



Hate Crime Laws: A Guide for LGBT People

This information sheet answers questions for lesbian, gay, bisexual and trans (LGBT) people on what the law says about hate crime.

You don't have to know whether something you experienced was a crime to report it, though it can be useful to know what kinds of behaviour are against the law and which are not. The first section outlines what hate crime is and how the police and courts should deal with it. The second section describes which criminal laws cover various situations involving homophobia, biphobia and transphobia.

Section 1: About hate crime

What is hate crime?

According to the police definition, a hate crime is any criminal offence which is perceived by the victim or any other person to be motivated by hostility or prejudice toward someone's actual or perceived race, religion, disability, sexual orientation, or transgender identity. It therefore includes crimes that are motivated by homophobia, biphobia and transphobia. Hate crimes can affect people who identify as lesbian, gay, bisexual and/or trans, but also people who are only perceived to be LGBT.

Did I experience a hate crime?

The media often focuses on violent hate crimes, which can sometimes overshadow the more everyday verbal abuse or derogatory language that many people experience, but which may still be a crime. Sometimes it's obvious that you've experienced a hate crime, for example if someone hits you while making obviously homophobic, biphobic or transphobic comments. However, it is often less clear, such as when people make prejudiced comments or offensive jokes. If you feel that someone has done or said something that was motivated by prejudice it's best to trust your instincts. Even if you are not sure if what they have done has broken a criminal law, you can still report it to the police or talk to an LGBT charity about it.

How do courts deal with it?

In a criminal trial involving a potential homophobic, biphobic or transphobic hate crime, the court first decides if the accused person is guilty of a criminal offence, such as assault. Then it must ask whether the accused person's actions demonstrated or were motivated by hostility towards someone's sexual orientation or transgender identity. If so, the court must increase the

sentence that person receives above what it would have been if it was not a hate crime. Courts do this by applying section 146 of the Criminal Justice Act 2003.

Section 2: Laws that cover hate crime

This section describes some of the key criminal laws that can apply to certain situations involving hate crime.

Physical violence

“I’m a bisexual man. As I was leaving my local LGBT pub I was followed, jumped on and hit by a group shouting ‘fucking queer’.”

If you experience physical violence, that is likely to be a crime. Which law applies depends on whether you receive any injury and how serious the injury is. Where an act of physical violence causes no injury or a minor injury, it might be ‘common assault’ (section 39 of the Criminal Justice Act 1988). Where more serious injuries are caused, it might be a crime of ‘assault occasioning actual bodily harm’ (section 47 Offences against the Person Act 1861). If it caused really serious bodily harm, such as broken bones, it may be a crime of ‘causing grievous bodily harm’ or ‘wounding’ (section 20 of the Offences against the Person Act 1861).

Verbal abuse in public

Verbal abuse, threats or ‘name calling’ is a common experience for some LGBT people. It’s not always clear whether or not a crime has been committed; however, there are laws that protect you from verbal abuse. Even if you are not sure if it was a crime you can still report it.

“I’m a gay woman. As I was walking along holding hands with my partner someone threatened to beat us up.”

If someone uses threatening, abusive or insulting words or behaviour towards you, to make you believe you will face physical violence that could be a crime under section 4 of the Public Order Act 1986.

“I’m a trans woman. As I waited for the bus a woman shouted out, ‘you tranny freak, you shouldn’t be allowed to be outside’. It left me feeling really shaken and upset.”

If someone makes threatening, abusive or insulting remarks toward you with the intention of causing you harassment, alarm or distress, which then makes you feel harassed, alarmed or distressed, that may be a crime under section 4A of the Public Order Act 1984.

“I’m a gay man. I noticed a rowdy group of men walking along a crowded street on a Saturday night. They were chanting ‘we hate queers.’ They didn’t direct it at anyone in particular, so is it against the law?”

The men may have committed a crime under section 5 of the Public Order Act 1986. Even though they aren’t directing the threatening and abusive words or threats towards any one person, it was in a busy public location, so it would be reasonable for them to believe that their behaviour would cause alarm or distress to people within sight or hearing range.

“I heard a religious person preaching homophobic remarks in the street. Aren’t they committing a Public Order Offence?”

