



CPS

Guidance on Prosecuting Cases of Homophobic and Transphobic Crime

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Introduction

- 1.1 In recent years, issues surrounding discrimination against sections of our society have been brought to the forefront of people's attention. We are all probably more aware now of issues surrounding discrimination than we used to be, and we are all more aware of the need to pay special attention to cases where these features are present. Furthermore, the publication of our original policy statement in 2002 raised awareness both within the CPS and within the lesbian, gay, bisexual and transgender (LGBT) communities about how cases with a homophobic or transphobic element are managed.
- 1.2 We must always be on our guard to ensure that the courts are made aware of any element of discrimination that may be present in a particular case. The CPS has a duty to ensure that where aggravating features are present in a case, the correct charge is preferred and the facts relating to motivation are brought to the attention of the sentencing court. Prosecutors must pay particular regard to the provisions of sections 28-32 of the Crime and Disorder Act 1998 (increase in sentences for racial or religious aggravation) and section 146 of the Criminal Justice Act 2003 (CJA) (increase in sentences for aggravation related to disability or sexual orientation).
- 1.3 We are also committed to ensuring equality in the provision of goods, facilities and services to LGBT communities and are mindful of our obligations under the Equality Act (Sexual Orientation) Regulations 2007. These came into force on 30 April 2007 and make it unlawful for a public authority involved in providing goods, facilities and services to discriminate on the grounds of sexual orientation.
- 1.4 In the past, incidents against lesbian, gay or bisexual people, or against trans people, have been rarely reported and even more rarely prosecuted. Research studies suggest that victims of, or witnesses to, such incidents have very little confidence in the criminal justice system or those agencies that are part of it. Consequently, incidents of this nature have gone largely unreported because the victim or witness often believes either that they may become the subject of a police investigation themselves or that they will be treated disrespectfully because of their sexual orientation or gender identity. Crimes based on homophobia and transphobia have therefore been ignored or forgotten because of the prejudiced views of a minority of individuals who do not give lesbian, gay and bisexual people and trans people the respect that they have a right to and deserve, or the encouragement that they need, in order to report incidents against them and then support the prosecution of the perpetrators in court.
- 1.5 Prejudice, discrimination or hatred of members of any part of our community based on their sexual orientation or gender identity have no place in a civilised society; any such prejudice, discrimination or hate that shows itself in the commission of crime must be thoroughly and properly investigated and firmly and rigorously prosecuted in the courts. A clear message must be sent so that those who commit such crimes realise that they will be dealt with firmly under the criminal law: the CPS has a vital role to play in delivering this aim, not only in terms of its own role but also in terms of advising its partners in the criminal justice system — the police, the courts, magistrates, judges and those in the voluntary sector — that this sort of crime must no longer be tolerated.
- 1.6 Because the CPS regards any element of prejudice, discrimination or hate in any type of crime as totally unacceptable, we have issued a public statement on how we will deal with cases involving a homophobic or transphobic element. We regard it as an aggravating factor when considering the public interest.

- 1.7 We have recognised the difference, however, between “incidents” and “crimes”. We want to encourage victims of, and witnesses to, homophobic or transphobic incidents to come forward and report the incidents to the police. However, not every incident will amount to a crime; not every incident that is a crime will lead to the perpetrator being found and charged.
- 1.8 Not every case that is brought to our attention will automatically allow us to lead evidence of the homophobic element in it for the purposes of section 146 of the CJA 2003. This could be because it may not be in a form, or of sufficient substance, to allow the court to take it into account when sentencing the defendant.
- 1.9 It is therefore important to ensure that members of the LGBT communities are aware of the distinctions involved between “incidents” and “crimes”. In building confidence between the LGBT communities and the CPS, we must be careful not to raise expectations inappropriately about how any perceived homophobic or transphobic incident will be dealt with by the police or by the CPS.
- 1.10 However, what our policy statement does say is that any member of the LGBT communities who is involved in an incident that is reported to the police, and in which the CPS becomes involved, is entitled to be treated with respect and dignity. An informed approach founded on these principles will help bring down the barriers that exist and help us to explain, when necessary, why the incident that they believe to be homophobic or transphobic cannot be put in that way to the court. All CPS staff should work to a standard of professionalism which shows clearly that its decisions are not influenced by prejudice, and which shows that the quality of its work is not diminished by ignorance of the circumstances that may affect LGBT people.
- 1.11 Experience has shown that when victims and witnesses are treated in this way, any adverse decision that we have to make is better understood and, whilst the victim may not agree with the decision that we take, he or she believes that we have dealt with the case in which they are involved in a proper and sensitive way.
- 1.12 CPS staff should also bear in mind some people may commit crimes for more than one reason. Crimes may be motivated by homophobia or transphobia and also by a hatred based on a person’s race, religion or belief, age, gender or disability. Some homophobic or transphobic crimes may be committed in a domestic setting, including between adults, children and young people. Some homophobic or transphobic crimes may occur in the media in, for example, websites, television broadcasts or song lyrics. Where these issues arise, the relevant CPS policy should be applied in each appropriate case.
- 1.13 We have been clear in stating that every case will be considered on its merits in accordance with the Code for Crown Prosecutors. Our commitment to the individual examination of each case and to the application of the two stages set out in the Code is unwavering. However, there is much that can be done to ensure that we have all the information available from the police so that the decisions that we take are of the highest possible quality. There is much that we can do to keep the victim of a homophobic or transphobic crime better informed about what is happening in the case. We also have a duty to ensure that those who need to attend court to give evidence are advised about what they can expect and what measures might be available to assist them to give the best quality evidence that they can.
- 1.14 Regular and effective communication with the police is also essential to ensure that there are improvements in interview quality; to prevent drift; to provide more focused feedback; and to ensure that decisions are properly recorded. It may be helpful, from time to time, to review with the police common systems and local inter-agency initiatives.

Is there a need for specific guidance?

- 2.1 The CPS' answer to this question is an unequivocal "Yes". Aside from the reasons set out in the introduction to this guidance, victims and witnesses who are affected by homophobic or transphobic incidents often need special consideration. Prosecutors need to appreciate the consequences of their decisions on the lives of those who have come forward to report a homophobic or transphobic incident. They may have partners and families who are not aware of their sexual orientation or gender identity; being "outed" through the criminal justice process may also cause them to lose their jobs; their homes; their economic stability; and their social standing, notwithstanding legislation that attempts to protect them.
- 2.2 Even in today's society, there are people who regard members of the LGBT communities with hostility and contempt simply because of their sexual orientation or gender identity. Further, LGBT people may be treated differently because some people have religious or other beliefs that cause them to regard LGBT people as immoral or inferior because of their sexual orientation or gender identity.
- 2.3 These are factors that will weigh heavily in the mind of any victim or witness and the CPS has a responsibility to treat their concerns with the utmost seriousness.
- 2.4 However, the CPS can only react to the concerns of the individual victim or witness if those concerns are made known. Accordingly, it is essential that we have procedures in place that allow the victim or witness to voice their concerns, set out exactly what they believe the impact on their lives might be if they need to give evidence, and allow the CPS to explain what is available to support them.

Terminology

- 3.1 Terminology and definitions relating to lesbians, gay men, bisexuals and trans people may sometimes seem confusing and they change over the years. We have set out here and in the glossary (annex A) terms that are in current usage and their meanings when this guidance was published in 2007.
- 3.2 Sexual orientation is the phrase that is used to describe the disposition of individuals to be physically and/or emotionally attracted to others. A lesbian is a woman who is physically, sexually and/or emotionally attracted to women; a gay man is a man who is physically, sexually and/or emotionally attracted to men; and a bisexual person can be either a man or a woman who is physically, sexually and/or emotionally attracted to both men and women.
- 3.3 Gender identity is the term used to describe the personal sense of being either a man or a woman. It is generally assumed that the gender identity will be consistent with the visible sex characteristics of a person. The gender role (social role) which, to a large extent, is culturally determined is also expected to be consistent with the sex appearance. A few individuals, however, are uncomfortable with both their appearance and their social role.
- 3.4 When this dissonance is experienced profoundly and continuously, the people concerned may "transition" to live full time in the role which accords with their gender identity. Many of them will seek medical treatment to bring the body more in line with the gender identity.

- 3.5 Some people, having made a permanent transition to the new role in which they intend to live for the rest of their lives, will obtain legal recognition in the form of a Gender Recognition Certificate (GRC). The Gender Recognition Act 2004 (GRA) bestows a right to be regarded “for all purposes” as belonging to the social gender to which they have transitioned. Although many in this situation will have had gender confirmation surgery (sometimes still referred to as gender reassignment surgery), this is not an essential criterion for acquiring a GRC.
- 3.6 The people who are described above are still referred to in many texts as transsexual people. They form a small part of a much wider group of people whose gender expression may be very varied, many of whom do not feel any discomfort with their sex characteristics, but who may enjoy cross-dressing occasionally (sometimes referred to as transvestite people). The umbrella term which is usually used to encompass all the varieties of gender expression discussed above is trans people. Many trans people prefer the terms, trans men and trans women.
- 3.7 It should be noted that sexual orientation is not the same issue as gender identity. Trans people, like others in the population generally, may be heterosexual, homosexual, bisexual or, occasionally, asexual.
- 3.8 Collectively, people who are LGBT may be referred to as members of the LGBT communities, but it is important to understand that someone’s gender identity and their sexual orientation are two different things, and the issues raised can also be very different.
- 3.9 Being a member of the LGBT communities is just one characteristic of an individual, and that person may face other types and forms of prejudice, discrimination or hate. These may be based, for example, on their gender, ethnicity, nationality, religion or belief, age or disability (perceived or actual). These characteristics can invoke prejudice in some people and it is therefore possible that a single incident may be motivated by a number of discriminatory reasons. Prosecutors must be alert to the case in which there are several types and forms of discrimination and ensure that every element of discrimination is properly addressed.
- 3.10 “Homophobia” and “transphobia” are terms used to describe a dislike of LGBT people or aspects of their perceived lifestyle. In other words, homophobia and transphobia are not restricted to a dislike of individuals; the dislike can be based on any sexual act or characteristic that the person associates with a LGBT person, whether or not any specific LGBT person does that act or has that characteristic. That dislike does not have to be as severe as hatred. It is enough that people do something or abstain from doing something because they do not like LGBT people.
- 3.11 Every victim of, or witness to, a homophobic or transphobic incident must be treated as an individual with individual needs. However, for the purposes of the public statement and for this guidance, the CPS considers that there are certain common issues that we can address in the same way. Accordingly, while recognising and appreciating that each victim and witness is different, we have used the phrases “the LGBT communities” and the words “homophobia” and “transphobia” as referring to all those who fall within our statement and guidance.
- 3.12 The term “victim” is perceived by some as negative. “Survivor” or simply “person affected” is often preferred. However, CPS policy reflects the CPS’ role in prosecuting cases involving a homophobic or transphobic element and so the term “victim” of a crime is retained.
- 3.13 Finally, a set of words that is frequently used in the LGBT communities that members of the CPS may hear or read about is “out”, “outing” or “being outed”. The word “out” refers to

the extent to which a member of the LGBT communities is known as being lesbian, gay, bisexual or a trans person by others. Many LGBT people may be out to certain groups of people, such as their friends, but not out to other groups, such as their families or their work colleagues. Even then, many LGBT people may be out to only some people within each group of people, so, for example, only some members of their family or only some friends and work colleagues may know that they are LGBT. CPS staff should be careful not to make assumptions about this issue and avoid any possibility that they out a victim or witness on the mistaken assumption that the person to whom they are talking is aware that the victim or witness is LGBT.

