



CPS

**Homophobic and Transphobic  
Crime Toolkit:**  
*Good Practice and Lessons Learnt*

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# 1 Introduction

The CPS is committed to prosecuting all hate crime swiftly, fairly and effectively. Homophobic and transphobic hate crimes are particularly serious as they are motivated and aggravated by prejudice and hate, and strike at the diverse nature of our society – we are committed to dealing with and prosecuting these cases in a robust and sensitive way.

In prosecuting homophobic and transphobic hate crime, we are often working with victims who come from communities who have very little or no confidence that their case will be dealt with seriously. Historically, aspects of lesbian, gay, bisexual and trans (LGBT) communities have been criminalised and it is more recently that some of these aspects have been decriminalised. LGBT rights are being enacted and criminal law provisions have now moved to protection for LGBT victims of crime.

LGBT communities are not homogenous and come from a range of diverse communities with diverse needs. In delivering our business, we need to be mindful of these needs as LGBT communities have considerable confidence hurdles to overcome, particularly, in relation to the 'outing' of victims and fear of prosecution for other minor offences<sup>1</sup>. We need to take these factors into account when prosecuting homophobic and transphobic cases as the depth of the challenge in building confidence within LGBT communities is immense.

We still have a considerable way to go in improving confidence in reporting incidents. Prosecutors, caseworkers, witness care officers and business staff have an important role to play to deliver a more effective, transparent and responsive CJS for LGBT victims of crime. There have been a number of horrific high profile cases, however, many homophobic and transphobic offences are less high profile whilst significant in their impact on individuals' and wider communities sense of safety. Minor incidents may be less likely to be reported. However, when they are reported we should respond sufficiently and robustly to enable confidence to be improved, and also to prevent escalation of minor incidents into more serious crimes.

We have made significant progress in improving our case outcomes in 2007–8 and have set challenging targets for 2008-11. We have also undertaken a Homophobic Crime Themed Review and follow up progress check in CPS Areas to assess performance, identify actions for improvement on handling homophobic and transphobic crimes and identify good practice. The Policy Statement for prosecuting cases of homophobic and transphobic hate crime has been refreshed to reflect the changes in legislation and society that have taken place since the publication of the first edition in November 2002. We all have a role to play in ensuring that the policy and guidance are applied consistently and appropriately.

The good practice and lessons learnt toolkit highlights examples of good practice across England and Wales, as well as lessons learnt from a range of cases that have been prosecuted – some high profile, some less so. We acknowledge that there are key lessons to be learnt from these cases – both positive and negative and we need build on this to continue to bring perpetrators of homophobic and transphobic hate crime to justice and demonstrate our commitment to the communities we serve.

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<sup>1</sup> See Policy Statement for Prosecuting Cases of Homophobic and Transphobic Hate Crime for further details

## 2 Purpose of the Toolkit

The toolkit has been developed for CPS staff to assist in improving performance outcomes for homophobic and transphobic crime. The audience is therefore internal to the CPS and is principally aimed at Homophobic and Transphobic Crime Champions/Coordinators, lawyers, associate prosecutors and caseworkers and it will also be useful for witness care officers.

The toolkit should be read in conjunction with the Policy Statement for Prosecuting Cases of Homophobic and Transphobic Hate Crime and the accompanying Guidance on Prosecuting Cases of Homophobic and Transphobic Hate Crime (November 2007). The toolkit seeks to complement the detailed information outlined in the guidance and highlight some of the strategic themes which emerged from the homophobic and transphobic themed review and progress check.

The first part of the toolkit will look at two high profile case studies – Jody Dobrowski and David Morley and two transphobic case studies – Heather Williams and Paul Lewis (anonymised cases)

The second part will highlight strategic good practice complemented by case studies within CPS Areas which assist in the successful prosecution of homophobic and transphobic cases across key themes. In drafting this toolkit, we have worked in conjunction with members of LGBT community organisations and are grateful for their expertise and input.

### 3 Strategic Context

**The National Context** – Effective prosecution of homophobic and transphobic hate crime is a high level priority across the CJS. The Justice PSA 24 has the objective of delivering a more effective, transparent and responsive criminal justice system for victims and the public. The commitments are to:

- improve the efficiency and effectiveness of the CJS in bringing offences to justice;
- improve public confidence in the fairness and effectiveness of the CJS,
- improve victim and witness satisfaction with the CJS and the police;
- provide consistent collection, analysis and use of good quality ethnicity data to identify and address race disproportionality in the CJS; and,
- recover criminal assets (£250m by 2009/10).

To fulfil these commitments the CPS records, analyses and reports essential data on the prosecution of racist and religious incidents, homophobic and transphobic crime and disability aggravated crime. The key outcomes sought are to:

- Reduce unsuccessful outcomes on hate crimes
- Publish annual hate crime reports
- Increase stakeholder awareness of the CPS handling of hate crimes
- Increase public awareness of the CPS handling of hate crimes

Alongside this, the CPS have a commitment to implementing the Victim’s Focus scheme, Witness Charter, Victims Code of Practice and develop Witness Care Units which will enable a better standard of support to victims of homophobic and transphobic crime

Significant progress has been made in improving the attrition rate for all hate crimes in 2007-8 and challenging targets have been set for 2008-11. Both individual hate crime strands targets and combined hate crime targets for each year are:

2008-9	18%
2009-10	17%
2010-11	16%

**Hate Crime Scrutiny Panels** – The development of Area hate crime scrutiny panels will also contribute to increased success in prosecuting homophobic and transphobic crime. The panels will enable the CPS decision-making process to be opened up to external scrutiny by community representatives. All CPS Areas are required to set up a panel covering some or all elements of hate crime dependent on Area performance. Unsuccessful prosecutions of homophobic and transphobic cases will form part of the scrutiny process which will lead to increased learning and further improvements in the prosecution process and will enable a new level of involvement and accountability to communities.

