

**All Wales Hate Crime Research Project: Event Report**  
**‘Understanding the Criminal Justice System’ Seminar**  
**2pm, Wednesday 27<sup>th</sup> October 2010**  
**County Hall, Cardiff**

## **Introduction**

22 representatives from 13 organisations attended the event, including local voluntary organisations and Cardiff Council. The support of Cardiff County Council in providing the venue and refreshments is gratefully acknowledged.

Mair Rigby (Project Officer) welcomed everyone to the event and ran through the agenda for the afternoon. During the first part of the afternoon a panel of representatives from criminal justice agencies would respond to three hate crime case studies and answer questions from the audience. This would be followed by a workshop session in which the audience would be consulted about their views on the criminal justice system.

Jasmin Tregidga (Research Associate) thanked everyone who had agreed to help with the distribution of the survey. Jasmin then gave an overview of the research part of the project and stressed that she is eager to liaise with all the agencies in order to conduct qualitative interviews during the second year of the project.

## **Part 1: Criminal Justice System Agency Panel**

The panel included representatives from:

- South Wales Police: Minorities Support Unit
- Crown Prosecution Service (CPS)
- Victim Support
- The Courts

Mair introduced the panel. Three hate crime case studies were read out to the participants and each member of the panel explained how their agency would respond to each situation.

## CASE STUDY 1: Jo

Jo is a 21 year-old gay woman who lives alone in private rented accommodation. Jo is open about her sexual orientation to her close friends and work colleagues, but she isn't 'out' to her neighbours.

Jo is very active socially and often goes out on the local gay scene at night. One night Jo is walking home with a female friend along a road where there are a lot of pubs with people congregated outside on the pavement. As they walk past one of the pubs, two men make comments about them, saying "What a pair of Lesbos!" Jo turns around and tells them to "Get lost". The men then start following Jo and her friend down the road calling them names and making sexually suggestive remarks. Jo shouts back at the men telling them they are "pathetic". The men reply that they are only having "a bit of fun" and that she should "lighten up". Jo is very angry about this and a shouting match develops between them. One of the men grabs hold of Jo and pushes her over onto the pavement. The men then run off laughing. There are people nearby who must have seen the incident, but no one comes to help. Jo is bruised from her fall and shaken up by the experience. She thinks one of the men called his friend "Dave" but she doesn't know anything else about them and has never seen them before. Jo's friend thinks they should just go home and forget about it.

Jo would like to report the incident but is worried that:

- The police won't take her seriously because she had been drinking at the time of the incident
- The police might blame her for the incident because she shouted back at the men
- No one will come forward to be a witness
- She could be 'outed' in her local community

## Panel Response to Jo's case

### South Wales Police

Each incident reported to South Wales Police is recorded electronically and assigned an occurrence number. Those reported as 'hate' incidents are flagged up and Hate Crime Officers are designated to review them. The officer who takes the report conducts a risk assessment. The risk may be assessed as standard, medium or high.

All victims of hate crime are supported by specialist Hate Crime Officers whose responsibility it is to identify the specific needs of each victim and to provide them with any necessary support measures. This supportive role is different from that of the investigative officer who will investigate the crime itself.

The investigative officer will investigate the complaint and gather evidence. A statement will be taken, CCTV footage of the incident will be reviewed if available, and house-to-house inquiries may be conducted. If physical contact was involved then forensic evidence might be collected. Through these procedures the officer will attempt to identify the perpetrators. Jo would also undergo a medical examination and be referred to support agencies, mainly Victim Support.

Jo may wish for the police not to take formal action due to fear of being 'outed'. The police would respect her wishes.

The police cannot guarantee that in the process of investigation Jo's sexual orientation would not be disclosed at some point. An example of when sexual orientation may be disclosed publicly could be during a court hearing and an Action Plan would be devised and implemented following the Risk Assessment for the hate crime.

The next stage would be to present the evidence to CPS.

## **Crown Prosecution Service**

The Crown Prosecution Service (CPS) would advise the police on the case and review the evidence. The CPS would then decide on the charge and, depending on the seriousness of the offence, present the case at Magistrates or Crown Court. The CPS can also give pre-charge advice to the police while the case is still under investigation. The CPS has a separate [Homophobic and Transphobic Hate Crime Policy](#) and would work according to this policy. If after looking at the evidence provided by the police the CPS decides the evidence needs strengthening, an action plan will be put into place in order to address any gaps. The CPS has specialist hate crime prosecutors who deal with hate crime cases.