- 3.14 Outing occurs when a person's sexual orientation or gender identity is made known or more widely known to others than the person wishes it to be known. Being outed is the term given to the process by which this occurs.
- 3.15 One of the consequences for LGBT people of reporting a homophobic or transphobic incident or supporting a prosecution by giving evidence in court is that they may have to answer questions about their sexual orientation or gender identity. In this way, a person may effectively be outed.
- 3.16 Being outed can be a matter of serious concern to LGBT people. CPS staff must be very sensitive to the worries that LGBT people may have about the possible consequences for them and often for their families, and for the way in which they conduct their lives if knowledge of their sexual orientation or gender identity becomes known or more widely known than the person wishes. CPS staff should also be aware that section 22 of the GRA 2004 restricts the circumstances in which information about a person's gender history may be disclosed. Further information on the subject can be found in section 14 of this Guidance.

Appropriate language

- 4.1 In all dealings with cases involving a homophobic or transphobic element — whether on paper or at court — it is essential that prosecutors adopt a style of address or reference that demonstrates respect for the victim's, witness' or defendant's sexual orientation, gender identity and lifestyle. When dealing with members of the LGBT communities, prosecutors should avoid making stereotypical assumptions, either about the way in which they lead their lives or about how they wish to be addressed.
- 4.2 All CPS staff should avoid any derogatory words, gestures or actions that could be taken as offensive and should take steps to advise any colleagues who adopt such behaviour that they should stop. Members of the LGBT communities who become victims of homophobic or transphobic incidents should not have to be victimised a second time by the way in which those who work in the criminal justice system treat them — either to their face or behind their back.
- 4.3 Members of the LGBT communities have every right to be treated with dignity and respect by CPS staff — as have every other victim and witness with whom we deal. The decisions that we take may have a material effect on the lives of the victims of and witnesses to crime and it is important that we recognise the sensitivities of victims and witnesses.
- 4.4 If you are in any doubt about how to refer to the sexual orientation or gender of the victim or witness, ask the person concerned how they wish to be addressed and find out the

language with which they feel comfortable about having their sexual orientation or gender discussed. All CPS staff should remember that there may be terms or expressions that a member of the LGBT communities might be content to use but which are inappropriate for CPS staff to use without the person's consent. So, just because you hear members of the LGBT communities refer to themselves in a certain way, do not assume that it is appropriate for you to use the same terms or expressions. Always ask.

- 4.5 Similarly, all CPS staff have a responsibility to ensure that those who prosecute cases on our behalf – agents and counsel – are familiar with these issues. Accordingly, CPS staff will want to ensure that there are paragraphs in counsel's instructions and those that go to agents which outline the way in which the CPS expects members of the LGBT communities who are victims of crime or who appear as witnesses to support the prosecution's case to be treated and addressed. The CPS Instructions for Prosecuting Advocates (Chapter 20) set out the standards expected of agents and counsel when prosecuting homophobic offences. Agents and counsel are expected to follow the same standards when prosecuting cases of transphobic crime.
- 4.6 These levels of courtesy extend into the courtroom itself and CPS staff should do all that they can to ensure that others involved in the case, from the judge or magistrate to opposing advocate and other witnesses, treat the victim or witness with the dignity that they deserve and that they are addressed in appropriate terms.

How to make sure that we take full account of a homophobic or transphobic element when we prosecute a case

- 5.1 The CPS definition of a homophobic or a transphobic incident is:
- “Any incident which is perceived to be homophobic or transphobic by the victim or by any other person.”*
- 5.2 This definition is simple and easy to use. It is based on the Stephen Lawrence Inquiry definition of a racial incident and is broad. It is also the definition used by the Association of Chief Police Officers (ACPO) in their tactical guidance manual. In the way that the definition has been constructed, it is inherent that the incident will be motivated by homophobia or transphobia, that is a dislike of LGBT people. The perception that the incident is based in homophobia or transphobia can come from the defendant.
- 5.3 It is important to recognise that the definition adopted allows a person other than the victim to categorise the incident as homophobic or transphobic. This is deliberate. Notwithstanding the nature of the incident, there may be victims who do not categorise themselves as members of the LGBT communities and who therefore conclude that they have not been involved in a homophobic or transphobic incident.
- 5.4 This is captured in the public statement where we talk about a person who has sex with a person of the same sex who does not see himself or herself as an LGBT person. There may be a number of reasons for this: social pressures; domestic responsibilities; economic pressures; language and culture; or a simple unwillingness to regard themselves as part of the communities when they engage in homosexual or trans behaviour on a part-time basis. Whatever the reason, it is important from the CPS' point of view that incidents in which such people are involved are also seen as falling within the public statement that we have published.

- 5.5 The word “incident” has been used deliberately. Apart from the distinction between “incident” and “crime” which is referred to above, examples of homophobic or transphobic incidents go beyond the typical examples that may immediately come to mind, such as physical assaults, sexual abuse or public disorder. Homophobia or transphobia may lie behind crimes of criminal damage; arson; blackmail; robbery; theft; burglary; and indeed almost any other crime. Prosecutors need to be alert to the possibility that these crimes may be based on homophobia or transphobia and they should ask the police to enquire further into this possibility, if they have any suspicions that this might be the case.
- 5.6 All cases referred to us by the police, which have been identified as a homophobic or transphobic related incident, should be flagged on our computerised case management system COMPASS. Some cases will need more than one flag, for example, cases that also involve domestic violence, rape or racist element. The flagging of cases is important: it means that we can monitor how we handle these cases so that we can report back to communities on our performance in handling these types of crime.

Prosecuting cases of homophobic and transphobic hate crime

- 6.1 Identifying a case as a homophobic or transphobic incident means that someone at some stage has perceived the incident that has given rise to the charge as being aggravated by hostility based on a victim’s sexual orientation or gender identity. It means that section 146 CJA 2003 **may** be relevant and that efforts should be made to prove whether it is or not. Prosecutors should be vigilant to make sure that at every review they consider the possibility of a case being a homophobic or transphobic crime.
- 6.2 Prosecutors will want to be satisfied that police enquiries in such cases have been thorough and that all possible witnesses have been interviewed. Often, witnesses to homophobic or transphobic crime may be reluctant to come forward because their own position may then become vulnerable to enquiry. Sometimes, the police may not pursue such witnesses because they believe that the case will never be strong enough to go to court.
- 6.3 Prosecutors should liaise directly with the senior police officer in the case to ensure that all evidence has been obtained and forwarded to the reviewing lawyer for decision.
- 6.4 There may be cases where the prosecutor is satisfied that there is a homophobic or transphobic element that is capable of being mentioned in court, but where the victim or witness does not want the prosecutor to refer to it for whatever reason. Such cases need to be considered very carefully, particularly where there are other witnesses who do not share the same view. The final decision is that of the prosecutor. However, the views of the victim in such cases will be important in the decision-making process about whether to refer to the element of homophobia or transphobia in court. The Victim Personal Statement may be of assistance to prosecutors in establishing the wishes of the victim. There is, of course, nothing to prevent the case from continuing in court on the appropriate charge without referring to the homophobic or transphobic element.
- 6.5 We always aim to build the strongest possible cases to put before the court. If satisfied that there is sufficient evidence to prove that the offence is aggravated in accordance with section 146, prosecutors should make it clear to the defence and to the court that they intend to so advise the court for sentencing purposes.

- 6.6 Where a case involves domestic violence, or a racist or religious offence, or is committed against a disabled person, or where the victim of, or witness to, a crime is a child, reference should also be made, as appropriate, to our Policy for Prosecuting Cases of Domestic Violence; Racist and Religious Crime – CPS Prosecution Policy; Policy for Prosecuting Cases of Disability Hate Crime; and Children and Young People – CPS policy on prosecuting criminal cases involving children and young people as victims and witnesses.

Charging

- 7.1 The Director's Guidance on Charging requires offences involving homophobic or transphobic aggravation to be referred to a Crown Prosecutor for early consultation and charging decision.
- 7.2 We review cases referred to us by the police in accordance with the tests set out in the Code for Crown Prosecutors. We make charging decisions in accordance with the Full Code Test, other than in the limited circumstances where the narrower Threshold Test applies.
- 7.3 The first stage of the Full Code Test is consideration of the evidence. We must be satisfied that there is sufficient evidence to provide a "realistic prospect of conviction" against each defendant on each charge. This means that a jury or bench of magistrates or judge hearing a case alone, properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged. If a case does not pass the evidential stage, it must not go ahead no matter how important or serious it may be. There is no relaxation in the sufficiency of evidence stage just because the case involves a homophobic or transphobic element.
- 7.4 If the case does pass the evidential stage, we must then decide whether 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.
- 7.5 The Threshold Test requires us to decide whether there is at least a reasonable suspicion that the suspect has committed an offence, and, if there is, whether it is in the public interest to charge the suspect. This test is applied to those cases in which it would not be appropriate to release a suspect on bail after charge, but the evidence to apply the Full Code Test is not yet available. The Full Code Test must be applied as soon as reasonably practicable.
- 7.6 If the case passes the evidential stage and it is a case of homophobic or transphobic crime, the public interest will almost always be in favour of prosecution. The Code for Crown Prosecutors at paragraph 5.9k gives the following example of a common public interest factor in favour of prosecution:

"the offence was motivated by any form of discrimination against the victim's ethnic or national origin, disability, sex, religious beliefs, political views or sexual orientation, or the suspect demonstrated hostility towards the victim based on any of these characteristics".

- 7.7 The charges that we decide to pursue in any prosecution should always reflect the seriousness of what took place; any element of pre-meditation or persistence in the defendant's behaviour; the provable intent of the defendant; and the severity of any injury suffered by the victim. Reference should be made to any relevant Charging Standard. The charges must enable us to present the case clearly and simply and they must give the court the power to impose an appropriate sentence.

