

**NOT PROTECTIVELY MARKED**



**POLICE  
SCOTLAND**

Keeping people safe

**POILEAS ALBA**

## **Hate Crime**

### **Standard Operating Procedure**

<b>Owning Department</b>	SCD – Safer Communities
<b>Version Number</b>	4.00
<b>Date Published</b>	25/01/2018

**NOT PROTECTIVELY MARKED**

**NOT PROTECTIVELY MARKED**  
**Compliance Record**

<b>Equality and Human Rights Impact Assessment (EqHRIA) Date Completed / Reviewed:</b>	23/01/2018
<b>Information Management Compliant:</b>	Yes
<b>Health and Safety Compliant:</b>	Yes
<b>Publication Scheme Compliant:</b>	No

**Version Control Table**

<b>Version</b>	<b>History of Amendments</b>	<b>Approval Date</b>
1.00	Initial Approved Version	09/08/2013
1.01	References added regarding the National Safer Communities Dept and regional Racial equality Councils	13/08/2013
1.02	Amended in line with Lord Advocates' Guidelines on the use of Translation Services and use of VPD	05/03/2014
2.00	Cyclical Review – Revisions to Hate Crime / incident definitions and introduction of guidance pertinent to Staff	11/03/2016
3.00	Re-formatting of document (including updating the nomenclature of the 'Equality and Diversity Policy' to the 'Equality, Diversity and Dignity Policy' and the 'Mental Health SOP' to Mental Health and Place of Safety SOP' only with no change to content.	15/12/2016
4.00	SOP given full review, completely revised.	23/01/2018

**Please Note:**

Version 4.00 of the Hate Crime SOP contains changes so significant from that published as v3.00 dated 15/12/2016 that it should be regarded as having been **Completely Revised**.

Consequently, changes from v3.00 are not highlighted in yellow and reader should therefore take care to read all sections when referring to this document.

## **Contents**

1. Purpose
2. Introduction
3. Aims
4. Definitions
5. Motivation
6. Prevention
7. Methods of Reporting
8. Responding to Hate Crime and Hate Incidents
9. Investigation of Hate Crime and Hate Incidents
10. Scottish Crime Recording Standard
11. Interim Vulnerable Persons Database
12. Concern Hub Staff Role
13. Local Policing Commanders Responsibilities
14. National safer Communities Team
15. Arrest of Suspects
16. Children's Provisions
17. Hate Crime Prosecution
18. Lord Advocate's Guidelines
19. Key Legislation
  - 20.1 Criminal Law Consolidation (Scotland) Act 1995
  - 20.2 The Offences (aggravated by Prejudice) (Scotland) Act 2009
  - 20.3 Criminal Procedure (Scotland) Act 1995
20. Miscellaneous Legislation
21. Hate Crime at Public Order Events
22. Hate Crimes and Hate Incidents involving Staff

**Appendices**

Appendix 'A'	List of Associated Legislation
Appendix 'B'	List of Associated Reference Documents
Appendix 'C'	Hate Crime Flow Chart
Appendix 'D'	Hate Incident Flow Chart
Appendix 'E'	IVPD Flowchart

## **1. Purpose**

- 1.1 This Standard Operating Procedure (SOP) supports the Police Service of Scotland (hereafter referred to as Police Scotland) [Equality, Diversity and Dignity Policy](#). This SOP outlines Police Scotland's intent to robustly address hate crime and hate incidents.
- 1.2 The SOP provides instruction and guidance on the recognition, recording, reporting and investigation of hate crimes and hate incidents. This applies to all Police Scotland police officers and police staff, including Scottish Police Authority (SPA), Special Constables and temporary or agency staff.

