

We prosecute cases on behalf of the public at large and not just in the interests of a particular individual including the victim. Nonetheless, when considering the public interest test CPS prosecutors take into account the consequences for the victim and the views expressed by the victim or his or her family.

If a case involving a homophobic or transphobic element passes the evidential test and the victim is willing to give evidence, we will almost always prosecute because we regard the homophobic or transphobic element as a serious aggravating feature.

What happens if the victim withdraws the complaint?

We do not automatically stop a prosecution if a victim requests that a prosecution does not proceed or if a victim withdraws the complaint. In such cases we will take a number of steps. An experienced prosecutor will be appointed to supervise the case. The police will be asked to take a written statement from the victim to explain the reasons for the withdrawal, whether the original complaint was true and to explain whether the victim had been under pressure to withdraw the complaint.

If we suspect the victim has been pressured or frightened, we will ask the police to investigate further. If the complaint is true but the victim still wants to withdraw, we will consider whether it is possible to continue with a prosecution without his or her evidence and, if so, whether we should do so against the victim's wishes. Even when a victim may not wish to proceed, he or she could be compelled to give evidence.

Victim Personal Statements

Available in all cases, these statements enable victims to explain the impact the crime has had on their lives. They offer victims the opportunity to voice their concerns about matters such as intimidation. The court can take these personal statements into account in bail and sentencing decisions.

Informing victims of changes to charges

Whenever we drop or substantially alter the charge following a homophobic or transphobic incident, we will provide a written explanation and offer the victim a face-to-face meeting with the CPS lawyer who took the decision. The meeting will enable the lawyer to explain further the reason for the decision to drop or alter the charge.

Minor offending by victims or witnesses

Members of the LGBT community who are victims of crime or witnesses to homophobic or transphobic incidents may be reluctant to go to the police, fearing they will be investigated for their own behaviour, for example, for "cruising" or "cottaging".

We cannot guarantee that people who commit such minor offences will not be prosecuted. However, when a person committing such an offence becomes the victim of a more serious crime, or witnesses one, the more serious offence will be investigated and, where appropriate, prosecuted, even if this means not pursuing a prosecution for the minor offence.

Monitoring homophobic and transphobic cases and engaging the community

By monitoring the way we deal with homophobic and transphobic cases and analysing the information with the police, other criminal justice agencies and LGBT groups, we intend continuously to develop and improve our approach to such cases. Data from the monitoring process will not contain personal details of victims or witnesses.

We will consult national and local LGBT groups to assess the effectiveness of our prosecution policy on homophobic and transphobic cases.

For a full version of the CPS statement on its policy for prosecuting cases with a homophobic element, contact:

CPS Communications Branch
50 Ludgate Hill
London,
EC4M 7EX

or refer to:
www.cps.gov.uk



This document is also available in a range of community languages or on audio cassette from the address above.

Produced by the Equality & Diversity Unit and the Policy Directorate, November 2002
Design and Typography by Seren (01903) 263352
Printed by Design2Print • Llandudno • North Wales
Tel: 01492 876610 • Fax: 01492 874431

Policy for Prosecuting Cases with a Homophobic Element



Crown Prosecution Service

Introduction

The Crown Prosecution Service (CPS) is responsible for prosecuting people in England and Wales charged by the police with a criminal offence.

This leaflet explains the way the CPS deals with cases with a homophobic or transphobic element. We regard homophobic and transphobic crimes as particularly serious because they are motivated by prejudice, discrimination and hate, and undermine people's right to feel safe in their sexual orientation and gender.

There is no statutory definition of an incident with a homophobic or transphobic element. The definition adopted by the CPS is "Any incident which is perceived to be homophobic or transphobic by the victim or by any other person".

This definition adopts the approach generally accepted for defining other types of hate incidents, such as racist incidents.

We use the term "LGBT communities" to include references to all lesbians, gay men, bisexuals and trans people. Our definition of homophobic or transphobic incidents includes those affected by such incidents because they are thought to be a member of the LGBT communities (whether or not that is correct) and those who defend, support, or protect members of the LGBT communities.

The definition also includes incidents which the perpetrator alone may perceive as homophobic or transphobic.