Any case which is perceived to be a homophobic hate **incident** by the victim or any other person is flagged as such on the CPS IT system. This triggers appropriate support for the victim and witnesses and ensures the CPS Homophobic Hate Crime Policy is followed. However, to prosecute the incident as a homophobic hate **crime** there needs to be evidence to show that the perpetrator demonstrated or was motivated by hostility towards sexual orientation

There are no specific charges for homophobic hate crime as there are for racially and religiously aggravated hate crime (eg racially aggravated common assault). However, there is legislation (Section 146 of the Criminal Justice Act 2003) which imposes a duty on the courts to increase the sentence for any offence aggravated by hostility towards sexual orientation (or disability). The CPS should remind the courts of this duty

The CPS has to prove evidence of "hostility" and not "hatred".

From the point of charge the victim and witnesses would be supported by the Witness Care Unit, which is staffed both by the police and CPS. Witness Care Officers undertake individual needs assessments with victims and witnesses and put measures in place to address these needs. This could include referral to an appropriate support organisation; helping to arrange transport or childcare if the victim or witness has to attend court.

In certain situations the prosecutor can make an application to the court for special measures, e.g. anonymity (not granted that often but used); screens (so that the defendant cannot see the victim); video links etc.

## **Courts**

The representative from the Courts stressed that fairness is at the core of their work. In Jo's case the CPS might have difficulty in deciding what charges to bring: if the assault is classed as 'common' then the case goes to the Magistrates court, if it is serious, then the Crown Court. The defendant can plead 'guilty' or 'not guilty'. Around 70-80% of defendants choose to enter a plea. If a plea is not entered, the court automatically assumes it is a 'not guilty' plea. If the defendant pleads 'guilty' and it is their first time in court, the sentence can be reduced by up to one third. At the same time, if aggravating factors are proven then the sentence could be increased by up to 30 per cent.

If the plea is 'not guilty', the case goes to trial, which will normally take place within 6 to 10 weeks depending on the seriousness of the case. Jo's case would most probably not be treated as high priority. An example of a high priority case would be a domestic violence case. The trial should be conducted in a manner which would ensure that the best evidence can be secured. If this involved using a video link or screens then these should be used.

Before the trial takes place, the witness service will ensure that the victim and any witnesses are supported throughout the trial. [The Witness Service](#) is based in court but it is an independent charity providing support to witnesses. They might show the victim the court before trial, make sure video links or screens are provided if necessary. In Cardiff, the Magistrates Court has 7 interview rooms where the victim would wait for the trial. It usually takes about 3 hours to wait for a trial. The Witness Service would also ring the victim after the trial to check that they are ok.

## **Victim Support**

Victim Support would conduct an assessment of the victim's situation, find out what Jo's needs are and make referrals to relevant support agencies. In this case an LGB support organisation would probably be contacted.

## Questions from the audience:

***Q: How does CPS decide that they have enough evidence to take a case to court?***

A: When reviewing the evidence the CPS has to apply the two tests (the evidential and public interest tests) set out in the [Code for Crown Prosecutors](#).

For a case to pass the evidential test prosecutors must be satisfied that there is sufficient evidence to provide a **realistic prospect of conviction**.

This means that a jury or bench of magistrates or judge hearing case alone is more likely than not to convict the defendant of the charge alleged.

In simple terms this means that the CPS has to be more than 50% sure that the court will convict

This is a different test from the one that the criminal courts themselves must apply. A court may only convict if it is sure that the defendant is guilty.

***Q: What happens if the file is transferred to the CPS and they decide that there is no chance of conviction?***

A: If a full file of evidence has been provided to the CPS the prosecutor should write to the victim and inform them about their decision and the reasons for it. The prosecutor should also offer to meet with the victim.

However, if the CPS has provided verbal or telephone advice only to the police, without seeing a full file of evidence, the police are responsible for informing the victim.

In cases where the CPS are not involved, for example if a perpetrator has not been caught, it is the police's responsibility to keep the victim informed.

The CPS and police would encourage victims to report any incident however small. If there is insufficient evidence to prosecute the evidence may still be helpful in future

***Q: How long will Victim Support provide assistance to the victim?***

A: It is up to the victim. Support will be provided as long as the victim needs it, whether or not they go to court.

## CASE STUDY 2: Mark

Mark is a 40 year-old man who has a learning disability. He lives with his mother in social housing and has a part-time job in a shop.

