

CPS North West



# How the CPS Tackles Hate Crimes

Cumbria Hate Crime Workshop

# Who are the CPS?

The Crown Prosecution Service (CPS) is the principal prosecuting authority for England and Wales, acting independently in criminal cases investigated by the police and others.

The CPS:

- decides which cases should be prosecuted – keeping them all under continuous review;
- determines the appropriate charges in more serious or complex cases – advising the police during the early stages of investigations;
- prepares cases and presents them at court - using a range of in-house advocates, self-employed advocates or agents in court; and
- provides information, assistance and support to victims and prosecution witnesses.

# Decision to prosecute

(The Full Code and Threshold Test)



The CPS decide whether or not to prosecute by applying the Code for Crown Prosecutors and any relevant policies to the facts of the particular case.

Although the police and the CPS work closely together, we are completely independent of each other and the final responsibility for the decision as to whether or not to proceed with an offence that has been charged rests with the prosecution service.

In reaching this decision we apply the Full Code Test and ask two questions:

1. Is there enough evidence against the defendant?
2. Is a prosecution required in the Public Interest ?

# The first test – the evidential test

- Crown Prosecutors must first be satisfied that there is enough evidence to provide a “realistic prospect of conviction against each defendant on each charge”.
- If the case does not pass the first test based on the strength of the evidence, it must not go ahead, no matter how important or serious it may be.
- This is because we have reached the view that the court is not likely to convict the defendant of the crime alleged.

# The second test – the public interest test

- If the case does pass the evidential test, Crown Prosecutors must then decide if a prosecution is needed in the public interest.
- A prosecution will usually take place “unless there are public interest factors tending against prosecution which clearly outweigh those tending in favour”.

# The Code for Crown Prosecutors

Some of the other public interest factors that we will consider are:

- 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; and the defendant's criminal history.

# Code for Crown Prosecutors – Hate Crime

- In cases of hate crime – as in all cases – the reviewing prosecutor must apply the Code for Crown Prosecutors.
- If there is sufficient evidence to proceed without the evidence of the victim, then subject to the public interest test, the case may still be able to proceed.
- However it is in our interest to support victims to make our cases stronger.



"All crime is unacceptable but offences that are driven by hostility or hatred based on personal characteristics are particularly damaging to any civilised society."

**Kier Starmer QC, February 2012**

# What is a Hate Incident?

A Hate Incident is “Any non-crime incident which is perceived by the victim or any other person to be motivated by hostility or prejudice based on a person’s race or perceived race”

Or a person’s disability, religion, sexual orientation or a person’s transgender identity (or alternative sub culture in GMP)

**ACPO / CPS definition**

# What is a Hate Crime?



A Hate Crime is “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 race or perceived race”

Or a person’s disability, religion, sexual orientation or a person’s transgender identity (or alternative sub culture in GMP)

ACPO / CPS definition

# Victims of Hate Crime



Brent Martin 23 years old

Died August 23<sup>rd</sup> 2007

Victim of Disability Hate Crime

The 3 defendants were given between 15 and 22 years imprisonment.



Anthony Walker aged 18

Died 29<sup>th</sup> July 2005

Victim of Racist Hate Crime

Defendants given life



Jody Dobrowski aged 24

Died 14<sup>th</sup> October 2005

Homophobic Hate Crime

Defendants were both sentenced to 28 years imprisonment

This was a landmark case in Britain, where Section 146 of the [Criminal Justice Act 2003](#) was utilised in sentencing the killers.

# Increasing sentences for Hate Crimes section 146

## **146 Increase in sentences for aggravation related to disability, sexual orientation or transgender identity**

(1) This section applies where the court is considering the seriousness of an offence committed in any of the circumstances mentioned in subsection (2).

(2) Those circumstances are—

(a) that, at the time of committing the offence, or immediately before or after doing so, the offender demonstrated towards the victim of the offence hostility based on—

(ii) a disability (or presumed disability) of the victim, ...

(b) that the offence is motivated (wholly or partly)—

(ii) by hostility towards persons who have a disability or a particular disability ..

**(3) The court—**

**(a) must treat the fact that the offence was committed in any of those circumstances as an aggravating factor, and**

**(b) must state in open court that the offence was committed in such circumstances.**

# Increasing sentences for Hate Crimes section 145

## **THE AGGRAVATED OFFENCES**

The CDA (Crime and Disorder Act) creates separate racially or religiously aggravated versions of certain “basic” criminal offences.