**Criminal Justice Partners** – Both Local Criminal Justice Boards (LCJBs) and Crime and Disorder Reduction Partnerships (CDRPs) are essential partners in tackling homophobic and transphobic crime. Victims and witnesses should have confidence that cases will be investigated and brought to justice sensitively and with vigour in accordance with the policy statement and guidance. Both LCJBs and CDRPs can be utilised to:

- Encourage reporting and develop multiagency protocols to address homophobic and transphobic crime
- Effectively engage LGBT communities through a multiagency approach to increase confidence across the CJS.
- Review reports and outcomes of homophobic and transphobic crime through the police or third parties.
- Develop service level agreements between the CPS and CJS partnerships to tackle homophobic and transphobic crime.

## 4 Good Practice and Lessons Learnt Case Studies

### JODY DOBROWSKI – THE CASE

### • CASE STUDY •

Jody Dobrowski was beaten to death for no other reason than the perpetrators hated gay people. On the evening of Friday 14th October 2005, Jody Dobrowski visited a part of Clapham Common that is used as a meeting place for gay men. It was there that he was set upon by Thomas Pickford and Scott Walker. Jody was knocked to the ground and then kicked, stamped and jumped upon. The blows were accompanied by shouts of homophobic abuse. Jody suffered horrific multiple injuries from which he later died in hospital.

Thomas Pickford and Scott Walker went to the Common with a pre-meditated intention of attacking a gay man. On arrest, Pickford admitted having been involved in the attack on Jody Dobrowski. He sought to minimise his involvement by putting most of the blame onto Walker. When interviewed, Walker made no comment to any questions about his alleged involvement in the attack. Both men had been involved in an attack against a gay man two weeks prior to the murder of Jody.

The case was treated as a homophobic crime from the outset. Both the police and the CPS liaised extensively with Jody's family and ensured that they were kept fully up-to-date throughout the prosecution of the case.

At trial, both Thomas Pickford and Scott Walker pleaded guilty to the murder of Dobrowski at the Old Bailey criminal court on May 12, 2006. Section 146 CJA was utilised in sentencing the killers as the court imposed a life sentence on June 16, 2006 with a minimum of 28 years to be served. In summation the sentencing judge commented that:

"It was Jody's tragic misfortune to cross your path. You subjected him to mindless abuse and showed him no mercy. In those few seconds you took from him the most precious possessions– his life and future."

### GOOD PRACTICE

- ✓ The prosecution team worked hard from the outset to build a strong case and encouraged the police to put out positive messages to reassure the LGBT community in south London and also use their dedicated LGBT contacts to encourage potential witnesses to come forward.
- ✓ CPS lawyers took the time to explain in detail all aspects of the process to the family and demonstrated passion and commitment to achieving justice.
- ✓ The family was provided with extensive information about court procedures and what to expect in court throughout the prosecution process. They were also given the opportunity to familiarise themselves with the courtrooms – where they would sit, how the process worked, where others would sit and how the family would be dealt with.



## GOOD PRACTICE

- ✓ Witnesses that did come forward were given effective anonymity after the judge granted the application for an order preventing publication of their names in the press – a measure contained within the Youth Justice and Criminal Evidence Act 1999.
- ✓ The case was opened to the sentencing judge on the basis that it was motivated by homophobia and so the higher 30-year tariff, as set out in the Criminal Justice Act 2003, applied. This was duly adopted by the sentencing judge – the first time the Act was applied to enhance the sentence for a homophobic killing.
- ✓ The prosecution team gave interviews to LGBT press after sentencing flagging the ground-breaking use of ‘true’ anonymity measures and use of S146 in the case. The team conveyed the message that homophobic and transphobic crime is treated very seriously by the CPS and that witnesses to these crimes could and should come forward as they will have the full protection of the law behind them.

## LESSONS LEARNT

- Effective case building in Homophobic and Transphobic cases is essential to successful outcomes. Areas should work in partnership with the police from the earliest stages to engage communities and encourage witnesses to come forward and support the prosecution process.
- Consideration should be given to the use of reporting restrictions (Youth Justice and Criminal Evidence Act 1999, section 46) in homophobic and transphobic cases to enable witnesses to give their best evidence.<sup>2</sup>
- Prosecutors should always consider whether s146 of the Criminal Justice Act is applicable in homophobic cases and have greater confidence in using the provision successfully. In cases where it is not applicable – consideration should nevertheless be given to the culpability of the defendant and the consequences for the victim or others so that the case can be put before the court in a way that allows it to be sentenced appropriately.
- Areas should develop sustainable relationships with LGBT communities to ensure awareness of our policy and commitment to effectively prosecuting homophobic and transphobic crime. Ongoing engagement with LGBT communities should be built into Area community engagement strategies to build relationships of trust and confidence in the CPS.

<sup>2</sup> See paragraphs 10.17 – 10.22 – Policy for Prosecuting Cases of Homophobic and Transphobic Hate Crime

**DAVID MORLEY – THE CASE**

The case raises significant issues in relation to LGBT communities trust and confidence in the CJS – however, it was not a homophobic prosecution.

David Morley was aged 37 and worked in the licensed pub trade. He had been the assistant manager of the Admiral Duncan pub in Soho when it was nail bombed in April 1999. David was well known and respected within London's LGBT community.