A group of teenage boys and girls start targeting Mark when they see him out and about in the area. They ask him to go into shops to buy cigarettes and alcohol for them. When he refuses to do this they become abusive and start calling him names like “retard”. This situation carries on for a few weeks. One day, the teenagers stop Mark on the street and tell him that if he doesn’t give them money, they will tell people that he’s a paedophile and this means that someone will come and set fire to his house. Mark is terrified of what will happen if the teenagers do start spreading this rumour about him in the local area. He thinks he might lose his job. He also doesn’t want to frighten his mother. He gives the teenagers £10 of his money just to try and make them leave him alone. The next morning he finds that someone has written “Pedo” in big letters on the wall of his house.

Mark wants to tell someone about what is happening but is worried that:

- He will find it difficult to explain what has happened to the police and they will be impatient with him if he can’t remember everything
- He will get in trouble because he didn’t tell anyone about the previous incidents
- The police will believe the teenagers and will arrest him on suspicion of being a paedophile

## Panel Response to Mark’s case

### South Wales Police

South Wales Police would involve vulnerable adult co-ordinators to support Mark. This would involve conducting an assessment of his needs and, if needed, supporting Mark during interviews. If a statement was needed from Mark, the police would make sure it is not rushed if Mark needed more time. Investigation would, amongst other things, involve taking photographs of the graffiti and collecting forensic evidence. The graffiti would then be removed by the Local Authority or the police themselves.

If counter-allegations were made by the perpetrators and subsequently investigated, the police cannot give assurances that the subject of these allegations would not be arrested.

If it turns out that Mark’s complaints were not subject to criminal law, the police would refer the case to e.g. to the housing provider, who has the duty of care in relation to tenants.

## **Crown Prosecution Service**

As with the first case study the CPS would decide if there was enough evidence to prosecute. The CPS has a separate [Disability Hate Crime Policy](#) and would work according to this policy. The CPS would follow the same procedures as outlined in the first case study including witness care and applying to the court for special measures.

There are no specific charges for disability hate crime, however, there is legislation (Section 146 of the Criminal Justice Act 2003) which imposes a duty on the courts to increase the sentence for any offence aggravated by hostility towards disability (or sexual orientation). The CPS should remind the courts of this duty

The CPS would advise the police to use a Registered Intermediary in this case which involves an adult with a learning disability. The intermediary ensures that communication between the victim and Criminal Justice agencies is effective and they would support the victim at the investigation stage as well as trial stage at court (e.g. beginning with the police interview).

In the past criminal justice agencies have made assumptions about victims and witnesses with learning disabilities. Some people have not been considered to be 'competent, credible and reliable' witnesses (e.g. if they find it difficult to remember details) simply because they have a learning disability. However, a very different approach is now taken. The CPS has recently launched its [Policies for Victims and Witnesses with Learning Disabilities and or Mental Health Issues](#) which outlines the service that should be provided by the CPS.

Often in disability hate crime cases the perpetrator will accuse the victim of being a paedophile in an attempt to justify their actions. The CPS also encourages prosecuting (as opposed to giving a caution) for even minor offences related to disability, in order to prevent escalation (e.g. as in the Fiona Pilkington case).

## **The Courts**

Perpetrators under 18 years of age would be prosecuted by the Youth Court, which presents a different scenario for the victim in comparison to the Magistrates or Crown Courts which deal with adults. If this offence was the first offence of a young perpetrator and they pleaded guilty a restorative justice approach would most probably be undertaken (this approach is becoming more and more popular when young people are involved).

## **Victim Support**

Victim Support would assist Mark by offering enhanced support which is in place for vulnerable adults.

## Questions from the audience:

***Q: What are the CPS figures in relation to hate crime against Gypsies and Travellers? What is being done to improve the situation of Gypsies and Travellers who are one of the most vulnerable groups in our society?***

A: CPS representatives did not have the figures relating to victims from the Gypsy and Traveller communities on them, but said they were aware that there was a need to increase confidence among this community. CPS is eager to talk to people working with Gypsies and Travellers and the community itself in order to address issues facing this community.

Gypsy and Traveller communities are regarded as a racial group by the CPS and any offence committed against a member of the community because of their racial group would be treated as a racially aggravated crime which attracts a higher sentence.

The CPS has worked with the Welsh Assembly Government on their Gypsy Traveller Strategy [“A Road Less Travelled”](#)

A: The audience member who asked the question noted that Gypsy and Traveller communities lack of engagement with criminal justice agencies is due to low trust and that work needs to be undertaken to build this trust.