**These aggravated offences have higher maximum sentences than their basic equivalents.**

Section 28(1) of the CDA provides that an offence is racially or religiously aggravated if:

(a) at the time of committing the offence, or immediately before or after doing so, the offender demonstrates towards the victim of the offence hostility based on the victim’s membership (or presumed membership) of a racial or religious group; or

(b) the offence is motivated (wholly or partly) by hostility towards members of a racial or religious group based on their membership of that group.

# How do we support prosecutions?

- Police and CPS jointly run **Witness Care Units** to keep victims and witnesses informed about their cases.
  - Do to community feedback we have made some changes to how they operate to be more supportive; e.g. easy read letters to witnesses with learning difficulties.
- If we believe that a witness is unlikely to testify we can compel them to appear in court with a **Summons** to support a prosecution

# How do we support prosecutions?

- In cases where the victim is vulnerable or afraid of the consequences of testifying CPS can apply to courts for **Special Measures**. These can include:
  - Privacy screens around the witness
  - Evidence by video link
  - Use of separate court entrance
- These services are available to victims of all offences, not just hate crimes.

# Other Special Measures include..

Special help (called Special Measures) can help people under the age of 17, people who are scared, elderly or disabled, and people who have problems communicating, give the best evidence they can.

They are things like:

- Using a video of their evidence in court
- Answering questions using a live video link from another room in the court
- Clearing the court of people who do not need to be there
- Screens to prevent a witness having to see the defendant
- Someone to help explain the questions or answers if necessary
- Young people and children are looked after by a special witness supporter in court.
- The Witness Care Officer will arrange for you to see the courtroom before the trial. They also try to arrange for young people and children to meet the Judge or Magistrates before the trial.

# Meeting with the Prosecutor before Court

Other than on the day of the trial to meet with the Prosecutor to look at the statement. Victims do not generally meet with the Prosecutor before. This is in the main because there is a prospect that the defence may say that the victim or witness has been coached and this could prejudice and undermine the case. However, all cases are looked at on a case by case basis.

# Meeting with the Prosecutor post trial

The outcome of trials is dependent on the verdict of the Magistrate or Jury and so meeting with the Prosecutor post trial doesn't always shed light on how or why the verdict was reached.

The outcome of the trial is generally communicated by Witness Care. Whatever the outcome going through the prosecution process can be a daunting and emotionally exhausting experience for many people and as such organisations including Victim Support are there to provide support to victims throughout the duration of the trial and post trial.

# VICTIM RIGHT TO REVIEW

- The right to request a review arises where the **CPS**:
- (i) makes the decision not to bring proceedings (i.e. at the pre-charge stage); or
- (ii) decides to discontinue (or withdraw in the Magistrates' Court) all charges involving the victim, thereby entirely ending all proceedings relating to them; or
- (iii) offers no evidence in all proceedings relating to the victim; or
- (iv) decides to leave all charges in the proceedings to "lie on file"

# Who Can Use VRR?

- A victim is defined in The Code of Practice for Victims of Crime (Victims' Code),
- as follows:
- 'a person who has suffered harm, including physical, mental or emotional harm or economic loss which was **directly** caused by criminal conduct'.
- This includes:
- close relatives of a person whose death was directly caused by criminal conduct;
- parents or guardians where the main victim is a child or youth under 18;
- police officers who are victims of crime;
- family spokespersons of victims with a disability or who are so badly injured they cannot communicate; and
- Businesses, providing they give a named point of contact."

# The Process

- Victims will be notified of the prosecution decision not to bring proceedings / bring proceedings to an end. This notification will include the following information:
  - (a) the nature of the decision – i.e. not to charge or to discontinue proceedings;
  - (b) whether the decision was made on evidential or public interest grounds.
- If the decision is a ‘qualifying decision’, the notification will confirm that the victim is eligible to seek a review under the scheme and will provide sufficient information to enable the victim to decide:
  - (a) Whether or not they wish a review to take place.
  - (b) If they do want a review what steps they need to take.
- The only action a victim need take is to notify the CPS of their request for review. Victims will be provided with contact details of the relevant CPS office in order that they can make contact by their preferred means.

# Raising Confidence

- Local Scrutiny Panels
- Presentations
- School Packs
- Attending Community Events including Cumbria Pride
- Providing positive stories to news outlets when we successfully prosecute cases
- Joint training with agencies e.g. Teachers, AWAZ
- Developing resources in partnership with NGO's and other government departments

