



**POLICE  
SCOTLAND**

Keeping people safe

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**POILEAS ALBA**

# Hate Crime Toolkit Guidance Document

Safer Communities / Equality and Diversity Unit / May 2019

## **Introduction**

Being targeted either wholly or partly due to an actual or presumed personal characteristic, can have a devastating impact upon the victim, their families and in some situations, can have a corrosive effect on community cohesion. Hate crime is far more prevalent than official statistics suggest.

**Hate crime** is defined as:

**‘any crime which is perceived by the victim or any other person, as being motivated (wholly or partly) by malice and ill-will towards a social group’.**

There are currently five social groups protected under hate crime legislation in Scotland:

- Disability
- Race
- Religion
- Sexual Orientation and
- Transgender Identity

If a hate crime is reported to the police and following investigation, no criminality is established, the circumstances will be recorded as a **hate incident**.

## **Perception**

Perception will be relevant in determining whether an incident or crime is hate related or in recognising the malice element of a crime.

To assist in identifying whether or not a hate crime/incident has taken place, we should ask the victim or witness three questions.

**Who** perceived the incident to be hate related?

**Why** that person perceived the incident to be hate related? Remember we do not challenge another person’s perception, we explore it.

**What** impact did the incident have on the victim and/or community? *(The impact is not necessary to establish a hate crime and in some cases there may be no obvious impact upon the victim).*

*The above points should be noted within the victim/witness statement and explained within the Crime Report, iVPD and SPR2.*

## **Other Person Perception**

Perception based recording refers to the perception of the victim or any other person. The fact that any person can perceive an incident to be motivated by malice and ill-will is of particular note to police officers or staff, who in themselves can identify that an incident is hate related, even if the victim does not or no victim was present/identified.

### **Why is this important?**

This shows that police recognise and understand the particular impact and harm caused by hate crime (victims, group victim belongs to and wider society).

Also, some people who identify as having a learning disability, dementia or mental health issue, may have additional barriers and may not realise that they have been the subject of a hate crime/incident. Therefore, police officers or staff can still record it as such, based upon their own perception.

**Any other person** can include, but is not limited to:

- Bystander / Witness
- Family Member
- Friend
- Third Party Reporting Organisation Staff
- Guardian/Carer
- Police Officer

## **Establishing a Hate Crime**

Follow the 'show your workings' document:

### **Has any crime been committed?**

**Yes.** If there is a crime it can only be a **crime** or **hate crime**.

**No.** If there is no crime it can only be **no crime incident** or **hate incident**.

### **There is a crime.....when is it a hate crime?**

The perception of the victim, or any other person, will be relevant when deciding whether the crime is recorded as a hate crime.

### **If there is no crime.....when is it a hate incident?**

If a hate crime is reported to the police and following investigation, no criminality is established, the circumstances will be recorded as a hate incident.

Evidence of malice and ill-will is not required for a hate crime or hate incident to be recorded and thereafter investigated as hate related by police.

Victims of hate crimes and hate incidents **do not** have to be a member of any of the above social groups in order to be a victim.

The intended victim/social group do not need to be present to record and investigate a hate crime/incident.

All reported hate crimes and hate incidents should be recorded on iVPD.

## **Legislation**

Most hate crime would be criminal even if there was no specific legislation to deal with it.

Legislation has been passed that if an offender is convicted of an offence and it is then proved that the offence was aggravated by prejudice, the court must take this aggravation into account when determining the sentence. These are known as statutory aggravations – this is the core method of prosecuting hate crimes in Scotland.

There are also a few ‘standalone’ offences where a statutory aggravation does not need to be applied.