***Q: Third party reporting services handled by local authority call centres make it very difficult for a disabled person to report a hate crime. From my own experience, they do not ask the question about disability and it would be better if officers from equality organisations delivered this service rather than untrained call centre operatives and other generalist services.***

A: The Police representative said that since March 2010 the police are carrying out training in the identification and managing of hate crime for all call handlers and about 100 Police Community Safety Officers (PCSOs). Identifying and mapping training has also been delivered to all front line officers.

The CPS representatives said that they are currently working with local housing associations who provide third party reporting services.

All four police forces and CPS Areas in Wales support the [Safer Wales Third Party Reporting Scheme](#)



### CASE STUDY 3: Fatimah

Fatimah is a 25 year-old British Muslim woman. She is married and owns a house with her husband. Fatimah starts a new job as an administrator in an office where she is the only Muslim employee. Some of her new colleagues start making jokes about Muslims being “terrorists” in her presence. One of the men in the office tells her she should take off her headscarf. When she tells him she finds this very offensive, he says she should stop being so “uptight” and that she should be grateful for being allowed to live in the UK at all. Fatimah complains to her line-manager who offers to speak to those responsible. Some of her colleagues then apologise, but the man who objected to her headscarf seems to be very angry and won’t speak to her. Based on other things that she’s heard him say in the office, Fatimah begins to suspect that this man might have connections with a far right group. At first she’s mainly relieved that the harassment has stopped, but a couple of weeks later someone starts to stalk her on Facebook by hacking into her profile and sending her abusive messages. Then she receives an anonymous threatening letter at her house. She doesn’t have any proof that people from her office are responsible for the online stalking and hate mail, but thinks that it’s unlikely to be a co-incidence. Fatimah would like to report the incidents, but is worried that:

- Reporting to the Police will result in an investigation that will make it too difficult for her to continue in her job and she will have to leave, making it hard to pay the mortgage
- She doesn’t have enough evidence against the person she suspects is responsible
- The Police might be racist or might not like Muslims any more than her colleagues do

### Panel response to Fatimah’s case

#### South Wales Police:

The police would link in with the HR department of the company and make it clear to the employer that it is also their legal responsibility to deal with the case. In terms of collecting evidence, specialist police officers would collect evidence of the online harassment by working with Facebook. Forensic evidence would be collected from the hard copy letter and if it contained handwriting, this could be used as evidence as well. In workplace cases where the victimisation is ongoing and constitutes a criminal offence of harassment, it would be prosecuted. In terms of priority, every single case is risk assessed and a priority level would be assigned to it. Also, in every Basic Command Unit (formerly division), senior officers have monthly meetings where all hate crime cases and how they are handled, would be reviewed.

The victim should be reassured that South Wales Police does not tolerate racist behaviour by its employees and any staff member who exhibits such behaviour could be liable to disciplinary proceedings. All hate crime victims are strongly encouraged

to report incidents. They will have the opportunity to discuss what has happened to them and whether or not they wish to make a formal complaint regarding the matter. Irrespective of whether or not they wish to pursue a complaint, if they report the matter, the police can often provide advice and support or arrange support from other organisations as appropriate in the circumstances.

## **Crown Prosecution Service**

As with the first two case studies the CPS would decide if there was enough evidence to prosecute. The CPS has a separate [Racist and Religious Hate Crime Policy](#) and would work according to this policy. The CPS would follow the same procedures as outlined in the first case study including witness care and applying to the court for special measures

There are specific charges for racist and religious hate crime which attract a higher sentence.

Here there could possibly be a prosecution for harassment and malicious communications. The CPS could also apply for a restraining order against the perpetrators.

## **Victim Support**

In all of the cases including this one, Victim Support would also use special support officers, who are volunteers trained in hate crime cases.

## **Questions from the audience:**

***Q: What do the relevant agencies do to raise awareness of what is 'hate crime'? The Valleys Regional Equalities Council (VALREC) conducted local research, which shows that many people are not familiar with the term and therefore reporting figures are low. The research also found that no after-care is provided for the victims and some people reported hate crime and never knew what happened with their report.***

A: The Police representative said that First Response officers are being trained to ask specific questions which would help them identify hate crime (e.g. Do you think this happened because of your race/religion?). With regards to the after-care, Hate Crime Officers should contact the victim within one week of the report to explain what is going to happen. Sometimes a home visit will be paid as well by a Hate Crime Officer or a PCSO. Within 3 to 4 weeks the Hate Crime Officer should ring the victim to see if they are happy with the process.