David Morley and Alistair Whiteside were sitting together on a bench on the south side of Hungerford Bridge, London on 29th October 2004 when a gang of six males and females approached them. Both men were brutally attacked and knocked to the ground, kicked and punched in the body and face. Their pockets were searched and Mr Whiteside's mobile phone was stolen. One of the girls went over to David Morley and kicked him hard in the head as if it were a football. They took their bags and then ran off in the direction of the Bridge.

The six defendants agreed to go to into Central London to commit serious actions of violence against random victims whose paths they crossed, intending to cause those people really serious harm and in addition to rob those people if and when the opportunity arose.

Together they attacked a total of eight victims in five incidents in the area between 2.30am and 3.20am on the 30th October 2004. The violence involved punches, kicks and stamps to the head and body of all the victims. Most escaped with only relatively minor injuries. David Morley suffered severe injuries to his head and body and later died in hospital from those injuries on the 30th October 2004.

In the first instance, the police treated David Morley's murder as being motivated by homophobia. However, further evidence and testimony of the defendants clearly showed that the attacks were entirely random and not motivated by hostility based on the victim's sexual orientation – although two of the victims were gay men.

Six people appeared for trial at the Central Criminal Court charged with the murder of David Morley on 30 October 2004, conspiracy to cause grievous bodily harm and conspiracy to commit robbery. Four defendants were convicted of manslaughter with sentences ranging from 8 to 12 years and concurrent sentences of conspiracy to commit grievous bodily harm with sentences of 5-6 years. Two other defendants were found not guilty on all counts.

The sentencing judge remarks included:

"I am not persuaded that this was a homophobic rather than a random attack; but the victims were seated, vulnerable and defenceless. You behaved with total indifference to those who crossed your path in the heart of London and no citizen of this country should be in fear of, or subjected to, this sort of behaviour."

## GOOD PRACTICE

- ✓ The Police and CPS worked collaboratively from the outset to develop a robust case. All lines of enquiry in relation to the crime being motivated by homophobia were followed until it was proven otherwise.
- ✓ After sentencing, the reviewing lawyer spoke to LGBT communities at a local LGBT forum. The meeting enabled the CPS to explain the review decision to the community, answer questions from community members and put some people at ease over fears that homophobic crime was not being treated seriously enough. The approach taken was a significant step in breaking down misunderstandings and building confidence.

## LESSONS LEARNT

- Early engagement with LGBT communities is essential to allaying fears and misunderstandings when incidents are perceived to be homophobic or transphobic. Areas need to ensure that review decisions are communicated to LGBT communities from the outset to ensure that misunderstandings do not occur.
- A media/communications strategy for cases perceived to be homophobic or transphobic but are not prosecuted as such should be developed at an early stage. This will enable the appropriate messages in relation to insufficient evidence to demonstrate aggravation to be conveyed publicly enabling fears to be allayed. LGBT press and media should be utilised as part of the strategy.
- Homophobic and Transphobic Crime Coordinators should be utilised to provide input and expertise at an early stage. Their roles and responsibilities within Areas should be clear and distinct with appropriate time being given to undertake their duties.
- Whilst some community fears were allayed, there was still some unhappiness that the case was not prosecuted as homophobic. Some of the measures taken by the CPS enabled some credibility and respect to be gained but did not completely dispel concerns. Therefore, strong links with local community LGBT groups, forums and press are crucial to give clear information on case progression.

## PAUL LEWIS – THE CASE

### • CASE STUDY •

The victim within this case is Paul Lewis a trans man who was undergoing the process of gender reassignment.

Paul Lewis contacted Stuart Davies (defendant) as he heard that had an altercation with his fiancée – Amanda Miller. In the course of the phone call, the defendant threatened to kick Mr Lewis' head in and called him 'sick'. Mr Lewis and his fiancé then went to see a mutual friend. They were in the car when the defendant punched the windows several times, he then threatened to smash their heads in.

Days later, Mr Lewis was walking with another friend when he was again approached by the defendant. Again, a confrontation took place where Lewis was verbally abused because the defendant was transphobic and then physically assaulted. The defendant then threatened Mr Lewis and stated that if the police were informed then he would get a sword from his house and decapitate him.

Following CPS advice, the defendant was charged with making a menacing phone call (S127 Communications Act 2003), Section 4(1) Public Order Act and Battery. The offences were wholly motivated by the defendant's hatred of transgendered people and he admitted in interview that he was homophobic. The offences were all accompanied by abusive words used by the defendant expressing his dislike for gender change. These include describing Mr Lee as 'a thing' rather than a person 'shime' (she/him), 'lets see what kind of a man you are' and 'you are sick'.

Both Mr Lewis and his fiancé gave evidence at trial with the special measure of screens. During the trial, it came to light that the defendant's wife may have perverted the course of justice by trying to secure a false alibi. On this basis, the judge directed that the case be re-tried as key defence witnesses were discredited. The case was subsequently re-tried where the defendant changed his plea to guilty on Battery, which meant the couple were not required to give evidence for the second time. The section 4 allegation was dropped. The defendant had previously pleaded guilty to making a menacing phone call.

The defendant was sentenced to a Community Order for 18 months including 130 hours of unpaid work in the community. £50 compensation was also ordered.

## GOOD PRACTICE

- ✓ The witness care unit kept in regular contact with Mr Lewis to ensure he was kept informed at every stage of the case. As a result, he remained positive and kept his resolve to see his attacker brought to justice.
- ✓ Special measures were provided using screens to reduce the impact of giving evidence for both Mr Lewis and his fiancée. Mr Lewis had no wish for anonymity and had always been open about his gender change.
- ✓ The prosecutor developed a rapport with the victim and his partner from the outset and ensured that relevant information was provided both before, during and after the hearing about the process and what could be expected at court.
- ✓ The prosecutor arranged to prosecute the re-trial ensuring continuity throughout the prosecution process. This facilitated further trust and confidence in the process and enabled the prosecutor to pass on the news of the guilty plea in person.

