



TRANSPHOBIC HATE INCIDENTS AND CRIMES

A guide for trade union members and reps

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TRANSPHOBIC HATE INCIDENTS



Something is a transphobic hate incident if the victim, or anyone else, thinks it was carried out because of ‘hostility or prejudice’ based on ‘transgender identity.’¹

This means that if you believe something is a hate incident, it should be recorded this way by the person you report it to.

It is important to note anyone can be the victim of a transphobic hate incident.

You can be the victim of a transphobic hate incident if someone believes you are trans even though you are not. You can also be the victim of a hate incident because of your association with transgender people.

Hate incidents can be perpetrated online or offline, or there can be a pattern of behaviour that includes both.

Transphobic hate incidents can take many forms including:

- hate speech/verbal abuse
- physical abuse
- physical violence
- teasing
- bullying
- threatening behaviour
- online abuse
- damage to property.

The incident can be a one-off incident or part of an ongoing campaign of harassment or intimidation.

¹ The police and the Crown Prosecution Service (CPS) have adopted this as a central definition of hate crime. ‘Transgender identity’ is the terminology used in hate crime legislation. In the rest of this document we use the term ‘trans identity’ in this context.



Hate incidents are not only carried out by strangers. They could be carried out by colleague, a family member, a carer, a neighbour, or someone you consider a friend.²

Hate crime

When a transphobic hate incident becomes a criminal offence, that is something which breaks the law of the land, it is known as a hate crime.

Any criminal offence can be a hate crime, if the offender targeted you because of their prejudice or hostility towards trans people.

When someone is charged with a transphobic hate crime, the judge can impose a tougher sentence on the offender under the Criminal Justice Act 2003.

Remember, the incident you've suffered may still be a crime even if it's difficult to show it was carried out because of hostility based on trans identity.

☞ When a transphobic hate incident becomes a criminal offence, that is something which breaks the law of the land, it is known as a hate crime. ☞

Hate speech can be a type of hate crime.

The balance between the protections covering freedom of expression and protections from hate speech is complicated. In a democratic and tolerant society, it is important that people are able to robustly exchange views, even when these may cause offence.

However, the courts and international conventions are clear that balance must still be struck between the right of individuals to express points of view which others may find offensive or insulting, and the rights of others to be protected from hatred and discrimination.

People are legally protected from hate speech; however, the law does not cover all protected characteristics equally.

For example, stirring up hatred on the ground of sexual orientation is an offence. This is committed if a person uses threatening words or behaviour, or displays any written material which is threatening, if they do so intending to stir up hatred on the grounds of sexual orientation.

² www.citizensadvice.org.uk/law-and-courts/discrimination/hate-crime/what-are-hate-incidents-and-hate-crime/

There is no offence of stirring up hatred on the grounds of trans identity.³

However, one of the public order offences, Section 4A of the Public Order Act 1986, makes it an offence to intentionally cause harassment, alarm or distress.

This offence applies to all people, but if it can be shown the individual was targeted because of trans identity the judge can impose a tougher sentence on the offender under the Criminal Justice Act 2003.

The Criminal Justice and Public Order Act 1994 inserted Section 4A into the Public Order Act 1986.

This part prohibits anyone from causing alarm or distress. Section 4A states, in part:

- ▶ (1) A person is guilty of an offence if, with intent to cause a person harassment, alarm or distress, he –
- ▶ (a) uses threatening, abusive or insulting words or behaviour, or disorderly behaviour, or
- ▶ (b) displays any writing, sign or other visible representation which is threatening, abusive or insulting, thereby causing that or another person harassment, alarm or distress.
- ...
- ▶ (5) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or to both.

This means that the right to freedom of expression, which is often cited as a defence for hate speech, does not protect expression that seeks to **incite violence, hatred or discrimination** against others.

If you are subject to a hate incident involving hate speech and are unclear on if the speech or expression has breached the law, you should report it to the police. However, if you do not feel able to report it to the police, consider contacting your local union rep to find out what support they can give you to help you report the incident.

TIP Freedom of expression is not a defence from workplace disciplinary action where a worker's expression has breached their employer's policies. If an incident happens at work, report it to your manager, HR and your union rep.

☞ Hate speech can be a type of hate crime. ☞

³ www.cps.gov.uk/legal-guidance/homophobic-biphobic-and-transphobic-hate-crime-prosecution-guidance



The law, S.146 Criminal Justice Act 2003, gives the court the power to increase the sentence of any offence that is aggravated by hostility on the grounds of trans identity.