The views of the victim in determining the public interest

- 8.1 In cases with a homophobic or transphobic element — as in all cases — the reviewing prosecutor must apply the Code for Crown Prosecutors with regard to the determination of the public interest.
- 8.2 The Code for Crown Prosecutors (paragraph 5.12) requires prosecutors, when considering the public interest, to:
- “take into account the consequences for the victim of whether or not to prosecute, and any views expressed by the victim or the victim's family”.*
- 8.3 This is repeated in The Prosecutors' Pledge, which was introduced by the Attorney General on 21 October 2005, and which states that prosecutors will:
- “take into account the impact on the victim or their family when making a charging decision”.*
- 8.4 As in all cases, the best casework decisions in cases with a homophobic or transphobic element are the ones which are based on all the relevant evidence, facts and other information which the police are able to provide to the prosecution.
- 8.5 Because of the particular concerns of some members of the LGBT communities concerning the effect that reporting an incident and supporting a prosecution may have on their lives, it is essential that the reviewing prosecutor has sufficient background information about the offence, the victim and any other witnesses to make an informed decision about where the public interest lies in continuing with the case.

Major and minor offending

- 9.1 The way in which members of the LGBT communities have historically been treated by individuals within the criminal justice agencies has contributed to an entirely understandable reluctance by members of those communities to come forward to report any homophobic or transphobic incident to the police or then to continue to support any prosecution, if the incident is a crime, by giving evidence at court.
- 9.2 That reluctance, borne out of historical experience, can often centre on the concerns that the LGBT person has about the way in which their conduct will be regarded by the police and the CPS. The victim of, or a witness to, a homophobic or transphobic incident may believe that they will become the subject of a police investigation and then a CPS

prosecution because of where they were when the incident occurred; because of whom they were with; or because of what they were doing at the time.

- 9.3 The CPS' policy in this area is set out in the public statement in the section: "minor offending by the victim of, or a witness to, a more serious crime" and is based on the relative seriousness of the two crimes. It is important to note that the CPS does not have any power to direct the police to follow the guidance that we have issued. However, Chief Crown Prosecutors will want to discuss with their local Chief Constables the way in which policing policy with regard to minor offending in these circumstances is implemented in an attempt to bring the two sets of policies into line.
- 9.4 The general position of the CPS is that it is more important to prosecute the perpetrator of a more serious crime than someone who may have committed a more minor crime where the former is connected to the latter. For example, it is more important to secure sufficient evidence to prosecute a defendant for a serious wounding than it is to prosecute a person for engaging in sexual activity in a public lavatory, if that second prosecution means that the first will not go ahead.
- 9.5 Accordingly, the CPS has made a public commitment that it will deal with the more serious offending even when that means that the minor offending is not prosecuted.
- 9.6 The position is, however, relative. If a person commits an act of, for example, engaging in sexual activity in a public lavatory and is reported for that act, without that person becoming the victim of, or witness to, a more serious crime themselves, that person should be dealt with in the usual way. The CPS' position is not a commitment to allow people to commit crime with impunity; it is an undertaking to prosecute serious crime effectively wherever it can, even if that means that those who commit minor criminal acts are not put before the courts in that particular case.
- 9.7 This position is not unique to homophobic or transphobic crime; the CPS often has to consider how to deal with (sometimes unrelated) acts of minor offending by victims of, or witnesses to, more major offending. There will be occasions where the minor offending is unrelated to the major offending, for example, where a person engaging in sexual activity in a public lavatory witnesses an attack by one person upon another person. Sometimes, the answer is to prosecute the more minor offending first and then deal with the major crime; on other occasions, it is right to disregard the minor offending as the public interest requires the effective prosecution of the person accused of the more serious crime. It is the latter approach that the public statement emphasises as the way forward in dealing with minor offending when a more serious offence is committed.

Possible defences

- 10.1 In addition to the usual array of defences with which prosecutors will be familiar, there are two specific defences which are sometimes raised in response to charges of assault in this context: self-defence and provocation.
- 10.2 By necessity, the prosecutor will need to adopt a different approach depending on whether the charge is one of an assault or one of murder, but in respect of both types of charge, there are common issues that the prosecutor is likely to face.
- 10.3 It will often be the case that there is no independent witness to what occurred. Prosecutors will sometimes be faced with a defence based on the suggestion that the defendant committed the assault because the victim or some other person made a sexual approach to them that so angered them or made them so frightened that they assaulted the individual concerned. Sometimes, it may be suggested that this sequence of events allows a defence of self-defence to be raised; on other occasions, it will simply be raised as a reasonable explanation for what the defendant did.

Self-defence

- 10.4 The defence of self-defence is a complete defence to any crime committed by the use of force. A person is entitled to use such force as is reasonable in the circumstances as he or she believes them to be for the purposes of self-defence or defence of another. Once self-defence is raised, the burden of disproving the defence rests on the prosecution beyond reasonable doubt.
- 10.5 In cases where self-defence is raised, prosecutors will want to ensure that — wherever possible — the victim is re-interviewed by the police to find out whether there is any truth in what the defendant alleges. If the victim is deceased (having been killed by the defendant) prosecutors will want to ensure that any witnesses are interviewed by the police. It will be important to obtain as clear an account as possible of the behaviour of the victim and the defendant in the time leading up to the assault. Any such witnesses who were present should be offered the appropriate support in giving their evidence in court.
- 10.6 Where the defendant alleges that the victim made a sexual advance towards the defendant, and this is denied by the victim, prosecutors must ensure that evidence of that denial is presented in court. In such cases, prosecutors should robustly challenge any suggestion that the victim made a sexual advance and should test the defendant's account in detail to expose any inconsistencies in evidence.
- 10.7 Even where the victim accepts that some of his actions could have been interpreted as a sexual advance, it is important to find out exactly what the victim did do — such as: did he touch the defendant at all; did he move towards the defendant at all and were any of these actions witnessed by any other person or people etc.. It will also be important to find out exactly where such actions took place: for example, was it in a place from which the defendant could have left easily.
- 10.8 All these issues will go towards considering whether a defence of self-defence is made out. The fact that the victim accepts that they made a sexual advance on the defendant does not automatically provide the defendant with the defence of self-defence. Often, such an

advance does not involve any physical act of touching, and the reaction of the defendant to what occurred may well be borne out of a sense of anger at the sexual advance rather than out of a need to protect themselves from an assault or a genuinely perceived threat of impending assault. In any event, the defence of self-defence is available where the defendant uses only such force as is reasonable in the circumstances. Prosecutors, therefore, will be particularly alert to those cases where the reaction of the defendant was disproportionate to the alleged actions of the victim. Causing actual or grievous bodily harm, even in the face of a sexual advance, may well be considered by the court to be excessive.

- 10.9 Prosecutors will need to examine all the evidence carefully to show to the court exactly what occurred. Once again, prosecutors should robustly challenge the defendant's version of events particularly where it appears that the defendant's reaction to what is said to have occurred went beyond that which was reasonably necessary to prevent them being assaulted or sexually approached.
- 10.10 In reality, there will be very few cases, if any, where the defence of self-defence may be properly made out, even where the victim made an overt sexual advance on the defendant. Invariably, the defendant will have had the opportunity simply to leave where they were rather than seek physically to defend themselves. That of itself should be sufficient to render the defence of self-defence inappropriate.

Provocation

- 10.11 Provocation is only available as a defence to a charge of murder.
- 10.12 Where the victim of an assault is killed, the defendant may claim that the victim made a homosexual advance towards them which caused them to lose their self-control and attack the victim to the point of killing them, thereby raising the partial defence of provocation.
- 10.13 Provocation is defined as: "some act, or series of acts, done which would cause in any reasonable person, and actually causes in the accused, a sudden and temporary loss of control, rendering the accused so subject to passion as to make him or her for the moment not master of his mind".
- 10.14 If there is some evidence that the accused was provoked to lose self-control (and the defendant's account that this occurred would be sufficient), the judge must let the jury decide whether the defendant was provoked and whether a "reasonable man" would have been similarly provoked.
- 10.15 In such cases, by definition, the victim is not able to give his or her account of what occurred. Indeed, in many cases, there may not be any witness to what occurred between the defendant and the victim, and therefore the prosecution will be faced with a defendant who provides the court with an explanation that cannot be contradicted by independent evidence.
- 10.16 Where the defence of provocation is raised or may be reasonably anticipated, prosecutors should ask the police to investigate thoroughly all the surrounding circumstances. Every aspect of the defendant's account should be robustly examined in order to assist the court in finding out what actually occurred. For example, there may have been witnesses who saw the defendant and the victim together and how they interacted with each other before the victim's death, who could give evidence regarding the behaviour of the victim and defendant.

- 10.17 Where a defendant raises either self-defence or provocation, prosecutors must always ensure that they have all the facts available so that they may robustly challenge the defence in all appropriate cases. In cases where self-defence or provocation is raised to a charge of murder, it is especially important not to take at face value the defendant's account of what occurred without seeking evidence to contradict it or challenge his or her account to raise any inconsistencies that may emerge.

Mitigation

- 10.18 Whilst provocation is a defence only to a charge of murder, the defence may make assertions in mitigation that the defendant was 'provoked' by the actions of the victim (for example, an unwanted sexual approach). If these assertions are inaccurate, misleading or derogatory, they should be challenged by the prosecution advocate. If necessary, the prosecution advocate should apply for the sentencing hearing to be adjourned so that the police may speak to the victim to clarify matters. If the defence persists in the assertion(s), the court should be invited to hear evidence about the matter by way of a Newton Hearing.
- 10.19 Where relevant, the prosecution advocate should direct the court's attention to the provisions of Sections 58-61, Criminal Procedure and Investigations Act 1996 (restriction on reporting of assertions).

Bail

- 11.1 Section 37 of the Police and Criminal Evidence Act 1984 (PACE) allows pre-charge bail, with or without conditions, to be imposed where cases are referred to Crown Prosecutors for charging decisions and where it is appropriate to release the suspect on bail. The imposition of conditions on that bail may be appropriate to address concerns about interference with witnesses or the commission of further offences. Conditional bail before charge is not permitted when a person is bailed pending further investigation under section 34(5) of PACE.
- 11.2 Once a defendant appears before the court, the decision about bail is made by the magistrates and is governed by the provisions of the Bail Act 1976.
- 11.3 Cases involving homophobic or transphobic crime are no different from other crimes in this regard and prosecutors should make representations to the court about the appropriateness of custody or the imposition of bail conditions in accordance with the Bail Act and the information that has been provided to them by the police.
- 11.4 Research has shown that a significant number of homophobic and transphobic-based crimes are committed in circumstances where the victim is known to the defendant. This can occur where the victim and defendant are neighbours or work colleagues for example.
- 11.5 In such cases, prosecutors will want to ensure that the element of "proximity" is made known to the court so that it may take into account whether any particular bail conditions are appropriate to prevent the likelihood of further offending by the defendant. Where the file is silent about this, but where the prosecutor believes that proximity may be an issue, the police should be asked to clarify the position.