## LESSONS LEARNT

- The victim suffered a degree of intimidation during the course of the proceedings and the case also became protracted as a result of the re-trial. Areas should ensure that WCUs keep in regular contact with the victim providing regular updates on proceedings to ensure that victims continue to support the prosecution process.
- Ensure clarification from the outset about how transgendered victims and witnesses wish to be addressed and how comfortable they are having their sexual orientation or gender identity discussed.<sup>3</sup>

<sup>3</sup> See Section 4 – Appropriate Language, Guidance on Prosecuting Cases of Homophobic and Transphobic Hate Crime.

## HEATHER WILLIAMS – THE CASE

### • CASE STUDY •

This case particularly issues in relation to the potential infringement of the s22 Gender Recognition Act 2004 as the disclosure of any information would reveal the identity of the main victim (a transsexual woman) or her address which could have put her at risk of further intimidation.

Ms Williams was returning home from work and boarded an evening train. Mr Braithewaite (Passenger 2) also boarded the train in the same carriage.

Nearing the end of the journey, the defendant walked through the train and sat opposite Ms Williams and tried to engage her in conversation. As Ms Williams sensed a potential unwelcome situation and was in any case intending to alight at the next station, she did not wish to enter into a conversation with the defendant and told him that she had no time to talk as she was getting off at the next stop. The defendant continued in an aggressive and offensive and stated 'I know you are a man'. Ms Williams did not want to discuss her gender identity with a stranger, but attempting to avoid argumentative confrontation, reluctantly replied 'No, I am a transsexual woman'.

At this point, she gathered her possessions and moved to the exit doors. The defendant proceeded to follow her and verbally abuse her and another passenger who sought to intervene. At which point, the defendant pointed his finger in the face of the Mr Braithewaite and said 'Don't you fucking tell me what to do, you're one of them, bunch of queers'.

Ms Williams then became concerned for her personal safety as the defendant moved to a position between her and the exit doors and continued to state 'fuck off' and 'dirty queers'. As a result, she activated her personal attack alarm. When the train came to a halt Ms Williams and Mr Braithewaite alighted, along with the defendant.

After Ms Williams had been pursued down the station platform with the unwelcome tirade continuing, two Police Community Support Officers approached and positioned themselves between the defendant and Ms Williams. The defendant continued to shout 'She's a fucking man' in their presence and 'fuck off you queers, fuck off out of England'. He then tried to push one of the officers out of the way and kneed the other officer in the groin area. The defendant was restrained by one of the officers still shouting 'you're a fucking queer' and 'you fucking raped me'. He was then restrained and arrested on suspicion of assault.

Whilst in custody the defendant was further arrested on suspicion of Transphobic Section 4 Public Order. During interview, the defendant admitted his presence at the scene and to the offence. He admitted that he 'can't stand' gay people and to being abusive with a homophobic content. The defendant was formally charged with an s.4a Public Order Act Transphobic offence and s.5 Public Order Act Homophobic Offence and assault on the PCSO.

## HEATHER WILLIAMS – THE CASE

The defendant received 120 days imprisonment for the S4 offence, a conditional discharge for 2 years for the s.5 offence and 80 days imprisonment for the assault on the PCSO to run concurrently. The s.4 sentence was particularly significant as magistrates took into account the impact of the Transphobic offence and a particular distinction was noted in the greater length of sentence for the Transphobic offence than the assault on the PCSO.

## GOOD PRACTICE

### Victim Care

- ✓ At an early stage a thorough review was undertaken by the prosecutor in conjunction with the Area hate crime specialist identifying s.22 GRA 2004 as an issue in the case and identifying special measures (screens) and reporting restrictions under s.46 YJCEA 1999.
- ✓ The case was referred to the Area champion for advice and the victim was invited to an early pre-trial special measures meeting to provide reassurance and identify further support issues. The victim also received personal contact from the Area champion to provide reassurance, support and encouragement throughout the prosecution process.
- ✓ The Area ensured fully briefed presentations at court and sentence by the reviewing lawyer and results were immediately telephoned to the victim by the hate crime champion.

### Legal issues

- ✓ The distinction between Homophobic & Transphobic sentencing options was identified from the outset of the case alongside early identification of conflict between CPIA duties and s.22 GRA 2004.
- ✓ The charging decision ensured that a distinction was identified between s.4A POA Transphobic offence and s.5 POA Homophobic offence plus the assault on the PCSO allowing appropriate and identifiable sentencing options for the Magistrates.
- ✓ The Area identified full special measures support and reporting restrictions in relation to protecting the identification of the victim in conjunction with the CPS HQ Policy lead on homophobic crime.
- ✓ The Victim Personal Statement was fully and properly considered, including withholding of the victim's name from the defence, and used in Court. This was especially important as it was the sole 'voice' for the victim in court given that her statement was not used.

## GOOD PRACTICE

- ✓ The thorough review of the case revealed that another witness could provide all the evidence of the verbal attack on the victim. The CPS made the decision not to disclose the victim's statement as it was not necessary under advanced disclosure rules and there was sufficient evidence to proceed to plea without it.
  - ✓ The Area ensured the case was well prepared, the advocate was thoroughly briefed, together with sufficient disclosure (without compromising the victim's identity) which resulted in guilty pleas and confidence in the prosecution process by the victim.
  - ✓ The Area ensured proactive prosecuting, early CPS involvement in charging and an informed and committed prosecution team working together ensured success.
- Community Engagement**
- ✓ After sentencing, the Area hate crime champion maintained ongoing dialogue with the victim and attended local LGBT events, developed local contacts and has ensured ongoing involvement with organisations for transgender communities.