An offence will be transphobic if:

- At the time of committing the offence, or immediately before or after doing so, the offender demonstrated towards the victim of the offence hostility based on the victim being (or being presumed to be) transgender; or
- The offence is motivated (wholly or partly) by hostility towards persons who are transgender.

The law⁴

The CPS and the police have agreed a shared definition of transphobic hate crime. This definition is wider than the legal definition of a hate crime within the CJA 2003, to ensure the CPS and police capture all relevant cases.

Their agreed definition is:

"Any incident/crime which is perceived by the victim or any other person to be motivated by hostility or prejudice towards a person because of their trans identity or perceived trans identity by the victim or any other person."

⁴ www.cps.gov.uk/sites/default/files/documents/publications/homophobic-biphobic-transphobic-hate-crime-public-statement-2017.pdf

REPORTING

It is important that hate incidents are reported to the police, whether it's a one-off or part of a pattern of repeat offending.

The police should record the incident in the way you report it, i.e. if you report the incident as a hate incident that is the way they should record it. The way the police officer dealing with the matter perceives the incident should not affect the way it is recorded.⁵

If you've experienced, or know someone who has experienced, a hate incident you can report it to the police. You can contact the police directly, or you can use online reporting facilities. Additionally, you can seek help from local organisations who can help you report the incident or crime.

If you choose to report the incident to the police they will investigate it and decide whether to refer the case to the Crown Prosecution Service (CPS) for a decision on whether to charge the suspect and, if so, with what offence.

TIP If you report the incident to the police you should ask for the incident reference number. This will help you in any further dealings with the police.

☞ You can contact the police directly, or you can use online reporting facilities. If you do not feel able to report it to the police, consider contacting your local union rep to find out what support they can give you to help you report the incident. ☞



⁵ www.citizensadvice.org.uk/law-and-courts/discrimination/hate-crime/problems-reporting-a-hate-incident-or-hate-crime/

WHAT TO DO IF YOU WITNESS A TRANSPHOBIC HATE INCIDENT

Anyone can witness a transphobic hate incident online or in person. However, many people, when faced with a hate incident, speech or crime, are unsure of what to do next.

The following steps are intended to help you decide how to proceed.

Step 1 | get help

If you witness a hate incident the first step is always the same. You should get someone to help you and the individual experiencing the hate incident.

The person you get to help will depend on where the incident is taking place.

For example:

- If it is at work you could get help from/ report the incident to your manager, the employer's HR team or your union rep.
- If the incident is on an online platform you can report through their reporting process. All the main social media platforms have a way to report hate incidents.
- If it is in a public place, for example on the street or a park, you could call the police.

☞ By engaging the victim in conversation, you are letting them know they are not alone with the aim of help them to feel safer. ☞

Step 2 | take action – where it is appropriate and safe to do so

Remember before taking any action there are two things you must consider:

i. Your safety

Ask yourself, 'Is it safe to intervene?' If the answer is, 'no it is not safe,' go to step three and report the incident to the police.

ii. How your intervention will help

If you have evaluated the situation, and believe your safety is not at risk, remember the purpose of taking action is to support the victim and, if and where possible, to de-escalate the incident.

One way of supporting the victim, and helping to de-escalate the situation, is to:

- calmly engage the victim in conversation
- ignore the perpetrator.

The conversation can be on any topic from the weather, to the latest episode of your favourite TV show or your weekend plans, etc.

By engaging the victim in conversation, you are letting them know they are not alone with the aim of help them to feel safer.

Stay with them until you are both in a safe space or the abuser has left the scene.



TIP Do not attempt to engage the perpetrator in an argument. This approach will not de-escalate the incident and could make the situation worse. Ignoring the perpetrator is more likely to have the desired effect of de-escalating the situation.

Remember, if you feel safe enough to step in it can make a real difference.

The bystander effect

We have all heard of incidents where many people have stood by while someone else was abused.

This is called the bystander effect, or bystander apathy.⁶ It occurs when the presence of others discourages an individual from intervening in an emergency situation. Research has found the greater the number of bystanders, the less likely it is for any one of them to provide help to a person in distress.

However, chances are, that once people see you acting, they will no longer be afraid to act and they will act too.⁷

Research has also found that just being aware of the bystander effect/apathy makes individuals more likely to act.

Don't be afraid to let others know about it as well.

TIP If you are subjected to a hate incident in a crowded place, and no one is stepping in to help you, research suggests you can counter this (the bystander effect/apathy) by calling on specific people to help you. This reminds them of their personal responsibility. You can call people out by name or by an identifiable characteristic like the colour of their shirt.⁸ Eye contact makes this approach stronger.