- 11.6 It sometimes comes to the attention of the CPS that there may be inappropriate contact by a third party, or a suggestion of harassment of the victim, a witness, or someone connected to either, which may be related to possible actions by the defendant. The defendant may be in custody or on bail with conditions designed to stop the defendant from engaging in the contact or harassment which is the subject of the complaint. If this happens, the CPS will ask the police to investigate with a view to determining whether there is any evidence of collusion that might enable charges to be brought against any person involved.
- 11.7 In all cases of homophobic and transphobic crime, it is essential that the victim is kept informed about the bail conditions or custody status of a defendant in accordance with The Code of Practice for Victims of Crime.

Victims who withdraw support for the prosecution or indicate they are no longer willing to give evidence

- 12.1 Many homophobic or transphobic incidents go unreported because the victim makes an immediate decision not to involve the police. There is little that we can do to prevent this from happening, although by building links with the LGBT communities and by using those links to help the communities to have greater confidence in us, more victims from the LGBT communities may be willing to come forward and report crimes to the police. Each police force has an LGBT liaison officer and every CPS Area has a Homophobic Crime Co-ordinator¹; both have a role to play in building these links.
- 12.2 However, there will also be cases in which the victim or a witness has reported the incident to the police and where the defendant has been charged, but where the victim or witness then has doubts about continuing to support the prosecution process.
- 12.3 When, after reporting a crime, a victim withdraws support for a prosecution or indicates an unwillingness to give evidence, the CPS must:
- ensure that an experienced prosecutor supervises the case;
 - ask the police to take a written statement from the victim explaining the reasons for that withdrawal, confirming that the original complaint was true and identifying whether the victim has been put under any pressure to withdraw support;
 - ask the police to give their views and, where appropriate, take advice from the police's LGBT liaison officer and/or the CPS Homophobic Crime Co-ordinator and others with a legitimate interest.
- 12.4 The ACPO *Hate Crime* guidance advises (at paragraph 11.6.2) that, in these circumstances, the officer must include in the report to the CPS his or her views on:
- the reasons given by the victim;
 - how the victim would react if compelled to attend court;
 - future risks to the safety of the victim and their family; and
 - the impact on the wider community.

¹Details of the Homophobic Crime Co-ordinator for your Area can be obtained from the Equality and Diversity Unit; Tel: 020 7796 8790

- 12.5 As a result of receiving the withdrawal statement and accompanying police report, prosecutors may need to consider whether any further charge, for example witness intimidation, is appropriate. The prosecutor should liaise closely with the Witness Care Officer to establish what support has been provided to the victim and to establish whether it would be appropriate to offer the victim the services of a specialist support agency if this has not already been done.
- 12.6 In cases of homophobic or transphobic hate crime, it may be that the victim or witness is fearful of the consequences of their sexual orientation or gender identity becoming known or more widely known than they wish it to be. In such cases, it will be appropriate for the prosecutor to consider whether there are any measures available to the prosecution or to the court that might help the victim or witness overcome their concerns.
- 12.7 Prosecutors will need to be careful, however, to draw a distinction between measures that go to protect the identity of the victim or witness and measures that exist simply to avoid the victim or witness having to give evidence in court. In the latter instance, the name of the victim or witness will still be given in open court if it is decided that their statement can be read to the court and therefore details of the victim or witness will enter the public domain. However, unless it is required for evidential purposes, the address of a victim or witness should not be disclosed in open court or disclosed to the defendant.
- 12.8 Prosecutors should also assess at an early stage whether there is sufficient evidence to proceed without the victim, for example by relying on statements from other witnesses, 999 call recordings, admissions in interview, CCTV evidence, scientific evidence, photographs and officers' statements. If there is sufficient evidence, and provided the public interest stage of the Code test continues to be met, there may not be any reason to consider a witness summons if the victim subsequently withdraws support. In any event, it is important for perpetrators of hate crime to know that a prosecution will not simply rely on the victim's willingness to give evidence.

Continuing a case where the victim indicates a withdrawal of support

- 13.1 In some cases, a special measures application may provide sufficient reassurance to the victim for them to decide to reconsider and support a prosecution. If such an application is not possible or the victim remains unwilling to give evidence, consideration must be given to whether any of the following options is possible and appropriate:
- proceeding without using the victim's evidence;
 - making a hearsay application under section 116 of the Criminal Justice Act 2003;
 - compelling the victim to give evidence; or
 - discontinuing as a result of the victim withdrawing support for the prosecution.
- 13.2 Where we are considering proceeding against the victim's wishes, we must consider all parties' human rights issues and endorse fully and clearly the decision-making process on the file.
- 13.3 In addition to the evidence of the nature and seriousness of the offence, background information is crucial in helping a prosecutor to make the correct decision about how to

proceed in a case where the victim has withdrawn their support for the prosecution. Some of the factors that should be considered include:

- the ability of the victim to testify;
- whether there is an ongoing relationship between the victim and the defendant;
- if there is an ongoing relationship, the history of the relationship and any previous incidents;
- the likelihood of the defendant offending again;
- the impact on the victim of proceeding or not proceeding with the case; and
- whether there have been any threats made since the incident.

- 13.4 Prosecutors should seek to establish clearly the reasons why the victim no longer wishes to give evidence. In some cases, supporting the prosecution may place the victim at further risk of harm, such as in domestic violence cases or situations where the defendant is the victim's carer. We must have regard to any special measures or other support available to the victim that may help them, at least in part, to overcome their concerns.
- 13.5 Before taking a decision to issue a summons to require the victim to give evidence, prosecutors must make enquiries to satisfy themselves as far as possible that the safety of the victim will not be endangered by their decision. The **safety** of the victim is a prime consideration. Some of the factors to be considered in assessing the safety of the victim are:
- the views of the victim about the impact on their safety in proceeding with the prosecution;
 - whether a witness summons would make it safer for the victim to attend by effectively making it clear that the decision to proceed with the case is that of the CPS rather than that of the victim;
 - the views of the officer in the case on the safety of the victim and the likelihood of further harm; and
 - whether or not the victim is being supported by any specialist agency outside the Criminal Justice System (CJS).
- 13.6 The ACPO Hate Crime guidance (at paragraph 8.2) reminds police staff to be aware that, at all stages, from initial notification to the conclusion of any investigation: "there may be attendant risks to the safety and well-being of victims and witnesses. An important risk factor is the identification of potential further victimisation. Immediate steps should be taken to identify and record these risks. If a risk is identified, steps should be taken to manage the risk by using appropriate interventions. The perceptions of victims and witnesses of their own risk are necessary considerations. A record of this risk assessment should be kept to ensure openness and accountability". Prosecutors should ask the police about the risk assessment when making decisions about how to proceed in the case.
- 13.7 If an experienced prosecutor has considered whether it is possible to proceed without the victim, and decided that it is possible but that it would not be right to do so in the particular circumstances, the case will be discontinued. These cases will be rare and should be marked as discontinued in the public interest.
- 13.8 Where it is not possible to continue without the victim and the decision is made not to compel attendance, again the decision to discontinue is on public interest grounds.

Particular issues that affect trans people

- 14.1 The law with regard to sexual assaults on or by trans people was changed by the implementation of the Sexual Offences Act 2003. Section 1(1) of the Act states that an offence of rape is committed if:
- “A person (A) – intentionally penetrates the vagina, anus or mouth of another person (B) with his penis,
B does not consent to the penetration, and
A does not reasonably believe that B consents.”
- 14.2 References in the Act to “penis”, “vagina” and other parts of the body also include references to a part surgically constructed, in particular, through gender confirmation (otherwise known as reassignment) surgery. It follows, therefore, that the law now recognises that vaginal rape can be committed against a trans woman (male to female) who has had such surgery. A trans woman who has not had gender confirmation surgery may be capable of the act of rape.
- 14.3 Many trans men (males who are born as females) still have a vagina, whether or not a penis is constructed so, in these cases, where there is forcible penile penetration of a trans man’s vagina, rape is again the appropriate charge.
- 14.4 The general principle to be applied is that the appropriate charge is the one which properly reflects the practical act complained of by the victim. It is irrelevant for the purposes of charge selection whether any relevant part of the victim’s anatomy is biological or surgically constructed.
- 14.5 The Sexual Offences Act 2003 creates four offences:
- assault by penetration (section 2);
 - assault of a child under 13 by penetration (section 6);
 - sexual assault (section 3);
 - sexual assault of a child under 13 (section 7).
- 14.6 Non-consensual offences of assault by penetration and sexual assault are no longer gender specific if the act complained of occurred after 1 May 2004.
- 14.7 An issue of concern to trans people is the name by which they will be addressed. Whether the trans person is a victim, witness or defendant, the CPS’ policy is that the person will be addressed in terms that reflect his or her present gender status. So, a trans woman, although having a birth certificate that shows her to have been born a male, should be addressed and charged and/or indicted, if appropriate, as a woman.
- 14.8 The Judicial Studies Board Equal Treatment Bench Book states: “In the case of a transsexual, disclosure of birth gender may be essential. However, there will be very many cases where such disclosure is not absolutely necessary and, in any event, it should be possible to accept the person’s apparent identity for nearly all court and tribunal purposes”.
- 14.9 There may be instances where it is necessary to refer to the previous convictions of a trans person when those convictions may appear under the trans person’s birth gender and name. Wherever possible, those convictions should be referred to neutrally and without reference to the different name under which they are listed as convictions. This is no different from

current practice where people who have aliases simply have their convictions read out under the name in which they are charged without reference to the fact that the convictions were acquired under a different name.

- 14.10 The Gender Recognition Act 2004 confers a right of privacy to a trans person who has applied for a Gender Recognition Certificate (GRC). Section 22 of the Act makes it a criminal offence to disclose protected information (that is, information relating to a person's application for, or possession of, a GRC) if this knowledge is obtained in an official capacity, for example, as a member of the civil service or a constable. However, there are specific exceptions allowing disclosure of this information, for instance: where the disclosure is for the purpose of instituting court proceedings; where the disclosure is in accordance with an order of the court; or where it is for the purposes of preventing or investigating a crime. On occasions, it may be necessary to mention in court the fact that a person is a trans person. However, the established practice of the courts is that, where disclosure of birth gender is not essential, it should be omitted; it should be possible in such cases to accept the person's apparent identity for nearly all court purposes.
- 14.11 If it is relevant to any alleged offence that the person has a trans history, for instance, where the alleged victim believes that transphobia was a component of the crime under investigation, that information must be disclosed. Any more detailed information regarding whether a person has or has not had gender confirmation surgery is unlikely to be relevant unless there are allegations of a specifically sexual nature. Under these circumstances, prosecutors should bear in mind that the victim will be entitled to anonymity in the media under the Sexual Offences Act 2003.