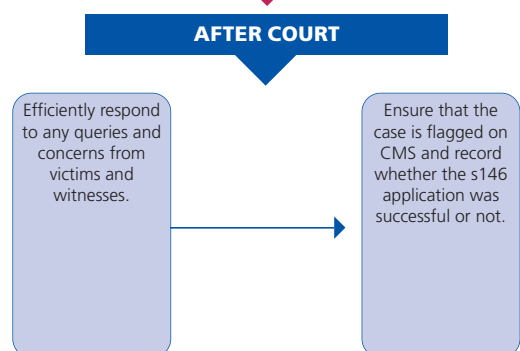
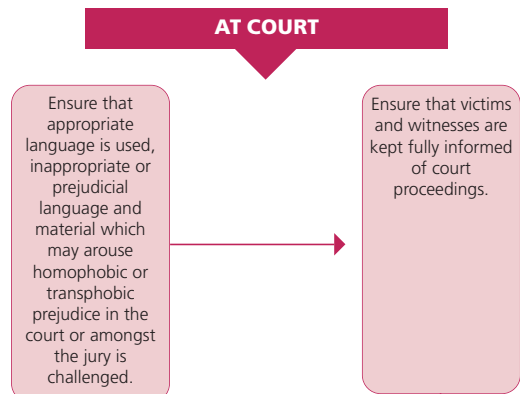
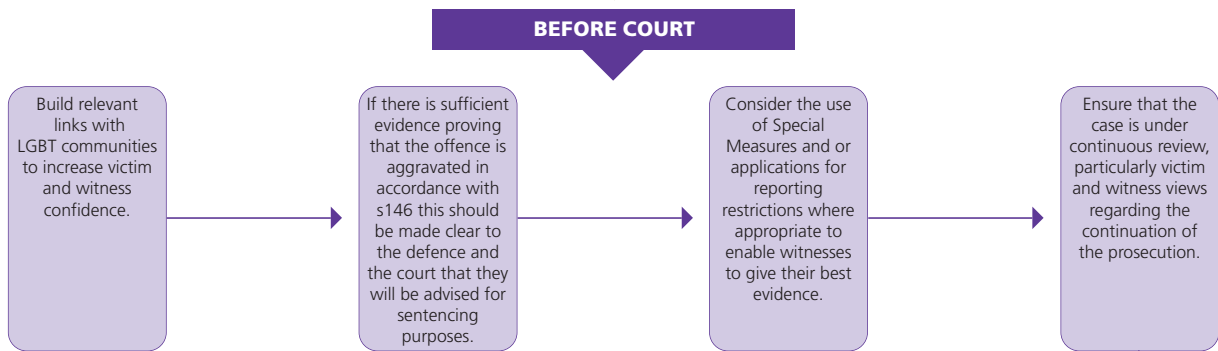
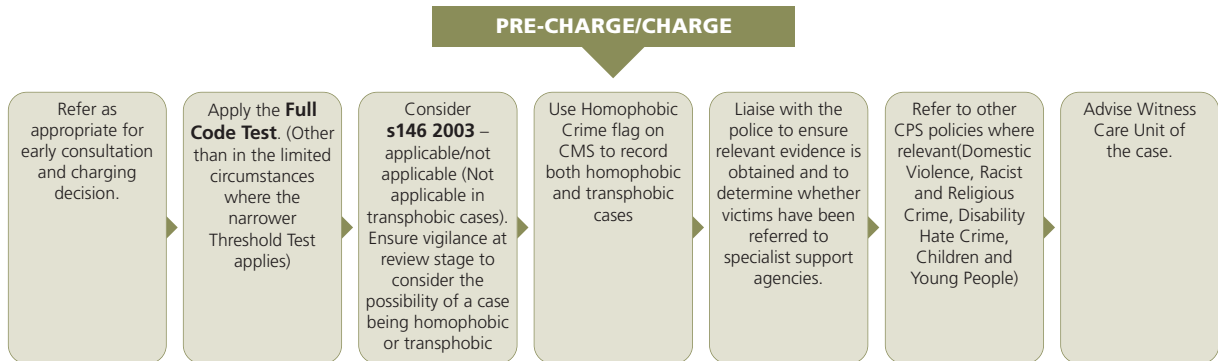
## LESSONS LEARNT

- Prosecutors should identify at an early stage whether s22 Gender Recognition Act 2004 is applicable within transphobic crime cases. This should include checking whether information relating to the GRA has been passed on. In this particular case, police officers had asked for mention of the GRA to be taken out of the victim's statement. Had she consented, her entitlement to s22 protection might have gone unknown by the CPS. Nonetheless, it remains a key issue that the privacy of transsexual victims and witnesses who do not hold Gender Recognition Certificates should also be respected and appropriate measures taken.
- Early consideration of victims' needs and concerns are essential in Transphobic hate crime cases, particularly in relation to special measures and GRA considerations.
- Prosecutors should ensure appropriate distinctions between homophobic and transphobic offences under POA 2004.
- Areas should ensure effective engagement with transgender communities to increase confidence in the prosecution process and alleviate fears and concerns.
- Areas should be aware that avenues of contact with transsexual people are not necessarily exclusively synonymous with 'LGBT communities, channels or venues'. Many transsexual people are simply getting on with their lives as the men, or women that they are rather than being part of the 'LGBT scene'; especially if they are heterosexual. Keeping lines of communication open therefore means clearly itemising 'trans' or 'transphobic' matters – for example ensuring crime reporting channels are labelled as 'homophobic and transphobic' and not simply 'homophobic' hate crime lines.



