **Citizens Advice** provides free, independent support for witnesses in criminal courts in England and Wales. It offers practical and emotional support and information to witnesses. For example, information about court and legal processes, visits to court rooms ahead of trial and support on the day. Further information can be found at <https://www.citizensadvice.org.uk/about-us/how-citizens-advice-works/citizens-advice-witness-service/>

There may be a third party reporting centre in your area. These are locations where individuals can report a hate crime without the need to go directly to a police station. The organisation Stop Hate UK also operates reporting services in different parts of the country, visit <http://www.stophateuk.org/>.

What support can the court make available?

Victims and witnesses attending court may have a variety of support needs. This can be for a range of reasons, such as fear of intimidation, or preferences in how they are communicated with. All of the support available aims to help the victim or witness give the court as good an account of what happened as possible.

Special measures provided under the **Youth Justice and Criminal Evidence Act 1999** can be granted by the court, to support witnesses and to help them give their best evidence. These include:

- screens in the courtroom
- live links allowing witnesses to give evidence away from the courtroom
- evidence in 'private' when the public gallery can be cleared in certain cases
- removal of wigs and gowns by judges and barristers
- visually recorded statements

- intermediaries to help witnesses with communication difficulties
- communication aids
- reporting restrictions

Receiving this support is not automatic. Any victim or witness will need to meet the statutory criteria for eligibility before an application is made to the court. An application will set out which special measure(s) is required, and how it will assist a witness in giving their best evidence. The court will then decide whether to grant the application.

The **Youth Justice and Criminal Evidence Act 1999** allows for special measures for witnesses defined as 'vulnerable' or 'intimidated' in the Act as follows:

Vulnerable witnesses:

- under 18 at time of hearing
- suffers from a mental disorder within meaning of Mental Health Act 1983
- has significant impairment of intelligence or social functioning
- has a physical disability or disorder

Intimidated witnesses:

- anyone whose evidence is likely to be diminished due to fear or distress in connection with giving evidence

Vulnerable witnesses may apply for a **registered intermediary** to facilitate communication between the police, the court, the prosecution and/or defence teams. The CPS will apply to the court with information provided to the police by the victim or witness.

Assistance for witnesses which goes beyond what is set out above and any particular concerns or queries should be passed on to the WCU as it may be able to help.

The CPS has produced guidance on the special measures that can be made available by the courts: https://www.cps.gov.uk/legal/s_to_u/special_measures/.

The Royal College of Speech and Language Therapists has developed short FAQs on registered intermediaries, which can be found at:

http://www.rcslt.org/about/young_offenders_and_criminal_justice/registered_intermediaries

How can you best support a client?

Your client may mention something that has happened to them or refer to something in passing that happened on the way to meet you. If your client seems upset by what has happened or gives you any cause for concern, be prepared to ask a few questions. You might want to consider the following:

- Try to establish what happened, who was involved, where and when it happened and whether this kind of thing has happened before.
- Ask about how it has made your client feel.

- Does your client know the person/people involved?
- Ask your client whether they think that what happened to them had something to do with their personal characteristic(s),
- Ask whether your client has told anyone else and whether they want to talk to someone about what happened.

People's reluctance to report can be overcome with a sympathetic hearing, the right information and effective support. Consider with your client the option of telling the police, a local hate crime organisation or reporting online at **True Vision** or the [National Hate Crime Report and Support Centre Wales](#).

True Vision is the website developed by the National Police Chiefs' Council to enable people to report hate crime directly to their local force through one website. The site also contains practical information (www.report-it.org.uk/).

It is important that you keep a record of the conversation with your client as this may assist in any investigation or prosecution which follows.

Some examples of successful prosecutions

1. The defendant went into a shop with his girlfriend where he was racially abusive to the shopkeeper and struck him with his fist in the chest. CCTV was available but the video had been corrupted. The defendant denied assault and at first accused the shopkeeper of assaulting him. The defendant's partner was not prepared to offer evidence against him.

Charges of racially aggravated common assault were brought. At trial the defendant was found guilty and sentenced to six months imprisonment, increased by two months for the racial hostility. In addition, in order to provide some future protection to the complainant, a restraining order was applied for and granted by the court, restricting contact with the complainant and entry to his shop.

2. A gay couple, and the son of one of the men, were walking through the town centre when they encountered the defendant. One of the men had testified in support of his son in a trial involving the defendant's son. The defendant's language became abusive and homophobic. She was very aggressive and made threats towards both men as well as the child. She also threatened to report the complainants to the police falsely alleging he molested her son.

The defendant was found guilty and sentenced to a six month community order, which would have been a fine had it not been for the homophobic aggravation.

3. The victim had been involved in a car accident in 1994 which impairs her ability to respond quickly. She also has short-term memory loss. The defendant, her husband, systematically belittled her for her disability. He assaulted her over a sustained period.

The victim gave evidence by way of interview and a live link to prevent her having to return to the area. A Victim Personal Statement was read to the court. The prosecutor said that the offending

demonstrated a progressive pattern of belittling, undermining and bullying behaviour based wholly or partially on the victim's disability.

The defendant was given a 15 months custodial sentence suspended for 2 years. This would have been 12 months, but for the aggravating feature of disability hostility. A restraining order of 4 years was also granted.

4. The complainant had been subjected to gratuitous transphobic abuse over the course of several weeks. After the last of these incidents, the defendant was identified as the offender, arrested and formally interviewed. Police referred the case to the CPS for a charging decision.

The defendant pleaded guilty to harassment without violence, and was sentenced to a term of 3 months imprisonment suspended for 9 months. The terms included a Drug Rehabilitation Requirement for 6 months and a requirement to undergo supervision by the Probation Service for 9 months. The court also made a restraining order for a period of 12 months, prohibiting the defendant from contacting the complainant directly or indirectly.

5. The defendant approached the victim, a transgender woman, at a transport hub. He first tried to sell her a ticket and when she showed no interest in buying it, asked for money. When the victim walked away towards her platform, the defendant became abusive towards her gender identity. He followed her progress to the platform and spat at her.

The attending police officer took a swab of the spittle which, after forensic examination, was found to be a DNA match to the defendant's. Initially, the defendant did not deny the assault, but denied the transphobic element.

To assist the court, a Victim Personal Statement was provided by the victim who had been very shaken by the incident. The defendant entered a guilty plea. The sentence would have been a category 2 offence, but was increased to a category 1 due to the transphobic aggravation. An eight week curfew was imposed on the defendant who had to wear an electronic tag between the hours of 18.00 and 06.00. A compensation claim was made on behalf of the victim.