Continuous review

- 15.1 Prosecutors are required to keep all cases under continuous review. But in many cases involving a member of the LGBT communities as a victim or witness, there is a particular need to be kept informed of their current view regarding the continuation of the prosecution, especially if that person's evidence is crucial.
- 15.2 Where a case is to be heard in the Crown Court and counsel are to be instructed, selection should focus on suitable experienced counsel who are prepared to play their part in witness care and who understand fully the issues and sensitivities surrounding LGBT issues. The Bar's Code of Conduct imposes a strict requirement on counsel not to make statements or ask questions which are intended only to insult or annoy a witness or some other person; this will be as applicable to victims or witnesses of homophobic or transphobic crime as to any other victims or witnesses. The CPS Instructions for Prosecuting Advocates (at paragraph 20) clearly set out the standards expected of advocates when prosecuting cases with a homophobic or transphobic element. These include: using appropriate language; challenging inappropriate or prejudicial language; and challenging material which is unnecessary in itself and which may arouse homophobic or transphobic prejudice in the court or amongst the jury. The Equal Treatment Bench Book contains clear guidelines for magistrates and judges about appropriate language and behaviour, so that they can play their part in ensuring that a proper level of respect for victims is maintained. The document can be found at: <http://www.jsboard.co.uk/etac/etbb/index.htm>

ECHR issues

- 16.1 Prosecutors will be used to considering the impact of ECHR issues on the defendant's, the victim's and a witness' rights within criminal proceedings generally. The rights of defendants, victims, witnesses and the public have to be balanced.
- 16.2 Of particular relevance here is the possibility that a victim or witness who does not wish to support the prosecution in court, because they fear that they may be "outed" as a result, may suggest that any attempt by the prosecution to require that person to come to court or otherwise use their evidence might breach Article 8 – the right to respect for private and family life. They may argue that the disclosure of their sexual orientation or gender identity through the requirement to give evidence infringes their rights in this regard.
- 16.3 Prosecutors will need to consider carefully how to rebut any suggestion of this nature and the fact that the CPS prosecutes in the public interest – not the interest of any one individual – and the fact that the views of the victim or witness, whilst important, are not paramount will be of help. It will be important in such cases for the prosecution to be able to show that the views of the victim or witness have been taken into account in accordance with the Code for Crown Prosecutors. Prosecutors must ensure that, where their actions affect someone's right to keep their sexual orientation private under Article 8, they document the grounds for their decision, and can show that they have acted in a manner which is both proportionate and necessary. Full and accurate file endorsements are vital to this process.

Helping witnesses to give their best evidence

- 17.1 The CPS is fully committed to taking all practicable steps to help victims and witnesses through the often difficult experience of becoming involved in the CJS. Recent legislation and initiatives have been designed to increase the confidence of victims and witnesses in the CJS. Support may also be available from a very early stage from the police, community groups, Housing Services and other support agencies which may continue throughout the life of the case. We have established Witness Care Units in every CPS Area and Witness Care Officers provide a single point of contact for all victims and witnesses from the point of charge through to finalisation of the case. They provide victims and witnesses with information and support throughout the process, tailored to the needs and requirements of the individual victim or witness. Each police force has LGBT liaison officers and every CPS Area has Homophobic Crime Co-ordinators who can provide prosecutors with useful information about how best to support victims and witnesses.

Victim Personal Statements

- 17.2 A Victim Personal Statement (VPS) is a statement made by a victim of crime explaining the effect that the crime has had on him or her. In the statement, victims can describe how they have been affected by the crime. They can talk about their wishes and needs during the case and any concerns they may have as a result of the offence, for example, about safety, intimidation or bail. They can mention their support (or absence of support) for the

prosecution and requests for help from any of the support agencies. In this way, the court can better understand not only the crime but also the context in which it occurred. This statement is optional, and the victim should be asked whether or not he or she wishes to make such a statement, or if he or she requires help to make a statement from a support worker or family member. This statement can be made at any time and it is possible to make more than one statement. A victim can ask the police or the CPS lawyer for a leaflet which explains what VPSs are and how they can be used.

- 17.3 If there is no VPS on the file, prosecutors should ask the police whether the victim has been asked whether he or she wishes to make one. Prosecutors may use these statements to help them to make decisions about cases, for example, when deciding whether they should ask the court to impose conditions when a defendant is on bail.
- 17.4 The defence and the court should be provided with a copy of the VPS prior to the sentencing hearing.

Direct Communication with Victims

- 17.5 When the Direct Communication with Victims (DCV) scheme was launched in 2001, it represented a key change in responsibility for the CPS. As a result of the recommendations in the Glidewell and Macpherson reports, the CPS took over from the police the responsibility to communicate to victims any decision to drop or substantially alter the charge. Since the implementation of the scheme, significant changes have taken place in the way that the CPS and other CJS agencies are required to engage with victims and witnesses. Prosecutors should refer to the CPS Legal Guidance on "Direct Communication with Victims under the Code of Practice for Victims of Crime", which takes into account changes in process brought about by the implementation of the statutory charging scheme, No Witness No Justice and *The Code of Practice for Victims of Crime*².
- 17.6 Prosecutors should note that there may be additional sensitivities when contacting members of the LGBT communities: for example, the individual(s) concerned may not be out to their family, relatives or friends. In addition, the person affected may be in a heterosexual relationship.
- 17.7 Care should be taken to ensure that any telephone call or correspondence is carried out with the person(s) concerned. Talking the issues through with the police, an experienced lawyer, the CPS Area Homophobic Crime Co-ordinator and/or contacting the CPS LGBT Network could provide useful information about how best to approach victims in these instances.

The Code of Practice for Victims of Crime

- 17.8 The CPS has formal obligations towards victims under *The Code of Practice for Victims of Crime* which came into force on 3 April 2006, having been issued by the Home Secretary under section 32 of the Domestic Violence Crime and Victims Act 2004. It sets out the services that victims can expect to receive from all CJS agencies, including the CPS. One obligation is that a prosecutor must notify the victim where he decides either that there is

²For a copy, go to: http://www.cps.gov.uk/victims_witnesses/victims_code.pdf

insufficient evidence to bring any proceedings (following a full evidential report), or where the prosecutor decides to drop or substantially alter any charge. If the victim is vulnerable or intimidated, the prosecutor must notify them within one working day of the decision being made. For homophobic or transphobic offences, the prosecutor will also offer to meet the victim to explain the decision. Where a prosecutor has made a decision not to charge during a face-to-face consultation with an investigator, the investigator must advise the victim.

The Prosecutors' Pledge

- 17.9 This is a 10-point pledge introduced on 21 October 2005 by the Attorney General. It sets out the level of service that victims can expect to receive from prosecutors. *The Prosecutors' Pledge*³ should ensure: that the specific needs of victims are addressed; that they are assisted at court to refresh their memory from their written or video statement; and that they are protected from unwarranted or irrelevant attacks on their character.

Special measures

- 17.10 Prosecutors are aware of the provisions of Part II of the Youth Justice and Criminal Evidence Act 1999 and the availability of special measures for vulnerable or intimidated witnesses.
- 17.11 The Home Office research report, published in January 2006, entitled: *Are Special Measures Working?*⁴, found that the prosecution team was not effective enough in identifying vulnerable and intimidated witnesses and that such witnesses were often first identified by the Witness Service. Although statutory charging and No Witness No Justice have made the identification of vulnerable and intimidated witnesses a key issue, prosecutors, as part of the prosecution team, must play their part in this identification process.

Special measures meetings

- 17.12 When an application is made for special measures, the witness should be asked if he or she would like to meet the prosecutor. The purpose of meeting is not to discuss the evidence in the case, but to reassure witnesses that their needs will be taken into account and thereby help build up their trust and confidence. The witness does not have to attend that meeting by themselves. They can bring a partner, relative, a friend or other supporter.
- 17.13 The CPS research report: *Special Measures for Vulnerable and Intimidated Witnesses: An Analysis of CPS Monitoring Data*⁵, found that: "pre-trial contact between CPS lawyers and [vulnerable and intimidated witnesses] to discuss special measures was recorded as taking place in only 3% of our sample cases. As well as contradicting published policy, this evident lack of contact represents significant missed opportunities. If witnesses are better prepared

³For a copy, go to:

http://www.cps.gov.uk/publications/prosecution/prosecutor_pledge.html

⁴For a copy go to: http://www.homeoffice.gov.uk/rds/notes/january06_summaries.html

⁵This related to a monitoring exercise conducted between April 2003 and March 2004. The report can be found in the CPS Legal Guidance chapter on special measures.

and reassured, they are more likely to give their best evidence. Prosecutors normally meet witnesses at court on the day of trial in any event. Nonetheless, earlier and more systematic pre-trial contact should improve general levels of witness satisfaction, even if such meetings make no discernible impact on the success of special measures applications or on final case dispositions”.

- 17.14 In the light of the findings of the CPS research report, prosecutors are reminded to consider whether to have a special measures meeting in every case where an application for special measures is made.

Pre-court visits

- 17.15 Prosecutors should be aware of the availability and potential value of pre-court familiarisation visits, particularly for vulnerable and intimidated witnesses. The Home Office report: *Are Special Measures Working?*, found that: “pre-court familiarisation visits are potentially the most useful of the non-statutory measures in the pre-trial phase”. If the witness wants a pre-court familiarisation visit, the Witness Care Officer will make a referral to the Witness Service, which will then contact the witness directly to make the necessary arrangements.

Reporting restrictions for adults

- 17.16 Section 46 of the Youth Justice and Criminal Evidence Act 1999 was implemented on 7 October 2004. It allows the CPS to apply for an order preventing the reporting of certain details of witnesses in the media that may lead to their identification. The court must be satisfied that the quality of evidence or level of cooperation given by the witness is likely to be diminished by reason of fear or distress about being identified by the public as a witness, and that it is in the interests of justice and the public interest to allow the application. Such applications may sometimes be appropriate in respect of hate crime victims, including victims of hate crime based on sexual orientation or gender identity.

Anonymity

- 17.17 Prosecutors should refer to section 139 and Schedule 6 of the Sexual Offences Act 2003 Act for the definitive list of sexual offences in respect of which the victim is entitled to anonymity in the press.
- 17.18 In addition, prosecutors will be aware of the line of authorities that allow the courts to regulate their own conduct, one aspect of which can be the granting of anonymity to victims or witnesses when giving evidence.
- 17.19 Blackmail cases apart, departures from the usual practice of requiring the witness to give their full name before the start of their examination-in-chief will be rare. However, there are cases where anonymity has been granted and prosecutors should consider the most up-to-date texts to review the latest authorities. Prosecutors will clearly want to focus on those cases in which the victim or witness has been allowed to remain anonymous because

otherwise grave difficulty may be suffered in obtaining the necessary evidence in any future case of a similar nature. Arguably, this is the position with regard to a substantial number of cases involving a homophobic or transphobic element.