The policies described in this leaflet also apply to people who have same-gender sex but who do not consider themselves members of the LGBT communities, providing any incident they are involved in is perceived by someone as homophobic or transphobic.

Not every incident that is reported amounts to a crime and even when a crime can be proved, there may be insufficient evidence to prove to a court that it was motivated by homophobia or transphobia. Whenever an incident falls within our definition of a homophobic or transphobic incident, the CPS shall treat the victims and witnesses in accordance with the policy outlined in this leaflet. Whenever there is sufficient evidence to show that homophobia or transphobia motivated a crime the CPS shall advise the court of this.

The role of the CPS

Our main role is to prosecute people charged with criminal offences. This means we:

- provide advice to the police to assist with their investigation of crime;
- review cases to ensure that the right cases are prosecuted on the right charges

with the right evidence; and

- prosecute cases at court ourselves or through agents instructed by us.

Our prosecution decisions are guided by the *Code for Crown Prosecutors*. In particular, every case received by the CPS is reviewed against two tests set out in the Code to determine whether a prosecution should be brought. The two tests are the evidential test and the public interest test.

The evidential test

CPS prosecutors must be satisfied there is sufficient evidence to provide a "realistic prospect of conviction".

The public interest test

If a case does not pass the evidential test, it cannot go ahead, no matter how important or serious. When cases do pass the evidential test, CPS lawyers must decide whether a prosecution is needed in the public interest. It will usually be in the public interest to prosecute cases in which there is sufficient evidence unless there are public interest factors tending against prosecution which clearly outweigh those tending in favour.

We regard a homophobic or transphobic element in a case as an aggravating feature – and therefore extremely serious. The public interest in such cases will therefore almost always favour prosecution.

The CPS will prosecute cases that pass the two tests. This does not mean that a conviction will necessarily follow, only that the CPS is justified in putting such cases before a court for the court to decide whether the defendant is guilty, having heard the evidence of witnesses and the arguments of the prosecution and defence.

Is there enough evidence to prosecute?

A victim who is the only witness to a homophobic or transphobic incident resulting in a prosecution will usually be required to give evidence in court, unless the defendant pleads guilty.

We recognise that some victims will find this very difficult, so we will actively consider what other evidence may be available, either to support the victim's evidence or as an alternative to their evidence.

Special measures for vulnerable or intimidated witnesses. We will consider what special measures might be available to vulnerable or intimidated victims or witnesses who are required to give evidence in order to make their experience of

giving evidence less difficult. Vulnerable witnesses include those under 17 years at the time of the hearing, those suffering from a mental health issue or physical disability and those with significant impairment of intelligence and social functioning. Intimidated witnesses will include complainants in sexual cases and those likely to suffer fear or distress in connection with giving evidence in a case.

It is a matter for the courts whether to allow special measures to be used to assist a witness. To allow the use of special measures for a witness, a court needs to be satisfied that the quality of the witness' evidence would be diminished if such facilities were refused.

Special measures include the use of screens in court to shield the witness from the defendant, giving evidence by video recording or by live TV link or, giving evidence in private in sexual cases or in cases of witness intimidation. Not all of these special measures were available at the time this leaflet was prepared.

Anonymity. Although the CPS will do all it can to help witnesses at court, it is highly unlikely that a court would allow LGBT victims or witnesses not to give their names in open court. However, unless it is required for evidential purposes, the procedure is that the address of a witness should not be disclosed in open court.

Is it in the public interest to prosecute?

When there is sufficient evidence to proceed our decision whether to prosecute in the public interest is influenced by a number of factors. These include:

- the seriousness of the offence;
- the victim's injuries – whether physical or psychological;
- if the defendant used a weapon;
- if the defendant has made any threats before or after the attack;
- if the defendant planned the attack;
- the chances of the defendant offending again;
- the continuing threat to the health and safety of the victim or anyone else who is, or may become, involved;
- the victim's relationship with the defendant;
- the defendant's criminal history, particularly any previous offences based on homophobia;
- if the offence is widespread in the area where it is committed.

The more serious the offence or the greater the risk of further crimes, the more likely we are to prosecute in the public interest, provided we have sufficient evidence.