## 5 Homophobic and Transphobic Crime – The Prosecution Process

### Homophobic and Transphobic Crime: *The Prosecution Process*



## 6 Good Practice Themes

The Homophobic and Transphobic Crime Themed Review and Progress Check spotlighted Area performance in prosecuting these types of cases as well identified a range of good practice themes across all stages of the prosecution process. The review and progress check required Areas to develop and implement an action plan to improve outcomes for homophobic and transphobic crime and review Area performance. The following good practice themes across all stages of the prosecution process – **pre charge/charge**, **before court**, **at court** and after court were identified:

### PRE- CHARGE/CHARGE

#### 1 Local Protocols and Partnership Working

There are considerable benefits to developing local protocols between the CPS and police for handling homophobic and transphobic hate crime, as well as with wider CJS partners including CDRPs and CSPs and the voluntary sector. Local protocols can work to ensure that all hate crimes are prosecuted fairly, firmly and robustly, and victims of incidents are fully supported through positive action by CJS agencies. Working in partnership with CJS agencies to deliver a seamless service for victims of homophobic and transphobic crime is a key component in building confidence and providing an appropriate service to LGBT communities.

Good practice in relation to local protocols and partnership will require Areas to develop a range of multiagency relations both with the police, CJS, CDRPs and other multiagency fora:

- Develop **service level agreements** with the police for effective prosecutions and accurate coordinated recording of homophobic and transphobic crime. This should include accurate identification of homophobic and transphobic cases, effective investigative processes, case handling, effective victim and witness care, discontinuances of cases, interagency issues, training and performance management.
- Develop mechanisms to **reconcile** and **validate** police and CPS data on the number of homophobic and transphobic crime prosecutions and identify and address reasons for adverse outcomes.
- Work with LCJBs and CDRPs to **review** levels of reporting, **monitor** the quality of investigations and prosecutions to ensure lessons learnt and appropriate actions are taken.
- Develop **joint engagement strategies** with CJS partners to effectively build confidence within LGBT communities.
- Ensure active participation in **multi-agency hate crime partnerships** with agreements across the CJS and the third sector to **identify** and track cases and **share information**.

## 2 Flagging and Monitoring

All homophobic and transphobic cases should be accurately identified, flagged and recorded on COMPASS CMS. The CPS is committed to monitoring the impact of its public policy statement as part of the Area Performance Review system. Accurate data enables performance to be accurately tracked, unsuccessful outcomes further reduced and greater trust and confidence developed in the CPS. Area Good Practice in flagging and monitoring homophobic and transphobic cases would:

- Ensure that the Police have **clearly identified** homophobic and transphobic cases on case files and cross reference where appropriate.
- Ensure that file jackets are **endorsed** and homophobic and transphobic cases are flagged according to the definition on the CPS case management system by application of the National Monitoring flag for Homophobic Crime. The homophobic crime flagged is currently used for both homophobic and transphobic cases.
- Develop **monthly reviews** to assess the quality of pre-charge decisions MG3s and include homophobic and transphobic cases in casework quality assurance (CQA) checks.
- Develop a **quarterly Hate Crime Forum** to consider performance against targets, the effectiveness of pre-charge decision making and recording and flagging of cases on CMS. The Area should also be informed of performance against the target.
- Develop an **internal communications strategy** for all relevant CPS staff outlining the flagging requirements to ensure greater accuracy of all hate crime flagging and report of Area performance. This could include e-circulars, posters and internal newsletters.
- Utilise **Area Homophobic and Transphobic Coordinators** to monitor adverse case outcomes, develop Individual Case Reports, undertake analysis of the reasons for failure and cascade lessons learnt to SMT and all relevant staff and share with community representatives where appropriate.

**CPS Thames Valley** has developed the 'Flagging the 4 F's' campaign (Flagging, File Location, File Endorsement, Finalisation) comprising of daily e-circulars and posters to all staff on general flagging requirements, particularly, highlighting hate crime flagging. This has enabled the Area to improve the accuracy of homophobic and transphobic flagging on CMS and develop a clearer picture of the quality of casework on homophobic and transphobic crime which inform casework improvements.

### 3 Homophobic and Transphobic Crime Coordinators/Hate Crime Coordinators

All CPS Areas have a Homophobic and Transphobic Crime Coordinator who can provide prosecutors with useful information about how best to support LGBT victims and witnesses and undertake a key role in analysing and monitoring Area performance. Area Homophobic and Transphobic Coordinators have a significant role to play at both strategic and operational level. Good Practice in effectively delivering the role would:

- Develop **multi-agency working** and **community engagement** through liaison with CJS, CDRP, local authority and community and voluntary sector partners to analyse and share prosecution data and identify improvements for prosecution processes.
- **Monitor** local performance to ensure that the homophobic and transphobic crime policy is being adhered to and fully implemented and liaise with the CCP to ensure continuous performance improvement.
- Provide **appropriate time** to effectively develop and deliver the homophobic and transphobic coordinator role according to the size of the Area.
- Undertake a **strategic role** in supporting the **development, delivery, monitoring and evaluation** of homophobic and transphobic actions as part of the Area Business Plan.
- Ensure cases are accurately **flagged, dip sample** cases if appropriate and **identify and analyse** local trends and issues including DCV letters, applications for special measures and meetings with prosecutors for LGBT victims.
- Identify **local learning and development** needs, and assist in devising training and identifying local community partners to deliver Area training.
- Contribute **specialist knowledge** to the Area Hate Crime Scrutiny Panel and Group Community Involvement Panel and develop a source of expertise and provide guidance on homophobic and transphobic crime case handling.
- Provide **individual advice** on charging decisions and the prosecution process to other prosecutors, witness care officers and caseworkers dealing with homophobic and transphobic crime cases and contribute to casework quality assurance processes.
- Work closely with Area Communications staff to **disseminate good news stories** across the Area and Group and disseminate **good practice**.
- Attend national training developed for coordinators and attend appropriate national and regional conferences/meetings.