## **2. Introduction**

- 2.1 It is recognised hate crime is the most impactful manifestation of bigotry and prejudice in society. Experience shows that being targeted either wholly or partly due to a personal characteristic can have a devastating impact upon the victims, their families, wider communities and in some situations have a corrosive effect on community cohesion.
- 2.2 Public confidence can be seriously affected if the police and other agencies' response is seen to be ineffective. This can lead to victims feeling more isolated and fearful of what might happen next and potentially less likely to report further incidents, as well as create an environment for hostility and prejudice to thrive and damage the fabric of society.
- 2.3 Hate crime is a priority for Police Scotland. Safer Communities, Equality and Diversity Unit have national overview of force wide activity however the responsibility to provide a quality service to victims, extends to every member of staff. It is essential that that a victim centred approach is maintained, understanding the impact upon them and liaise with partners in order to ensure that support, based upon the victim's needs is being delivered.

## **3. Aims**

- 3.1 This SOP has been compiled to ensure a corporate approach to processes and activities across Police Scotland and that all hate crimes and hate incidents are identified, recorded, investigated and monitored thoroughly, with due regard to the needs of the victim, their families/friends and those of the wider community. Police Scotland aims to:
  - Enable victims and witnesses to report hate crime and hate incidents with confidence, through a variety of methods and keep them safe from further risk of harm.
  - Develop responses that keep people safe and foster environments that promote cohesive communities.
  - Investigate all reports effectively ensuring a victim centred approach.

## **NOT PROTECTIVELY MARKED**

- Work with partners to raise awareness and encourage the reporting of hate crime and hate incidents.
- Work with partners to educate and change behaviour of offenders.
- Adopt a positive intervention approach to taking action against offenders whenever there is sufficiency of evidence.

3.2 The spectrum of hate crime is wide in nature, and types of incidents include:

- physical and emotional harassment
- physical and emotional abuse
- name calling
- bullying
- online/social media
- vandalise/damage property
- acts of violence and murder

3.3 It is essential that all police officers and staff are aware of the potential for a hate crime to escalate into a critical incident. Failure to provide an appropriate and professional response to such reports could cause significant damage to community confidence in the police service.

## **4. Definitions**

4.1 All officers and staff must have a clear understanding of what constitutes a hate crime and a hate incident.

4.2 Police Scotland will record all hate crimes and hate incidents in terms of the following definitions:

**Hate Incident** - Any incident which is perceived by the victim or any other person, to be motivated (wholly or partly) by malice and ill-will towards a social group but which does not constitute a criminal offence (non-crime incident).

While it is accepted that not every hate report will amount to criminality, officers are required to take preventative and protective measures even when a non-criminal offence is apparent. Seemingly low level or minor events may in fact have a significant impact on the victim. Crime type alone does not necessarily dictate impact or consequences of the action. Repeated targeting of a person, whether by the same perpetrator or not, can lead to what is known as the 'drip drip' effect i.e. although seemingly minor incidents, the repeated nature could affect the person's ability to cope. Each individual will be affected differently.

**NOT PROTECTIVELY MARKED**

## NOT PROTECTIVELY MARKED

For example, a person repeatedly disturbing and damaging garden plants at a house could have a significantly different impact on one person, than it does on another.

**Hate Crime** - A hate crime is any crime which is perceived by the victim or any other person, to be motivated (wholly or partly) by malice and ill-will towards a social group.

- 4.3 There are currently five social groups protected under hate crime legislation:
- Disability or perceived disability (any disability including physical disability, learning disability and mental health).
  - Race or perceived race (any racial group, ethnic background or national origin, including countries within the UK and Gypsy/Traveller groups).
  - Religion or perceived religion (any religious group, including those who have no faith).
  - Sexual orientation or perceived sexual orientation (sexual orientation towards persons of the same sex or of the opposite sex or towards both).
  - Transgender identity or perceived transgender identity (defined as transvestism, transsexualisms, intersexuality or having by virtue of the gender Recognition Act 2004 (c7), changed gender and any other gender identity that is not standard male or female gender identity. This refers to a whole range of people who find their gender identity or gender expression differs in some way, from the gender assumptions made by others about them when they were born).
- 4.4 For further information relating to definition of a protected characteristic please refer to [Lord Advocates Guideline on Offences Aggravated by Prejudice](#).