- 17.20 However, it would be unwise to raise the hopes of any individual victim or witness by suggesting that anonymity is likely to be granted.

Treatment of witnesses in the courtroom

- 17.21 *The Prosecutors' Pledge* confirms that prosecutors will: "protect victims from unwarranted or irrelevant attacks on their character and may seek the court's intervention where cross-examination is considered to be inappropriate or oppressive".
- 17.22 It may sometimes assist prosecutors to refer to the *Equal Treatment Bench Book*, which can be found at <http://www.jsboard.co.uk/etac/index.htm>. The book contains clear guidelines for magistrates and judges about appropriate language and behaviour, so that they can help the court to maintain the proper level of respect to which victims and witnesses are entitled.

Sentencing

Procedure in cases to which section 146 CJA 2003 applies

- 18.1 There is no procedure laid down by which the court is to determine whether or not an offence is aggravated by hostility based on a victim's sexual orientation. If the defendant is convicted of an offence to which section 146 applies and evidence tending to show that the offence was aggravated by hostility has not been adduced during the trial, the prosecution should seek to establish the aggravating feature in a Newton Hearing (see *R v Newton*⁶) following the guilty verdict.
- 18.2 If there is admissible evidence of hostility based on sexual orientation, it must be put before the court and accepted by the defendant, or found proved, for the court to take it into account in sentencing for the purposes of section 146. Case law on racially aggravated offences confirms that the judge should not draw an inference that the offence was so aggravated and pass sentence on that basis without putting the defendant on notice and allowing him to challenge the inference: see, for example, *R v Lester*⁷.
- 18.3 After hearing the evidence of hostility based on sexual orientation, the court should announce whether that aggravating feature has been found proved. If it is not found proved, section 146 will not apply and the court will proceed to sentence accordingly. If it is found proved, section 146(3) will apply and any sentence that the court would have imposed for the "basic" offence should be increased accordingly.

⁶77Cr App R 13 CA

⁷63Cr App R (S) 29A

How does the court decide on the sentence in a case to which section 146 applies?

18.4 There is no current sentencing case law on homophobic or transphobic crimes but again it is appropriate to look at the case law on racially aggravated crime for guidance. How a court should decide the appropriate increase in sentence for racial aggravation was addressed by the Sentencing Advisory Panel in its advice to the Court of Appeal in 2000⁸ and largely adopted by the Court in *R v Kelly & Donnelly*⁹. The judgment advises that a sentencer should determine the appropriate sentence without the element of racial aggravation and then make an addition to the sentence to take account of that aggravation. The extent to which the sentence should be enhanced will depend on the seriousness of the offence and the judgment gives guidance on how to assess this. It was recommended that:

- (1) the sentencing judge should first arrive at the appropriate sentence without the element of racial aggravation but including any other aggravating or mitigating factors;
- (2) the sentence should then be enhanced to take account of the racial aggravation, increasing the sentence by an appropriate amount to reflect the degree of racial aggravation;
- (3) the sentencing judge should state what the appropriate sentence would have been for the offence without the racial aggravation so that the sentence for the racial element of the offence can be clearly seen. That would lead to transparency in sentencing which would benefit both the public and the Court of Appeal (it should be noted that this process is particularly important in cases in which there is subsequently an argument about whether the sentence is unduly lenient);
- (4) the appropriate amount to be added for the racial element of the offence would depend on all the circumstances of the individual case;
- (5) **serious aggravating factors** to be taken into account are:
 - (a) planning;
 - (b) a pattern of racist offending;
 - (c) membership of a group promoting racist activities;
 - (d) the deliberate setting up of the victim for the purposes of humiliating him or her or being offensive towards him or her;
 - (e) if the offence took place at the victim's home;
 - (f) if the victim was particularly vulnerable or providing services to the public;
 - (g) if the timing or location of the offence maximised the harm or distress it caused;
 - (h) if the expressions of racial hostility were repeated or prolonged;
 - (i) if fear and distress throughout a particular community resulted from the offence; and
 - (j) if particular distress was caused to the victim or the victim's family;

It can be seen that factors a-d relate to the offender's **intention** and factors e-j relate to the **impact** on the victim or others;

⁸Racially Aggravated Offences published on 29 August 2000, see: <http://www.sentencingguidelines.gov.uk/advice/index.html#raciallyaggravated>
⁹[2001]2 Cr App R (S) 73 CA

(6) **less seriously aggravating factors** are:

- if the racist element was limited in scope or duration;
- if the motivation for the offence was not racial; and
- if the element of racial hostility or abuse was minor or incidental.

- 18.5 On 1 September 2005, the Sentencing Advisory Panel published a consultation paper on *Assaults and other Offences Against the Person* in which the Panel stated its belief that the principle established in *R v Kelly & Donnelly* could be adapted to apply to offences aggravated by any one of the four statutory aggravating factors (race, religion, sexual orientation and disability). It said: “the notional sentence should be decided in the normal way and then enhanced, as appropriate, to take account of the specific aggravation”. It is clear that the Panel believes that the principles outlined in its advice on racially aggravated offences could be readily applied to offences aggravated by other forms of prejudice.
- 18.6 The fact that the abuse may be of a relatively minor nature is not a reason for a prosecutor not to pursue an aggravated offence. The Sentencing Advisory Panel’s position is that racial, religious, homophobic, transphobic or disability-related hostility or abuse, which is minor or incidental in the context of the overall offence, can properly be reflected in the penalty to be imposed. This lends weight to the CPS position that such cases can properly be prosecuted as aggravated offences and that the perceived “minor” nature of any homophobic or transphobic abuse should be reflected in the sentence imposed. Parliament has made it clear that the demonstration of such abuse, in the course of an offence, is unacceptable.

Sentencing in cases to which section 146 does not apply

- 18.7 Prosecutors should always have regard to the guidelines issued by the Sentencing Guidelines Council in December 2004, *Overarching Principles: Seriousness*. They state that a court is required to pass a sentence that is commensurate with the seriousness on the offence. The seriousness of an offence is determined by two main factors: the **culpability** of the offender; and the **harm** caused or risked being caused by the offence. Culpability will be greater “where an offender targets a vulnerable victim (because of their old age or youth, disability or by virtue of the job they do)” (see paragraph 1.17); factors indicating a more than usually serious degree of harm include the fact that the “victim is particularly vulnerable” (see paragraph 1.23).

The Attorney General’s Guidelines on the Acceptance of Pleas and the Prosecutor’s Role in the Sentencing Exercise 2005

- 18.8 These revised guidelines were published on 21 October 2005. All prosecutors should be aware of their contents and follow them. They explain the important role that the prosecutor plays in protecting the general public interest and the specific interests of victims. They also provide principles that should always be followed when considering the acceptance of a plea and when addressing the court at the point of sentence. They can be found in the CPS Legal Guidance and at:
http://www.attorneygeneral.gov.uk/attachments/acceptance_of_pleas_guidance.doc
- 18.9 Prosecutors should ensure that the court has all relevant information concerning any orders which might be imposed upon conviction, such as compensation, restitution and forfeiture orders.

- 18.10 In Protection from Harassment Act 1997 cases, although the court may make a restraining order (under section 5) of its own volition, it is expected that the prosecution will ask for an order where appropriate, and that the contents of the order would be discussed in any pre-sentence report. The contents of the order are at the court's discretion, provided that the court is satisfied that the conditions are necessary to protect the victim or other person named in the order. However, the prosecutor should be prepared to assist the court with suggested conditions. The order gives protection to the victim, and is not a punishment. The duration of the order should reflect the need for future protection and not the seriousness of the previous conduct. Indefinite orders may be appropriate in many cases, with discharge or variation being considered in due course¹⁰.
- 18.11 In cases where there has been a pattern of anti-social behaviour causing or likely to cause harassment, alarm or distress, continuing over a period of time and having an adverse effect on neighbours or the community, it will be appropriate to make an application for an anti-social behaviour order (ASBO) upon conviction, under the Anti-Social Behaviour Act 2003. The police should be asked to provide as much information as possible to support the application and a draft order should be prepared for the assistance of the court.
- 18.12 *The Prosecutors' Pledge* confirms that we will: "on conviction, apply for appropriate orders for compensation, restitution or future protection of the victim".

Unduly lenient sentences

- 18.13 It is possible that any type of offence may be aggravated by hostility based on sexual orientation or gender identity because any type of offence may involve a member of the LGBT community. It is therefore possible that a crime that has been sentenced as a hate crime may become the subject of an unduly lenient sentence referral (for example wounding with intent, rape, and robbery).
- 18.14 Sections 35 and 36 of the Criminal Justice Act 1988 empower the Attorney General to apply to the Court of Appeal for leave to refer for review any sentence which appears to the Attorney to be unduly lenient; which was passed on an offender for a prescribed range of offences; and which was passed in the Crown Court. A written application for leave to refer, signed by the Attorney, must be lodged with the Registrar of Criminal Appeals within 28 days of the sentence being passed. **The 28 day time limit is absolute** so prosecutors must ensure cases are handled expeditiously so that the time limit is met. Prosecutors should refer to the CPS Legal Guidance which clearly sets out the procedure to be followed.
- 18.15 Consideration of a sentence for possible referral as an unduly lenient sentence may arise in one or more of the following ways:
- the CPS may consider the sentence merits a reference;
 - the CPS may receive a complaint about the sentence from, for example, the victim or the victim's family, a member of the public, a lobby group, or from a police officer;
 - the Law Officers may receive a complaint about a sentence;
 - the Law Officers may call for the case papers, for example, after reading reports of individual cases.

¹⁰It should be noted that, when implemented, section 12 of the Domestic Violence Crime and Victims Act 2004 will amend section 5 of the Protection from Harassment Act 1997 to make it possible for the court to impose a restraining order upon conviction or acquittal of any offence.

18.16 In cases where, following receipt of a complaint, the CPS considers the case and decides not to submit the case to the Law Officers for consideration, it must notify the complainant without delay so that the complainant's option of complaining directly to the Law Officers is preserved and so that the Law Officers will have sufficient time, if a complaint is made, to consider the case.