CPS and police undertake extensive community engagement with communities across Wales. We are trying to work together to encourage reporting of hate crime. The term hate crime is somewhat misleading as we only have to prove hostility and not hatred.

## **Part 2: Workshops**

The audience was divided into three groups and asked to respond to the following questions:

1. Which areas of the criminal justice system do you think victims find most difficult to understand?
2. What kinds of barriers do you think victims of hate crime experience in relation to the criminal justice system?
3. What should be done to improve victims' understanding of and confidence in the system?

### **Question 1: Which areas of the criminal justice system do you think victims of hate crime find most difficult to understand?**

**The term 'hate crime'** – victims often associate hate crime with violent acts. They are often unsure if what's happening to them is serious enough to warrant attention. They may assume that they will have to provide evidence that the perpetrator 'hated' them. People tend to report based on severity, so they will put up with/tolerate a lot before reporting.

**How police CPS work:** it was observed that the system is very complicated and it's not surprising that victims find it difficult to understand.

**Procedures** - e.g., reporting; gathering evidence; the evidential and public interest tests etc.

**The role of the CPS and the process for taking hate crimes to Court** - victims will often blame the police for CPS decisions.

**Sentencing for hate crime** - there is a lack of knowledge about sentences and outcomes. Victim expectations need to be well-managed with regard to sentencing.

## **Question 2: What kinds of barriers do you think victims of hate crime experience in relation to the criminal justice system?**

**Initial access** - e.g. lack of local police stations, not knowing where/who to report to, and untrained call handlers who don't identify hate crimes or lack understanding of equality and diversity - the example of trans women being incorrectly referred to as 'he' after they had stated their gender was mentioned.

**Mistrust in the Police** - much has improved, but there is still more need for training/change in culture in the police.

**Evidence** - the hate element in crimes can be difficult to evidence

**Communication barriers** - issues of accessibility and legal language/jargon

**Physical barriers** - police stations, courts, foyer areas etc.

**Lack of information**- about what services are open and when, e.g, police stations and helplines.

**Safety** - if people feel that reporting is a risk to their safety, they won't do it.

**Fear of losing control of the situation** - victims may feel that reporting will take the situation out of their control and make things worse

**Hearsay and the media** - anecdotal stories about negative experiences in the community, together with negative portrayals of the relationship between the police and minority communities in the media can create barriers to reporting

**Fear of counter-allegations** - victims may be very afraid of perpetrators making counter-allegations that might lead to them being investigated by the police

**The adversarial system** - it was observed that the adversarial nature of the system is in itself intimidating to victims

**Experiences in other countries** - for immigrants and refugees and asylum seekers different experiences with the authorities/law in their countries of origin could be a barrier

**Lack of resources for specialist services** - since many victims of hate crime come from groups that are already more-or-less excluded and discriminated against, there is a high level of need for specialist services to support them when reporting hate crime

### **Question 3: What should be done to improve victims' understanding of and confidence in the system?**

**Increase ways of dealing with hate incidents/crimes** - look at what other countries are doing, e.g. mediation/restorative justice

**Promote the process more widely** - to increase understanding and demystify the criminal justice system

**Improve training for people on the front lines** - make it a disciplinary offence if they don't comply

**More awareness and acceptance of the lack of trust and confusion from the CJS** - we still need to see more listening and less defensiveness

**Mainstream the issue** - use radio stations and the media. The public is far more aware of domestic abuse now, why can't the same work be done with regard to hate crime?

**Increase understanding of 'hate crime' as a term** - information needs to be more widely available

**Practical improvements:** e.g., private areas for reporting in police stations, raise awareness of opening times, more 3<sup>rd</sup> party reporting schemes, regularly update victims and keep them informed, local authority reporting should be done as a dedicated service.

**Equality and diversity training** - cultural differences are important but there needs to be more insight into how the Police are perceived

**Promotional campaigns to raise awareness**

**Hate crime education in schools**

**Increase approachability:** send out the message that 'It's alright to ask!' People should feel comfortable approaching criminal justice agencies to ask questions about hate crime without feeling that they will be seen as 'wasting time' or will receive dismissive responses

**Mair Rigby, Project Officer: All Wales Hate Crime Research Project**

Email: [mair.rigby@raceequalityfirst.org.uk](mailto:mair.rigby@raceequalityfirst.org.uk)

Tel: 029 2022 4097

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