## 5. Motivation

- 5.1 In Scotland, hate crime and hate incidents are taken to mean any crime or incident where the perpetrator's actions are motivated wholly or partly, by malice and ill-will towards the individual, on the basis of their actual or presumed sexual orientation, transgender identity, disability, race or religion.
- 5.2 If the perpetrators actions prior to, at the time of the incident or immediately after the incident, demonstrates malice and ill-will towards the victim, on the basis of their actual or presumed sexual orientation, transgender identity, disability, race or religion, then this provides evidence of motivation.
- 5.3 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. For example, an individual who is the victim of a transphobic incident does not have to be transgender, or disclose their transgender identity, for this to be perceived, recorded and investigated as a hate related incident.

NOT PROTECTIVELY MARKED

## **5.4 Malice and ill-will**

5.4.1 Understanding malice and ill-will is important to understanding the extent of the hate. The term hate implies a high degree of animosity, whereas the definition and the legislation it reflects require that the crime must be demonstrated or motivated (wholly or partly) by malice and ill-will.

(In the absence of a precise legal definition of malice and ill-will, consideration should be given to the ordinary dictionary definition, to wish someone harm).

## **5.5 Perception**

5.5.1 For recording purposes, the perception of the victim or any other person is the defining factor in determining whether an incident is a hate incident or in recognising the malice element of a crime. The perception of the victim should always be explored, however they do not have to justify or provide evidence of their belief and police officers or staff members should not directly challenge this perception. Evidence of malice and ill-will is not required for a hate crime or hate incident to be recorded and thereafter investigated as a hate crime or hate incident by police.

5.5.2 The alleged actions of the perpetrator must amount to a crime under Scottish Crime Recording Standard (SCRS) rules. If this is the case, the perception of the victim, or any other person, will decide whether the crime is recorded as a hate crime. If the facts do not identify a recordable crime but the victim perceives it to be a hate crime, the circumstances will be recorded as a hate incident (non- crime incident).

## **5.6 Other Person Perception**

5.6.1 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 a hate incident, despite the fact that the victim has not. Some people who identify as having a learning disability, dementia, or mental health may have additional barriers and may not realise that they have been the subject of a hate crime or hate incident. Therefore, police staff or officers can still record it as such, based upon their own or a third party's perception.

5.6.2 The other person could also include but is not limited to:

- Bystander/witness
- Family member
- Third Party Reporting Centre staff
- A carer or other professional who supports the victim
- Any other person



## **5.7 Vulnerability**

- 5.7.1 A disabled person is not an easy target or vulnerable per se. It is the particular situation in which they may find themselves, which is then exploited, that makes them vulnerable to be targeted for some types of criminal offences.
- 5.7.2 For example, just because someone is a wheelchair user, this does not make them an easier target or more vulnerable to de-fraud. It may however make them an easier option for someone looking to steal a handbag in the street.
- 5.7.3 It can be simpler and often more intuitive, to proceed on the basis of vulnerability, however an inappropriate focus on vulnerability, risks enhancing an already negative image of disabled people as inherently "weak", "easy targets" and "dependent", requiring society's protection.
- 5.7.4 Instead, the focus ought to be on enforcing the victim's right to justice and scrutinising the offender's behaviour, prejudices and hostility so that the case is properly investigated and prosecuted for what it is.
- 5.7.5 In cases involving criminal offences committed against disabled people, prejudice behaviour is not always explicit and evidenced by the use of clear and crude language. Examining all the surrounding circumstances will ensure there is a proper understanding of the offence and the context in which it has been committed.