The Homophobic Crime Coordinator in **CPS Hampshire and IOW** has been involved with setting up a LGBT Advisory Group to support both the Police and the prosecution process. The Group has been developed to complement the Area Hate Crime Scrutiny Panel and will look at police files and CPS case studies.

## BEFORE COURT

### 4 Pre-Court Victim and Witness Care

The Prosecutors Pledge and the Code of Practice for Victims of Crime sets out the obligations of the CPS towards victims of crime. Effective support for victims and witnesses at the pre-court stage is critical to tackling homophobic and transphobic crime. The issue of anonymity may be of particular concern to many victims and witnesses of homophobic and transphobic crimes and appropriate support will need to be provided wherever possible. Good practice in supporting LGBT victims and witnesses at the pre-court stage would:

- **Identify at the outset** if the victim, or any witnesses could be classified as vulnerable under s16 of the Youth and Criminal Evidence Act or 'intimidated' under s17 and thus suitable for a video interview or a request for Special Measures
- Ensure **early liaison** with the police to ensure the victims and witnesses have been referred to specialist support agencies where appropriate.
- Ensure that victims have a **single point of contact** wherever possible and are informed at the earliest possible stage where the charge has been withdrawn, discontinued or altered.
- Ensure that Witness Care Unit staff are appropriately **trained** and have relevant knowledge and understanding of issues and concerns when dealing with victims and witness of homophobic and transphobic crime.
- Undertake **regular analysis** of court attendance and assess reasons for non-attendance for improvement purposes
- Liaise with relevant **specialist agencies** to provide support for victims and witness and relevant case information.

## 5 Case Handling

Effective case handling and strengthening the prosecution process is essential to bringing offenders to justice. In homophobic and transphobic cases, robust cases need to be built from the outset and victims and witness should be supported to give their best evidence to ensure successful prosecutions. Prosecutors have an essential role to play in ensuring successful outcomes in homophobic and transphobic crime. Good practice in relation to case handling would:

- **Proactively apply** the Code for Crown Prosecutors, the National Policy Statement and Guidance for Prosecuting Case of Homophobic and Transphobic Crime when providing both pre-charge and charging advice
- Ensure that Homophobic and Transphobic Crime Coordinators or Unit Head's are **consulted** in any homophobic or transphobic case where there is a proposal to drop/alter a charge or remove the aggravating element.
- Ensure that Agents are **appropriately instructed** and referred to Section 20 of the CPS Instructions for Prosecuting Advocates and the CPS Police Statement and Guidance.
- Ensure **regular consultation** between the Police and the CPS at all stages to ensure continuous information flow about case progression and developments.
- Deal with Homophobic and Transphobic Crime cases **expeditiously and robustly** giving prime consideration to the victim including dealing with pre-charge advice files promptly and in accordance with the Code for Crown Prosecutors
- Ensure **sensitivity** in relation to personal issues in respect of the victim, possible defences and any particular issues in relation to trans people where applicable
- Ensure that **early advice** was sought from the Area Homophobic and Transphobic Crime Coordinator where appropriate in relation to charging decisions, review and discontinuances
- Ensure that where a case is discontinued or a charge is substantially altered the Prosecutor would write to the victim to explain the decision in accordance with the Direct Communication with Victims initiative and in compliance with its obligations under the Code of Practice for Victims of Crime.
- Prompt the preparation of **Victim Personal Statements** to be used in deciding how to proceed and also ensuring that the victim's views are heard in court.

**CPS Humberside** has developed a 'cradle to the grave' approach to homophobic and transphobic crime whereby all cases are dealt with in-house up to and including crown court. The approach also includes proactive work to raise confidence to report homophobic and transphobic crime, tracking cases through multiagency work, providing appropriate support to victims and witnesses and positive media stories to further raise confidence in the CPS handling of cases.

## AT COURT

### 6 Special Measures

Special Measures provisions for vulnerable or intimidated victims and witnesses are contained within the Youth Justice and Criminal Evidence 1999 and Criminal Justice Act 2003. Where appropriate, applications should be made for ordinary 'special measures' to ensure that vulnerable or intimidated victims and witnesses are able to give 'best evidence' in criminal proceedings. This may include an application for screens, live link or the prevention of inappropriate reporting in the media in relation to homophobic and transphobic cases.

To ensure good practice in relation to special measures:

- Prosecutors should regularly refer to the Guidance on Prosecuting Cases of Homophobic and Transphobic Crime for detailed information on special measures meetings, pre-court visits, reporting restrictions for adults and anonymity.
- Refer to the Infonet Special Measures homepage for up to date information.<sup>4</sup>
- Prosecutors should refer to the Directors Guidance on Witness Anonymity, August 2008(P/LI/60/2008) and the Attorney General's guidelines on the Prosecutors role in Applications for Witness Anonymity Orders in relation to applications for anonymity (in conjunction with special measures) for homophobic and transphobic cases. These applications should only be considered in **exceptional** circumstances.

Michael Ramsey faced two charges of criminal damage. A Not Guilty plea was entered which was changed on the day of trial. The defendant was infatuated with Amelia Rovey and went to her house with chocolates. She refused them and was there with her female friend. The defendant kicked the door off its hinges and smashed the alarm box and then called them 'a pair of lesbians'. Special Measures of a video link were applied for and both the victim and witness attended court, pre-empting the plea change. The defendant received a compensation order.