⁶ www.psychologytoday.com/gb/basics/bystander-effect

⁷ <http://pittsems.weebly.com/how-to-counteract-the-bystander-effect.html>

⁸ <http://pittsems.weebly.com/how-to-counteract-the-bystander-effect.html#>

Step 3 | report the incident

One of the most important things to do is when you have witnessed a hate incident taking place, if you feel able, is to report it to the police.

The police need to know if and where hate incidents are taking place so they can build a strategy to address them. Even if no criminal charges can be brought by the police it is important that they understand the experiences of the trans community. By reporting the incident, not only are you helping the victim get justice but also helping prevent future incidents.

If the hate incident is online, it is important the organisation that runs the platform is made aware.

The organisation can take action, and where necessary, take steps to limit, restrict or remove their access to it.

If you do not feel able to report the incident directly to the police but want it reported, you can speak to your union rep who will be able to help report the incident. Or, alternatively, see the section below entitled 'Victim Support Organisations' for alternative reporting options and other support services.

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THE ROLE OF A UNION REP IN ADDRESSING TRANSPHOBIA IN THE WORKPLACE

We have seen a big increase in the number of transphobic hate crimes recorded by police forces in England, Scotland and Wales.

This is a rise that cannot be explained solely by an increase in confidence trans people have in reporting hate crime incidents to the police.

Unions, reps and our members have an essential role to play in fighting all forms of discrimination, including transphobia and transphobic hate incidents and crimes.

Workplace representatives are key in supporting a trans member in the workplace. As with all union best practice it is best to negotiate policies on trans inclusion and equality before any issues arise.

Top tips for reducing transphobia

Here are the TUC's top tips for reducing transphobia and transphobic incidents in the workplace.⁹

- Make it clear that anti-trans behaviour or comments are unacceptable in the workplace and ensure this point is included in workplace policies.



- Encourage employers to include trans issues in induction training and, when introducing it for the first time, make sure you provide it to all existing staff and managers.

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⁹ www.tuc.org.uk/sites/default/files/Transformingtheworkplace.pdf

- Support trans members experiencing problems at work and help them to report transphobic incidents to their employer and, where necessary, the police.

Remember: Freedom of expression is not a defence from workplace disciplinary action where a worker's expression has breached an employer's policies. If an incident happens at work report it to your manager, HR or your union rep.¹⁰

Wider responsibilities

Trade unions reps have wider opportunities to ensure trans inclusion and should:

- negotiate specific policies to support employees who transition
- check other policies and procedures – such as recruitment policies, record-keeping and dress codes – to make sure that they do not discriminate against trans people
- encourage employers to adopt an inclusive approach by providing gender-neutral spaces and facilities
- ensure there are robust systems in place to ensure a person's trans status is kept confidential and that all personal records are swiftly updated should anyone change their gender. (Records referring to a person's previous identity should be destroyed unless there is a very good reason for keeping them.)

TIP Workplace representatives can also help by ensuring their members know of their union's commitment to equality, including their equality structures and policies.

Members' role

Trade union members can fight transphobia and hate crime and create and inclusive supportive workplaces by:

- speaking up for trans people, for trans equality and against transphobia
- being the first to challenge and correct misconceptions or transphobia
- not leaving challenging transphobia to trans people.

For more information see:

- *Transforming the Workplace: a TUC guide for trade union activists on supporting trans members*
www.tuc.org.uk/sites/default/files/Transformingtheworkplace.pdf
- *How to Be a Good Trans Ally at Work: a guide for trade union members and reps on how to support their trans members*
www.tuc.org.uk/sites/default/files/2019-11/Trans_Ally_Guidance_2019.pdf

Together we can make a real difference to trans people's experiences at work and help ensure workplaces provide a safe and welcoming environment for everyone.

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¹⁰ www.equalityhumanrights.com/sites/default/files/20150318_foe_legal_framework_guidance_revised_final.pdf

VICTIM SUPPORT ORGANISATIONS

Galop

www.galop.org.uk
<http://www.galop.org.uk/report/>
020 7704 2040
advice@galop.org.uk

Galop is the LGBT+ anti-violence charity, offering advice and support to people facing hate crime, domestic abuse, or sexual violence

Victim Support

www.victimsupport.org.uk
08 08 16 89 111

Victim Support is a charity that works with all people affected by crime, including victims, witnesses, their family, and friends.

Stop Hate UK

<https://www.stophateuk.org/report-lgb-and-t-hate-crime/>
0808 801 0661
talk@stophateuk.org

Stop Hate UK offers independent and confidential information, advice and support to anybody affected by LGB&T hate crime.

True Vision

www.report-it.org.uk/your_police_force

True Vision is a police website for reporting hate crime online without visiting a police station.

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