

# Court of Appeal hate crime guidance ruling

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Court rules safeguards in policing guidance need to be more explicit

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The Court of Appeal has ruled on a case involving the College of Policing's hate crime operational guidance.

A previous High Court ruling found the guidance to be lawful. This was challenged in the Court of Appeal, which ruled that the guidance disproportionately interfered with freedom of expression in its current format.

The appeal was lodged on five grounds.

- Common law principle of legality – appeal not upheld.
- Lawfulness of the guidance under common law – appeal not upheld.
- Interference in freedom of expression – upheld.
- Prescribed by law – appeal not upheld.
- Proportionality – upheld.

*Freedom of expression within the law is a fundamental right which should be protected.*

*Policing strives every day to protect the vulnerable from harm, uphold fundamental rights and enforce the law.*

*The College of Policing supports this work through setting standards and sharing knowledge that helps forces and individuals provide better service to the public.*

*Complaints of hate are often complex and our guidance seeks to help officers understand how best to do a difficult part of their job.*

*The balance we have always aimed to strike is between the need to protect vulnerable people and communities from harm with the need to facilitate and protect freedom of speech.*

*The court has found we need to make safeguards in our guidance more explicit to help police officers proportionately enforce the law. We will listen to, reflect on, and review this judgement carefully and make any changes that are necessary.*

*The judgement provides clarity that police have the power to record, retain and use a wide variety of data and information to keep people safe.*

*By recording correctly, the police can gain insight into potential tensions in communities and harm caused to individuals.*

*All police guidance is kept under continual review and is adapted to keep pace with the complex demands of protecting the public.*

**Assistant Chief Constable Iain Raphael, College of Policing**

A non-crime hate incident is an incident that 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 of incidents to monitor community tensions and prevent criminal behaviour.

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.

A hate crime is criminal offence that 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.

## Reporting hate incidents

If you are an officer involved in reports of hate incidents, note the following while the ruling is being examined.

- Responses to allegations of hate crime are unaffected.
- For allegations of hate incidents, police need to apply their judgement in establishing whether there is hostility towards a protected characteristic group.

- If, having applied their judgement and taking account of the full context, no hostility is found, the incident should not be recorded as a hate incident.
- Additionally, policing will need to consider whether the incident in question might be dealt with in a way that is less intrusive and that does not infringe freedom of expression, for example, signposting to alternative areas of support or ways of raising concern.
- Particular care is needed when the incident complained of takes place as part of debate. While hostility can sometimes be defended as being fair debate, police responders will need to consider whether, in the context of the incident, the words or behaviour complained of could reasonably be considered as motivated by hostility. In those cases, where common sense indicates an absence of hostility, no record should be made.

## Tags

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