<sup>4</sup> [http://infonet.cps.gov.uk/infonet/legal/xml\\_020780](http://infonet.cps.gov.uk/infonet/legal/xml_020780)

## 7 Sentencing

Section 146 of the Criminal Justice Act 2003 outlines the provision for increase in sentences for aggravation in relation to sexual orientation. Good practice will ensure that:

- Homophobic and transphobic cases should be identified at the earliest possible stages and where there is **evidence of aggravation** related to sexual orientation or presumed sexual orientation this should be brought to the Courts' attention.
- At sentence, Prosecutors will need to draw to the sentencing courts attention the provision of **s146 of the Criminal Justice Act 2003** or instruct Counsel to do so in relevant cases.
- Relevant files should be endorsed with any sentencing uplift with respect to this being an aggravating feature of the original offence.

John Morgan was charged with Robbery. The harassment related to Neena Mayan, a lesbian who lives with her partner and her eleven year old daughter. The defendant knew the victim as he was friends with her son. The defendant pursued a course of conduct over an eight day period which amounted to verbal abuse, calling her a 'big fat lemon lesbian' etc, he also teased her daughter asking if her mum was still a 'big fat lemon lesbian'. The trial proceeded following a Not Guilty Plea and the defendant was convicted and given a sentence uplift which was announced in court.

Tony Baker was charged with common assault and s5 POA offence. The s5 relates to homophobic abuse towards Jane Brown a transgendered woman. She was at home and the defendant threw a coin at her house. She was then subjected to 'I know you're a transsexual and 'oi, you've got your tits in the trolley and your balls...etc'. The defendant pleaded guilty and got a Supervision order for 12 months. It was stated in court that the length of the sentence was due to the case being a transphobic incident which meant that the sentence uplift was imposed.



## AFTER COURT

### 8 Post-Court Victim and Witness Care

Support for victims and witnesses of homophobic and transphobic at the post-court stage ensures compliance with the Prosecutors Pledge and the Code of Practice for Victims of Crime. Good practice would:

- Ensure that victims are **kept informed** of the outcome of court hearings as soon as possible through the Witness Care Unit and ensure that queries and concerns in relation to sentence are appropriately addressed.
- Ensure that reviewing lawyers take into account **due sensitivity** in correspondence with the victim and if necessary will have the letter hand delivered by the officer in the case. If requested, or if appropriate a meeting will be arranged.
- Ensure compliance with the Direct Communications with Victims scheme for victims of homophobic and transphobic crime.

### 9 Community Engagement

Effective engagement with LGBT communities is essential in building trust and confidence in the criminal justice system. Developing local relationships and building links with LGBT communities can encourage greater reporting of homophobic and transphobic crime. At local level, engagement can contribute to effective case handling and support improvements in victim and witness care through information giving, consultation and participatory activity. In engaging LGBT communities' good practice would:

- Develop a **comprehensive Area engagement strategy** which includes provision of information to LGBT communities, consultation on needs and requirements and participation of LGBT communities through delivery of specialist training and representation on Area Hate Crime Scrutiny Panel and Community Involvement Panels.
- **Develop links** with police station based lay volunteers who support victims of homophobic and transphobic incidents.
- Develop **good news stories** in local LGBT media to address underreporting and encouraging community confidence in the prosecution process.
- Provide a specific **CJS information pack** for LGBT communities outlining the CPS Policy on Homophobic and Transphobic Crime, current performance data, third party reporting procedures, anonymous reporting, the role of the Homophobic and Transphobic Crime Coordinator, LAGLO, special measures and reporting restrictions.
- **Disseminate case outcomes and data** to LGBT communities in an accessible format demonstrating public reporting of CPS performance on cases against stated public policies.
- Invite representatives from LGBT support agencies to **deliver awareness training** for all staff at Area level. This would enable Staff awareness of homophobia and transphobia to be increased and ensure increased participatory activity from LGBT communities.

- Develop **multi-agency consultation events** to better understand the concerns and issues affecting LGBT communities to enable community informed CJS policy and strategy development.
- Ensure CPS attendance at local LGBT venues to publicise the homophobic and transphobic crime policy, s46 reporting restrictions and concerns over homophobic incidents.

**CPS South Wales** has undertaken engagement activity in local LGBT venues to discuss the homophobic crime policy, S46 restrictions and concerns over homophobic incidents in a particular area of the city.

**CPS Cumbria** has undertaken engagement with Gay Cumbria which supports victims of homophobic crime. It have jointly developed communication protocols, Gay Cumbria has distributed the CPS policy statement within its information pack and a commitment has been developed to work with the organisation to assist with information relating to homophobic crime on a case by case basis. This will include victim referrals to Gay Cumbria and the provision of relevant information to the CPS in relation to the victim’s case.

## 10 Training

Greater awareness of supporting victims of homophobic and transphobic crime is a requirement for CPS staff. Equipping staff with the relevant skills and knowledge will improve homophobic and transphobic prosecutions and ensure equality of access to justice for victims. Good practice would:

- Ensure that all relevant staff members and WCU staff undergo training on supporting victims of homophobic and transphobic crime delivered by appropriate trainers.
- Develop specific training and briefing for identification, flagging and data inputting for staff who are responsible for CMS inputting.
- Utilise Homophobic and Transphobic Crime Coordinators to deliver awareness sessions for staff.
- Attend Police LAGLO Training to strengthen the prosecution approach to homophobic and transphobic crime.
- Plan, deliver and monitor **multi-agency training** with LCJB, CDRPs addressing equality and diversity issues.

**CPS Devon and Cornwall** effectively engaged a specialist support organisation to deliver awareness training for CPS and WCU staff in relation to homophobia and transphobia. Staff are better able to support victims of homophobic and transphobic crime as a result.



**Further copies of this booklet may be obtained from:**

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