Monitoring

- 19.1 The CPS has committed itself to monitoring the impact of its public statement on cases with a homophobic or transphobic element. Since April 2005, as part of the Area Performance Review system, the CPS has been required to record all cases of homophobic and transphobic crime¹¹ on COMPASS CMS and submit quarterly returns on performance.
- 19.2 Locally, however, senior management teams must ensure that they have set up systems which identify cases which fall within the public policy statement and are able to demonstrate that they have implemented the policy in all key regards, such as the referral to a senior prosecutor if the victim or witness no longer wishes to give evidence post-charge but pre-trial.
- 19.3 Local senior managers must make sure that they have established links with their local police force so that the required background information is forthcoming in appropriate cases.
- 19.4 Maintaining local information about the number of cases that are dealt with under this policy and what happens in those cases will do much to reduce the level of concern that some members of the LGBT communities have about the prosecution process, and it will go some way to building up levels of trust between the communities and the CPS.
- 19.5 Under the Race Equality Duty, the Disability Equality Duty, and the Gender Equality Duty, the CPS, like other public bodies, is required to have 'due regard' to the need to eliminate discrimination and promote equality. Within the CPS, these duties have been incorporated into the Single Equality Scheme 2006-2010. This Scheme addresses the equality of service not only in relation to race, disability and gender, but also in relation to religion or belief, sexuality, gender identity and age.
- 19.6 In addition, there are specific duties to monitor ethnically the provision of services and to assess the impact of our policies on victims, witnesses and defendants. As part of the commitment made under the CPS' Single Equality Scheme, the CPS will monitor cases of homophobic and transphobic crime, analyse levels and take corrective action as necessary. From 2008-2009 onwards, the CPS will publish an Annual Hate Crimes Report which will contain performance data on homophobic and transphobic crime (along with performance data on other hate crimes).
- 19.7 Homophobic Crime Co-ordinators, appointed in each of the 42 CPS Areas, will play a key role in relation to the monitoring set out above in paragraphs 19.2 - 19.6.

¹¹COMPASS CMS includes a Homophobic Crime flag. CPS Areas have been advised to record cases of transphobic crime under this flag until such time as a transphobic crime flag can be added to CMS.

Community engagement

- 20.1 The CPS published its Single Equality Scheme 2006-2010 in December 2006. The Scheme is a strategy and set of actions designed to promote equality in CPS business and employment covering the period December 2006 to January 2010. It includes actions and commitments to develop our legal obligations with regard to the equality strands of sexual orientation and gender identity, religion, belief and age. The update of our 2002 Policy for Prosecuting Cases with a Homophobic Element to include an equal focus on transphobic crime is a key element of the Sexuality and Gender Identity Equality Action Plan contained within the Single Equality Scheme.
- 20.2 **Working with criminal justice partners:** we have a responsibility to work with criminal justice partners to promote the confidence of people in the CJS. It is particularly important that we discuss with the police at a senior level the way in which we can work together to ensure that cases involving LGBT people receive the appropriate level of care and consideration in accordance with our policy statement. Chief Crown Prosecutors are encouraged to raise awareness of the policy statement and this guidance with their Local Criminal Justice Boards in order to promote good practice and consistency and to improve the way that all criminal justice agencies handle homophobic or transphobic hate crime.
- 20.3 **Working with the wider community:** effective community engagement has to take place at a local level so that LGBT people trust in the criminal justice agencies. CPS area Groups will be establishing Community Involvement Panels in each of the 15 area Groups in 2007-08. Also in 2007-08, CPS Areas will be establishing Hate Crime Scrutiny Panels which should meet quarterly and focus on identifying lessons from a random sample of completed cases with a view to improving case handling. Areas should ensure that LGBT people and representatives from local LGBT organisations are represented on both these panels. In 2005-2006, the CPS undertook a themed review on the handling of homophobic crime. Each of the 42 Areas was required to develop and implement an Action Plan to improve outcomes for homophobic crime in 2006-2007. Progress will be evaluated during 2007-2008. An integral part of the Area Action Plans is to foster community engagement with LGBT communities to encourage the reporting of homophobic and transphobic crime.
- 20.4 At a national level, the CPS has established a Community Accountability Forum which will have responsibility for overseeing the implementation of the Single Equality Scheme 2006-2010. Representatives from LGBT organisations have been invited to join the Community Accountability Forum to ensure that we understand the issues that they face; that we share information with them; and that we work to resolve any areas of concern.
- 20.5 Through the establishment of these new national and local fora, and through our work with criminal justice partners, we will ensure that the CPS at all levels is critically challenged to demonstrate how we are working to promote equality for LGBT people.

Glossary of terms used in this document

Terminology and definitions relating to lesbians, gay men, bisexuals and trans people may sometimes seem confusing and they change over the years. We have set out in this glossary some terms that are in current usage and their meanings when this public statement was published in 2007.

Bisexual

A man or woman who is physically, sexually and/or emotionally attracted to people of either sex.

Code for Crown Prosecutors

The public guidance that sets out how Crown Prosecutors take their case-work decisions and the factors that they should consider when doing so.

Cottaging

The process in which usually men seek men and/or have sex in a public place, usually in a public toilet.

Cruising

The process in which lesbians, gay men or bisexuals look for sex with other people, often in parks.

Gay

A man or a woman who is physically, sexually and/or emotionally attracted to people of the same sex. (Some gay men prefer to be called gay rather than queer or homosexual.)

Gender Identity

A person's sense of him, or herself, as being male or female.

Heterosexual

A man or a woman who is physically, sexually and/or emotionally attracted to people of the opposite sex.

Homophobic

A fear of or a dislike directed towards lesbian, gay or bisexual people, or a fear of or dislike directed towards their perceived lifestyle, culture or characteristics, whether or not any specific LG or B person has that lifestyle or characteristic. The dislike does not have to be as severe as hatred. It is enough that people do something or abstain from doing something because they do not like lesbian, gay or bisexual people.

Homosexual

A man or woman who is physically, sexually and/or emotionally attracted to people of the same sex.

Lesbian

A woman who is physically, sexually and/or emotionally attracted to women. (Some lesbians prefer to be called lesbian rather than gay, queer or homosexual.)

Out

The term used by lesbian women, gay men, bisexuals and trans people to describe their experience of self-discovery, self-acceptance, openness and honesty about their sexual orientation or gender identity and their decision to share this with others when and how they choose.

Outed

The outcome of someone giving information about a person being LGB or T without that person's permission.

People who have sex with a person of the same sex

There are many men and women who sometimes have sex with people of their own sex but who do not see that that activity means that they are LG or B. In other words, the activity does not define their identity. This may include some married men and women; some people who are from the black and minority ethnic communities; and some people who live in faith communities.

Serious sexual offences

Those offences set out in section 139 and Schedule 6 of the Sexual Offences Act 2003 in respect of which the media are prevented from naming or otherwise identifying the victim.

Sexual orientation

A term used to describe a person's emotional and/or physical attraction to another.

Trans people

A person who was assigned one gender at birth but who identifies elsewhere on the gender spectrum for some, part or all of the time. Some people have medication and/or surgery(ies) to alter their bodies so they will fit with their personal identity and sense of self. However, surgery should not be used as a marker for trans identification.

Trans is an umbrella term which includes transsexual, transvestite (cross dressers) and transgender people, amongst others. In practice, the range of people who fall under this umbrella term is extremely diverse.

Transphobic

A fear of or a dislike directed towards trans people, or a fear of or dislike directed towards their perceived lifestyle, culture or characteristics, whether or not any specific trans person has that lifestyle or characteristic. The dislike does not have to be as severe as hatred. It is enough that people do something or abstain from doing something because they do not like trans people.

Publications

Members of the CPS might find it helpful to read some publications that deal with LGBT issues in depth. This is not a comprehensive list of such publications but it provides a starting point for those who want to read further.

Advising Gay and Lesbian Clients — a Practical Guide for Lawyers. By Barlow, Bowley, Butler, Cox, Davies, Gryk, Hamilton, Smith and Watson. Published in 1999 by Butterworths: ISBN 0 406 90303 4. This book provides detailed and practical coverage of all the issues of specific concern to gay and lesbian clients.

Atypical Gender Development — A Review (International Journal of Transgenderism, 2006, 9:1). Available at: <http://www.gires.org.uk>
(A paper on the etiology of transsexualism.)

Breaking the Chain of Hate. By Wake, Wilmott, Fairweather and Birkett. Published in 1999 by the National Advisory Group. This reports on a national survey examining levels of homophobic crime and community confidence towards the police service.

Engendered Penalties: Transgender and Transsexual People's Experiences of Inequality and Discrimination (2007). By Stephen Whittle, Lewis Turner and Maryam Al-Alami. This research report found that 73% of trans people experience harassment in public spaces. See Chapter 1: 1.2 "Experiencing Transphobia" and 2: 2.7 "Safety in Public Spaces". This document is downloadable from the Equalities Review website: <http://www.pfc.org.uk/files/EngenderedPenalties.pdf>

GALOP Publications (various), including **Telling it like it is** — published in 1998; **The Low Down Black Services Needs Assessment** — published in 2001; and **Getting Lesbians onto the Agenda** — published in 1997. These look at specific issues within the LGBT communities.

Greater Manchester Lesbian and Gay Policing Initiative Study. Published in 1999 by GML&GPI Study. This recites the experiences of lesbians of violence and harassment based on a questionnaire of local lesbians.

Hidden Targets. Published in 2001 by the Southampton Gay Community Health Service. This sets out lesbian women's and gay men's experiences of homophobic crime and harassment in Southampton.

Identifying & Combating Hate Crime. Published in 2000 by the Association of Chief Police Officers. This is a manual which sets out information on preventing and dealing with hate crime in response to the Stephen Lawrence Inquiry.

Investigation of Racist, Domestic Violence and Homophobic Incidents. Published in 2000 by the Metropolitan Police. This provides a guide to the minimum standards required in such investigations.

Legal Queeries. Lesbian, gay and transgender legal studies with Moran, Monk and Beresford as editors. Published in 1998 by Cassell: ISBN 0-304-33864-8. This examines LGBT issues in relation to the law.

Living Together. Stonewall report available at:
<http://www.stonewall.org.uk/documents/living-together-final-web.pdf>

Murder Review. LGBT Advisory Group report available at:
<http://www.lgbtag.org.uk/documents/MurderReview-online-color.pdf>

Playing it Safe. Responses of Secondary Schools Teachers to Lesbian, Gay, and Bisexual Pupils by Douglas, Nicola and others. Published in 1999 by Stonewall. This contains information on how schools can tackle homophobia.

Queer Bashing. A national survey of hate crimes against lesbians and gay men. Published in 1996 by Stonewall. A document which sets out lesbians' and gays' experience of violence.

Supporting Inclusive Communities — lesbians, gay men and local democracy. Published in 2001 by the Local Government Association: ISBN 1 84049 226 0. These are guidelines which set out the areas where authorities need to consider how they relate to lesbian and gay communities.

Tackling Homophobia creating safer Spaces. Published in 1999 and available at:
www.schools-out.org.uk. This sets out the issues and includes statistics.

Transvestism, Transsexualism and the Law. By McMullan and Whittle. Published in 1994 by the Beaumont Trust: ISBN 0952135728. This provides a basic guide to the issues.

Violence against Lesbians. Published in 2001 and available at <http://www.querverlag.de>. It is printed in Germany: ISBN 3-89656-063-8. This reports on the first European conference on the issue and it contains a chapter giving information on British projects dealing with homophobia.