A religious preacher making remarks that are critical of LGBT people in a non-abusive way has the right to freedom of expression, so it’s unlikely to be a crime. However, if they make threats or use abusive language they could be committing an offence.

“But what if someone is handing out leaflets calling for LGBT people to be killed. Isn’t that just expressing an opinion?”

Incitement to hatred

It is a crime to intentionally stir up hatred based on sexual orientation by using threatening words, behaviour or displaying written material (section 29B of the Public Order Act 1986).

The relevant threatening conduct could be in words, pictures, videos, and even music. Illegal hate content can include messages calling for violence against LGB people, web pages with images or descriptions of violence against LGB people, or chat forums where people ask other people to commit hate crimes.

There is no specific crime of incitement to transphobic hatred but there are general laws that prevent someone encouraging others to commit crimes, including sections 44 and 45 of the Serious Crime Act 2007. Repeated use of offensive or insulting language can also be treated using the offence of harassment under the Protection from Harassment Act 1997. If you become aware of hate material, you can tell the police about it or an LGBT charity.

“I found an internet chat room where someone posted a comment saying he thought gay people were ‘sick’ and ‘homosexuality was against the laws of nature. Isn’t that inciting homophobia?”

Laws in the UK balance the rights of individuals to express insulting or offensive views with the rights of others to be protected from hatred and discrimination. To be illegal the content must match the descriptions listed in the paragraphs above. If it does not, it may be lawful even if it is upsetting to you and other people. However, you can speak up against it or take the steps to have it removed. For example, you can report material to a website moderator or hosting company. If you are unsure if the material is illegal, you can also speak to an advice charity like Galop or to the police. Further information about sexist, homophobic, biphobic and transphobic online abuse is available at www.stoponlineabuse.org.uk.

Abuse through electronic communication

“I’m a trans man and my neighbour found out about my gender history. He keeps sending me abusive texts.”

Sending abusive emails, texts and letters can be an offence under section 127 of the Communication Act 2003 (improper use of public electronic communications network). This includes sending an electronic message to cause someone annoyance, inconvenience or needless anxiety.

Harassment

Harassment is a crime where someone harasses another person (which includes causing alarm or distress) on more than one occasion (section 2 of the Protection from Harassment Act 1997). A person doesn't have to intend to cause harassment to commit this crime, so long as they ought to have known that their actions would cause alarm or distress.

Police often initially deal with harassment informally by giving a 'harassment warning'. That involves a police officer visiting someone to deliver a letter setting out action that may be taken if they carry on with their behaviour. If the person then continues their unwanted behaviour, it will be much harder for them to argue that they did not know they were causing alarm or distress.

Blackmail

"I'm a bisexual man and I'm married to my female partner. A colleague found out I'm bi and is threatening to tell people I'm really gay unless I give him £5000."

It is a crime for someone to make a demand from you in return for not revealing compromising information about you, such as your sexual orientation or gender identity (section 21(1) of the Theft Act 1968). As well as explicit demands such as for money, blackmailers can sometimes make less explicit demands such as suggesting gifts. This can still amount to blackmail. If you think someone is trying to blackmail you it's advisable to tell someone and get help. It's often a bad idea to hand over money, as the perpetrator is likely to continue extorting money from you. The best approach is usually to inform the police. However, if you don't feel able to do this, you can contact an advice charity such as Galop.

Refusal of goods, facilities or services

"My partner and I were holding hands in a café. The owner asked us to stop or we'd have to leave. Isn't that a hate crime?"

Being refused services (which includes goods and facilities) because of your gender identity or sexual orientation is discrimination and is illegal under the Equality Act 2010. It isn't a criminal offence though, so the police cannot take action. For example, if you were refused a booking at a restaurant or hotel because you are LGBT, the police could not get involved unless a criminal offence, such as verbal abuse also took place. Options might include talking to a charity for advice, making a complaint to the organisation that refused you a service or getting legal help to take action in court.

This resource was produced by Galop, an LGBT anti-violence charity providing support, advice and advocacy to people facing hate crime, domestic abuse or sexual violence. It is a part of a series of 17 resources on hate crime for LGBT people and service providers, created on behalf of the National LGBT Hate Crime Partnership.

Find out about our work at www.galop.org.uk and www.lgbthatecrime.org.uk

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