### THE LAWS THAT CAN BE USED TO ADDRESS HATE CRIME

| EXAMPLES OF AN UNDERLYING CRIMINAL ACT INCLUDE:  |  |   |   |
|--|--|---|---|
| <b>Common law offences:</b><br>For example – breach of the peace, assault, theft, murder, vandalism, uttering threats  | <b>Threatening or abusive behaviour:</b><br>Section 38 of the Criminal Justice and Licensing (Scotland) Act 2010 | <b>Sending grossly offensive, indecent, obscene or menacing messages via a public electronic communications network:</b> Section 127 of the Communications Act 2003 |   |
| UNDER CURRENT SCOTS LAW A STATUTORY AGGRAVATION MAY BE APPLIED IN RESPECT OF THESE PROTECTED CHARACTERISTICS:  |  |   |   |
| <b>Race</b><br>Crime and Disorder Act 1998   | <b>Religion</b><br>Criminal Justice (Scotland) Act 2003  | <b>Sexual orientation or transgender identity</b><br>Offences (Aggravation by Prejudice) (Scotland) Act 2009  | <b>Disabled people</b><br>Offences (Aggravation by Prejudice) (Scotland) Act 2009 |
| PREJUDICE OR HOSTILITY ALSO LIES AT THE HEART OF SOME OTHER OFFENCES WHICH ARE RECOGNISED AS HATE CRIME. THESE ARE SOMETIMES REFERRED TO AS ‘STANDALONE’ OFFENCES BECAUSE A STATUTORY AGGRAVATION DOES NOT NEED TO BE APPLIED: |  |   |   |
| <b>Stirring up racial hatred</b><br>Public Order Act 1986  |  | <b>Racially aggravated harassment</b><br>Section 50A of the Criminal Law (Consolidation) (Scotland) Act 1995  |   |

## **Reporting Methods**

Police Scotland has developed a range of reporting methods to try and meet the needs of victims, these include:

- Attend at a police office
- Stop a police officer in the street
- Phone 999 – emergency
- Emergency SMS 999 (for Deaf people)
- Phone 101 – non emergency
- Online Hate Crime Form
- BSL Scotland – video interpreting for British Sign Language
- Keep Safe Scotland Phone App – easier version of Police Hate Crime Form
- Third Party Reporting Organisations
- BTP text – for reporting on a train and
- Crimestoppers

## **Hate Crime Champions**

Hate Crime Champions (HCC's) are a network of trained staff who are readily available to provide advice, support and assistance to colleagues in identifying and tackling the issues surrounding hate crime. The [HCC's list](#) can be found on the intranet on the Safer Communities, Equality and Diversity page.

## **Community Impact Assessments (CIA)**

A CIA is a tool to record, monitor and inform decisions in relation to community tensions. Raising a CIA should be considered if an incident, operation or event is likely to significantly impact on communities or cause a rise in community tensions.

## **Community Advisors**

Community Advisors are independent persons who through their background, work or life experience have knowledge of a particular community or group and the issues that affect them. Advisors can be asked to be involved at a tactical and operational level, where their advice may have a bearing on an incident, investigation or event.

More information on hate crime/incidents can be found in the [Hate Crime SOP](#).

Safer Communities Equality and Diversity unit have a national role in providing advice, assistance and support in terms of Hate Crimes/Incidents and can be contacted on the below email addresses.

S30(c)

S30(c)