Without Prejudice Community Safety Practice Briefing. Published in 2001 by NACRO. This explains how local authorities and other public bodies need to respond to the various pieces of legislation regarding LGBT issues. Please check with your Constabulary's liaison officers and the community safety unit of the local authority for your own local groups in addition to these listed below.

Some projects and places that deal specifically with homophobic and transphobic incidents and crime in relation to the CJS

Please check with your Constabulary's liaison officers and the community safety unit of the local authority for your own local groups in addition to these listed below.

GALOP

Confidential helpline for lesbian, gay men and bisexuals, offering assistance in dealing with homophobic violence and the police in the greater London area.

PO Box 32810, London N1 3ZD

Admin Phone: 020 7704 6767

Fax: 020 7704 6707

Shoutline help number: 020 7704 2040

Website: <http://www.galop.org.uk>

Email address: info@galop.org.uk

Intercom

South West LGBT community group; can provide national consultancy on community safety, homophobic crime and CJS issues.

PO Box 285, Exeter, EX4 3ZT

Phone: 01392 201015

Website: <http://www.intercomtrust.org.uk>

Email address: lynx@intercomtrust.org.uk

Lesbian & Gay Switchboard

24-hour national information, advice and support line. Despite its title, it also caters for bisexuals and men who have sex with men. Has website that list groups and has a search engine to find LGBT groups nationally.

Phone: 020 7837 7324

Website: <http://www.queery.org.uk>

LGB Forum CYMRU

The only all-Wales lesbian, gay and bisexual organisation which works in partnership with Stonewall Cymru to be a voice for LGB people at the National Assembly, with local authorities and in the Welsh media.

Phone: 02920 237744

Website: www.stonewall.org.uk

Email address: cymru@stonewall.org.uk

Liberty

An organisation set up to protect civil liberties and promote human rights.

21 Tabard St

London SE1 4LA

Liberty Advice Line 0845 123 2307

Monday & Thursday 6:30-8:30 pm; Wednesday 12:30-2:30 pm

Web site: <http://www.liberty-human-rights.org.uk>

Email address: info@liberty-human-rights.org.uk

OUTRAGE!

Home page for the British LGB action group, which also enables access to many other sites.

Website: <http://www.outrage.org.uk>

Press for Change

Political pressure group dedicated to achieving full civil equality for transsexuals. It does this through campaigning, legal action and social education. Information packs available.

BM NETWORK

London, WC1N 3XX

Web site: <http://www.pfc.org.uk>

Email address: letters@pfc.org.uk

Stonewall

Civil rights organisation for lesbians and gay men.

Tower Building, York Road, London SE1 7NX

Phone: 020 7593 1850

Fax: 020 7593 1877

Minicom: 020 7633 0759

Web site: www.stonewall.org.uk

Email address: info@stonewall.org.uk

Useful resources dealing with LGBT issues

Albert Kennedy Trust

Advocacy, advice, support and placement for homeless lesbian, gay & bisexual young people.

4th Floor

Princess House

105-107 Princess Street

Manchester M1 6DD

Phone: 0161 228 3308

Website: <http://www.akt.org.uk>

Email address: Manchester@akt.org.uk

and at

Unit 305A

Hatton Square,

16-16A Baldwins Gardens

London, EC1N 7RJ

Phone: 020 7831-6562

Website: www.akt.org.uk

Email address: London@akt.org.uk

Bar Lesbian And Gay Group (BLAGG)

BLAGG is an equal opportunities group, the aim of which is to raise awareness of lesbian and gay, bisexual and transgendered issues, to lobby for change, and, as a Bar group, to offer support and advice to potential barristers, pupils and students.

24-hour Phone: 020 7353 1315

Website: www.blagg.org

Email address: info@blagg.org

Big up @ GMFA

Group at GMFA to lead on the development and implementation of sexual health promotion campaigns aimed at Black gay men.

Unit 43 Eurolink Centre

49 Effra Road

London SW2 1BZ

Phone: 020 7738 6872

Fax: 020 7738 7140

Black Gay Men's Advisory Group (BGMAG)

Set up in 2003 by a small group of Black gay men, both lay and professional, from a diverse variety of backgrounds and expertise, who wanted to respond positively to the many and varied needs of the UK's diverse Black Gay communities. BGMAG is keen to work in partnership with other agencies that support its mission and wish to make positive contributions to help build and support healthy community development.

BGMAG

8 Gypsy Road

West Norwood, London SE27 9TF

Website: www.bgmag.org.uk

Email address: admin@bgmag.org.uk

Broken Rainbow

LGBT organisation which works on same sex domestic violence.

The hotline number: 08452 604460

Mondays-Fridays 9:00am-1:00pm and 2:00-5:00 pm

Website: www.broken-rainbow.org.uk

Email address: mail@broken-rainbow.org.uk

Consortium

Umbrella organisation of LGB voluntary and community organisations.

J111 Tower Bridge Business Complex

100 Clements Road

Southwark

London SE16 4DG

Phone: 020 7064 8383

Fax: 020 7064 8283

Website: www.lgbconsortium.org.uk

Email address: admin@lgbtconsortium.org.uk

CPS LGBT Network

The CPS LGBT network exists primarily as a staff support network for members of CPS staff. Another function of the network is to provide the CPS with a forum of expertise in terms of LGBT culture and communities.

The network can advise prosecutors on, amongst other things, the appropriateness and context of particular terms.

Email address: LGBT.queries@cps.gsi.gov.uk

FFLAG Families and Friends of Lesbians and Gays

National voluntary organisation which provides support for families with lesbian and gay children. It also has information for voluntary and statutory bodies on family issues, young people, including situations involving homophobic crime.

7 York Court

Wilder Street

Bristol BS2 8HQ

Opening times: 10.00 am - 8.00 pm

Phone: 0845 6520311

Website: www.fflag.org.uk

Email address: info@fflag.org.uk

The Gender Trust

Information and support for transsexual people. Education and support for professionals and the criminal justice system.

PO Box 3192

Brighton BN1 3WR

Administration Phone: 01273 234024

Information Line: 07000 790347

Website: www.gendertrust.org.uk

Email address: info@gendertrust.org.uk

GIRES

Gender Identity Research and Education Society — a national organisation that promotes and communicates research, and provides education to all those who are in a position to improve the lives of those affected by gender identity and intersex issues.

Melverley

The Warren

Ashtead

Surrey KT21 2SP

Phone: 01372 801554

Fax: 01372 272297

Website: <http://www.gires.org.uk>

Email: admin@gires.org.uk

ILGA–Europe

A group with knowledge of legislation and policies across Europe.

Rue de la Charité 17

Brussels B – 1210, Belgium

Phone: +32 2 609 54 10

Fax: +32 2 609 54 19

Website: www.ilga-europe.org

Imaan

Aims to: enlighten the British media, religious communities and the broader society beyond, regarding the experiences of Muslim LGBT people; increase general awareness and tackle Islamophobia within the non-Muslim LGBT community; combating homophobia within the Muslim community as a whole.

Website: www.imaan.org.uk

Lesbian, Gay, Bisexual and Trans People Advisory Group to the Metropolitan Police

Independent panel established to provide advice on all aspects of the work of the Metropolitan Police as it impacts on the LGBT communities.

Phone: 07952 970813

Website: www.lgbtag.org

Email address: info@lgbtag.org.uk

The Lesbian and Gay Foundation

Based in the North West, this offers a range of social, support and information services and resources to LGBT people, friends, families and their partners. The LGF help line is accredited to the community legal services quality mark (information level).

Princess House

105-107 Princess House

Manchester M1 6DD

LGF Helpline: 0161 235 8000 (open every night 6-10pm)

LGF Admin line: 0161 235 8035

Fax: 0161 235 8036

Website: www.lgf.org.uk

Email address: info@lgf.org.uk

Lesbian Information Service

PO Box 8, Todmorden

Lancashire OL14 5TZ

Phone: 0170 6817235

Website: www.lesbianinformationservice.org

LGBT History Month

A national event held every February.

Website: www.lgbthistorymonth.org.uk

LGCM

National Lesbians & Gay Ecumenical Christian Organisation which challenges homophobia in the churches and supports LGBT Christians.

Oxford House

Derbyshire Street

London, E2 6HG

Phone: 020 7739 1249

Website: www.lgcm.org.uk

Email address: lgcm@lgcm.org.uk

Mermaids

This group is for children and teenagers who have gender identity problems, their families, friends, carers, professionals etc.

BM Mermaids

London, WC1N 3XX

Phone: 07020 935066 — 3:00pm-7:00pm.

Website: www.mermaids.freeuk.com

Email address: mermaids@freeuk.com

NAZ

This is a sexual health and HIV project which works exclusively with black and minority ethnic communities in London and which is able to address LGBT issues relative to these communities.

Palingswick House

241 King Street

London, W6 9LP

Phone: 020 8741 1879

Fax: 020 8741 9609

Website: www.naz.org.uk

Email address: npl@naz.org.uk

Pace

Advocacy and counselling service for lesbians and gay men.

34 Hartham Road

London N7 9JL

Phone: 020 7700 1323

Fax: 020 7609 4909

Website: www.pacehealth.org.uk

Email address: info@pace.dircon.co.uk

Regard

National organisation of disabled lesbian, gay, bisexual and trans people who give advice and support on issues facing disabled LGBT people.

Unit 2J Leroy House

436 Essex Road,

London, N1 3QP

Phone: 020 7688 4111

Fax: 020 7688 4114

Minicom no: 020 7688 0709

Website: www.regard.dircon.co.uk

Email address: regard@dircon.co.uk

Safra

The Safra Project is a support group for LGBT Muslim women.

Website: www.safraproject.org

Schools Out!

National network supporting lesbian, gay, bisexual and transgendered educational workers.

BM Schools Out! National

London, WC1N 3XX

Phone: 020 7635 0476

Website: www.schools-out.org.uk

Email address: secretary@schools-out.org.uk

Survivors UK

A UK organisation which helps male survivors of sexual abuse and rape by providing a telephone helpline, 1:1 counselling, and group counselling.

12A Evelyn Court

Grinstead Road

London SE8 5AD

Office Phone: 020 8691 8236

Helpline: 0845 122 1201

Monday/Tuesday/Thursday 7-10pm

Website: www.survivorsuk.org

Email address: info@survivorsuk.org.uk

Terrence Higgins Trust

National organisation, which supports men who have sex with men. Members of the gay men's health promotion team are available to supply support and information.

Phone: 0845 122 1200

Website: www.tht.org.uk

Email address: info@tht.org.uk

This booklet is a public document. It is available on the CPS website:

www.cps.gov.uk <<http://www.cps.gov.uk/>>

Produced by the Equality & Diversity Unit and the Policy Directorate
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Further copies may be obtained from
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