

Police hate crime guidance – Court of Appeal

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Submissions made to case involving College of Policing national hate crime guidance for police

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The College of Policing is at the Court of Appeal in a case involving its national hate crime guidance for police.

The case, taking place from 9 March to 10 March, involves a challenge to the guidance which states non-crime hate incidents – which differ from hate crimes – should be recorded by police.

The guidance was challenged in the High Court in February 2020 and The Honourable Mr Justice Julian Knowles (High Court of Justice, Queen's Bench Division) ruled it was lawful.

He held that the mere recording of a non-crime hate incident based on an individual's speech is not an interference of their rights and, if it was, it is prescribed by law and done for two of the legitimate aims in Article 10 of the European Convention on Human Rights. He went on to describe the aims of the guidance as 'extremely important'.

The recording of an incident where someone's actions do not meet the criminal threshold began following a recommendation in the Stephen Lawrence inquiry report in 1999. It said that crimes and incidents should be recorded based on the 'perception of the victim or any other person'.

The College of Policing, the professional body for police and an independent arm's-length body of the Home Office, has said freedom of speech is essential and it is very important that the background and reasons for recording non-crime hate incidents is understood (see background information below).

Freedom of speech is an essential part of our democracy. The guidance helps police balance the rights and needs of people complaining of non-criminal hate incidents without impinging on freedom of expression.

Non-crime hate incidents can be precursors to subsequent violent crime. Without recording these incidents, we would not be collecting the information across communities which police need to monitor the build up of tensions within a community. We would risk the police having a blind spot in their local community, hampering their ability to protect members of vulnerable and marginalised groups, and preventing future criminal behaviour.

The findings of the Stephen Lawrence inquiry report, on which some of our guidance is based, demonstrated the importance for us of understanding how hate can escalate within a community. Our guidance is aimed at protecting people who may be targeted because of who they are. We know this is an area where people may be reluctant to report hate incidents to us because of the very personal nature of what they experience or perceive.

We welcome the scrutiny of this case. Hate crime can have serious consequences and it is vital the police have the right tools to help them protect the public.

Assistant Chief Constable Iain Raphael, College of Policing

ACC Raphael added the guidance is under continual review and the College of Policing will await the decision of the court and reflect on its findings.

A result in the case is expected later in the year.

Background information

DBS checks

The recording of a non-crime hate incident is not a sanction. It does not show up on a basic, or even standard, disclosure and barring service (DBS) check. If an enhanced DBS check is carried out, which is limited to a list of high-risk positions like teachers and carers, it will not show up unless it is relevant to the job and is approved by a chief officer, who must consider an individual's human rights of privacy and freedom of speech.

Under separate Home Office rules, chief officers must also consider allowing someone the opportunity to reply before information is disclosed, and it should not be disclosed if it is trivial,

simply demonstrates poor behaviour or relates merely to an individual's lifestyle.

Guidance background

For decades police have recorded and responded to incidents which do not amount to a criminal offence, known as 'non-crime incidents' and these can involve things like anti-social behaviour and community tensions. Non-crime hate incidents are no different and are recorded by local police following a recommendation in the Stephen Lawrence inquiry report. It said that crimes and incidents should be recorded based on the 'perception of the victim or any other person'.

Previous High Court case

At [a High Court ruling in February 2020](#), Mr Justice Knowles said he was satisfied the guidance pursues the legitimate aim of preventing disorder and crime and protecting the rights and freedoms of others.

Non-crime hate incident

This is an incident which is perceived by the victim or any other person to be motivated by hostility or prejudice based on a person's race, religion, sexual orientation, disability or transgender status. Police make a record to monitor community tensions and prevent criminal behaviour.

Hate crime

A criminal offence which is perceived by the victim or any other person to be motivated by a hostility or prejudice based on the same characteristics.

To record or prosecute a hate crime there must be evidence of hate or hostility. Prosecuted by the courts.

The Government's independent advisory group for hate crime has said recording hate incidents is 'critical' because it often provides the evidence of motivation for subsequent hate crimes and has the power to prevent an escalation into criminal behaviour.

Hate crime and the public

The Government's advisory group has said victims are 'significantly more affected' than those 'of the same offence that does not contain the hate element.' Victims are more likely to commit suicide, lose their homes and their jobs or suffer mental health problems.

For example, in the Crime Survey of England and Wales, 9% of victims surveyed said they suffered from depression following a crime. However, in crimes where hate was a motivation the number reporting depression rose to 18%.

Similarly, 17% of victims said they were living in 'fear' following a crime but, when hate was a motivation for the crime, this figure rose to 45%.

The Government has undertaken a four-year action plan to tackle hate crime, which includes encouraging reporting of hate crime, and has it made clear that 'no one should be targeted because a hateful minority cannot tolerate the differences that make our country great.'

Vexatious complaints using the guidance

Guidance for officers makes clear that if they suspect a complaint may be vexatious they should involve senior officers before proceeding and ensure particular care is given to protect someone's human right to freedom of speech under Article 10. Officers should discount the perception of someone who has no knowledge of the victim, crime or area. This would include if someone is responding solely to stories on the web or in the media, or if they are reporting for a political motive.

Guidance in schools

There have been reports that the guidance has been updated to apply to schools. This is not the case.

Schools routinely, and more often than not, manage incidents without police involvement. The Department for Education (DfE) and the Home Office provide separate guidance on incidents taking place in schools. The DfE has published [guidance on behaviour and discipline in schools](#).

Tags

Hate crime