| INITIAL INCIDENT  |   |  |  |  |
|---|---|--|--|--|
| Is there a crime?<br>Review essential elements.   | Yes   |  | No   |  |
| Is it perceived to be motivated (wholly or partly) by malice and/or ill towards a social group? | No  | Yes  | No   | Yes  |
| What am I dealing with?   | Crime   | Hate Crime   | Incident   | Hate Incident  |
| <b>Record<br/>Who,<br/>Why &amp;<br/>What?</b>  | N/A   | <p><b>Who</b> perceives the conduct to be motivated (wholly or partly) by malice and ill will towards a social group?</p> <p><b>Why</b> do they perceive the conduct to be (motivated wholly or partly) by malice and ill will towards a social group?</p> <p><b>They do not need to provide evidence they only need to provide a reason for their perception.</b></p> <p><b>What</b> impact has this had on the individual, group or perceived group individual belongs to or wider society?<br/> <b>Perception</b> should always be explored however the victim or any other person does not have to justify or provide evidence of their belief; however information provided will be relevant in determining if the incident is hate related.</p> <p><b>Police officers and staff should not directly challenge this perception.</b></p> | N/A  | <p><b>Who</b> perceives the conduct to be motivated (wholly or partly) by malice and/or ill will towards a social group?</p> <p><b>Why</b> do they perceive the conduct to be (motivated wholly or partly) by malice and/or ill will towards a social group?</p> <p><b>They do not need to provide evidence they only need to provide a reason for their perception.</b></p> <p><b>What</b> impact has this had on the individual, group or perceived group individual belongs to or wider society?<br/> <b>Perception</b> should always be explored however the victim or any other person does not have to justify or provide evidence of their belief.</p> <p><b>Police officers and staff should not directly challenge this perception.</b></p> |
|   | <p><b>Storm</b> - update with crime report number and if necessary recode ensuring a full description of rationale, steps taken etc.</p> <p>If there is conflict between opening and closing narratives a full description is required.</p> | <p><b>Storm</b> - update with crime report and iVPD number and if necessary recode ensuring a full description of rationale, steps taken etc.</p> <p>If there is conflict between opening and closing narratives a full description is required.</p>   | <p><b>Storm</b> - update and if necessary recode ensuring a full description of rationale, steps taken etc.</p> <p>If there is conflict between opening and closing narratives a full description is required.</p> | <p><b>Storm</b> - update with iVPD number and if necessary recode ensuring a full description of rationale, steps taken etc.</p> <p>If there is conflict between opening and closing narratives a full description is required.</p>  |
|   | <p><b>iVPD</b> – no requirement to submit in relation to alleged hate element.</p>  | <p><b>iVPD</b> – submit for all hate crimes.</p> <p>Only record victims or reporter / perpetrators details and charges in relation to hate element.</p> <p>Ensure nominal details are recorded correctly including reason for victimisation, ethnicity etc.</p> <p>Ensure all aggravations are selected, record who and why someone perceived hate and update when enquiries are complete/detection. Remember the person does not have to belong to the social group to be the target of hate abuse.</p> <p>iVPD is PS only system to record hate so please record information accurately.</p>   | <p><b>iVPD</b> – no requirement to submit in relation to alleged hate element.</p>   | <p><b>iVPD</b> – submit for all hate incidents.</p> <p>Only record victims or reporter, perpetrators in relation to hate element.</p> <p>Ensure nominal details are recorded correctly including reason for victimisation, ethnicity etc.</p> <p>Record who and why someone perceived hate.</p> <p>iVPD is PS only system to record hate so please record information accurately.</p>  |
|   | <p><b>Crime Report</b> – complete as per SCRS and divisional/national guidelines.</p>   | <p><b>Crime Report</b> – complete as per SCRS and divisional/national guidelines and update with iVPD number.</p> <p>Ensure all aggravations are selected, record who and why someone perceived the incident to be hate and update when enquiries are complete/detection.</p>  | <p><b>Crime Report</b> – no requirement.</p>   | <p><b>Crime Report</b> – no requirement.</p>   |
|   | <p><b>SPR2</b> – complete as per SCRS and divisional/national guidelines.</p>   | <p><b>SPR2</b> - complete as per SCRS and divisional/national guidelines and update.</p> <p>Ensure all aggravations are added and record who and why someone perceived hate.</p>   | <p><b>SPR2</b> - no requirement</p>  | <p><b>SPR2</b> - no requirement</p>  |
| <p><b>SID</b> – submit if deemed necessary.</p>   | <p><b>SID</b> – submit for all hate crimes.</p>   | <p><b>SID</b> – submit if deemed necessary.</p>  | <p><b>SID</b> – submit for all hate incidents.</p>   |  |
| <b>Actions</b>  |   |  |  |  |

**Establishing a hate crime**

Follow the 'Show your Workings' document overleaf. Answer the questions to the left and depending on your answer follow that column to guide you on what you are dealing with, what to record and what your actions are.

**Has any crime been committed?**

**Yes.** If there is a crime it can only be a **crime** or **hate crime**.

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**There is a crime.....when is it a hate crime?**

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|   | Crime | Hate Crime | Incident | Hate Incident |
|---|-------|------------|----------|---------------|
| <b>Is there a Crime?</b>  | Yes   | Yes        | No       | No            |
| <b>What is the crime?<br/>Review essential elements</b>   |       |            |          |               |
| <b>Is it perceived to be motivated by malice and ill towards a social group?</b>                            | No    | Yes        | No       | Yes           |
| <b>Social group(s)?</b><br><br>Disability<br>Race<br>Religion<br>Sexual Orientation<br>Transgender Identity |       |            |          |               |
| <b>Who perceives it?</b><br><br>Victim<br>Witness<br>Police<br>Other  |       |            |          |               |
| <b>Why?<br/>Reason for perception?</b>  |       |            |          |               |
| <b>What is the Impact?<br/>Who is the impact on?</b>  |       |            |          |               |
| <b>Actions</b><br><br>Storm<br>Crime Report<br>iVPD<br>SPR2<br>SID  |       |            |          |               |