## **6. Prevention**

- 6.1 The core business of Police Scotland is to keep our communities safe through the detection and prevention of crime. The responsibility for crime reduction and prevention is one that Police Scotland shares with other partner agencies and Local Authorities.
- 6.2 To prevent hate crime, Police Scotland will:
- Engage in partnerships with the aim of preventing hate crime.
  - Share relevant information with other agencies as and when appropriate and consented to.
  - Utilise the National Intelligence Model (NIM) to gather and collate intelligence, to address hate crime in a co-ordinated manner.
  - Ensure that individuals involved or suspected of committing hate crimes and hate incidents are identified and recorded as appropriate on the Scottish Intelligence Database (SID).
  - Work with victims and support agencies to minimise opportunities for repeat victimisation.
  - Support education programmes aimed at promoting diversity and good citizenship.
  - Incorporate hate crime awareness and prevention into mainstream policing.

## **7. Reporting Methods**

7.1 Increasing and improving hate crime reporting depends upon partnership engagement and action. As already mentioned, hate crime can be hugely impactful not only on the victim, but potentially family members and wider communities. This can lead to victims of hate crime and hate incidents feeling isolated, intimidated and frightened to report incidents. Failure to respond correctly to a victim can have a significant impact on future community relations and affect the ability to develop community intelligence.

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

- 101 or 999 (in an emergency)
- Third Party Reporting (TPR) Centres
- Crimestoppers
- Keep Safe Scotland App
- Online hate crime portal via the Police Scotland website

### **7.3 Third Party Reporting (TPR)**

7.3.1 In some cases, victims or witnesses of hate crime or hate incidents do not feel comfortable reporting the matter directly to the police and may prefer to report the matter to someone they are more familiar with. TPR centres have staff that have been trained by Police Scotland to identify hate crimes or hate incidents and can offer appropriate support to victims. This can be done by supporting them to make a report directly to police or by submitting an online hate crime report on their behalf. Victims and witnesses have the opportunity to report crimes via a TPR centre anonymously and can specify if and how they wish to be contacted by police. Anonymous reports can assist local policing teams to identify problem areas/times and take action to address local issues. Details of current TPR centres can be found on the Police Scotland website <http://www.scotland.police.uk/contact-us/hate-crime-and-third-party-reporting/>

### **7.4 I am Me/Keep Safe**

7.4.1 Keep Safe is an initiative that works in partnership with community group I Am Me and Police Scotland and is the first of its kind in Scotland. The initiative works with a network of local shops, businesses and Local Authority buildings, to create safe places for disabled, vulnerable or older people to go if they need help, if they are lost, scared or if they are the victim of crime. The Keep Safe Scotland App is a shortened version of the online hate crime report and is linked to the Police Scotland Website <https://www.scotland.police.uk/secureforms/hate-crime/>  
All Police Scotland offices are recognised as 'Keep Safe' places.

## **7.5 Hate Crime Online Reports**

7.5.1 The online reporting facility is available to all members of the public via the Police Scotland website. Currently these reports are received at the Public Assistance Desk (PAD) for decryption. Staff within the PAD then assess the information and decide on the appropriate action to be taken. Victims and witnesses have the opportunity to report crimes anonymously and can specify if and how they wish to be contacted by police. Anonymous reports can assist local policing teams to identify problem areas/times and take action to address local issues.

### **7.5.2 Roles and Responsibility of PAD**

- **Where there is a named victim or witness who has indicated they can be contacted:** Raise a Storm incident. Ensure it accurately records and prioritises information relating to the reporters preferred method of contact, special requirements and any additional information that would be useful for attending officers e.g. telephone contact only/contact via another named person/do not contact reporter direct. Allocate the Storm incident for officers to attend.
- **Where there is a named victim or witness who does not want to be contacted:** Review nature of incident to identify if there are any concerns for the safety of any person involved. If yes and appropriate, a duty of care may supersede the anonymity request from the reporter. Is there any actionable information e.g. should local policing be informed? Can a SID be submitted? Is there sufficient information to create a Hate concern? (The submission of a SID should be in addition to any possible action that can be taken, not considered as an alternative).
- **Anonymous reporter:** Review nature of incident to identify if there are any concerns for the safety of any person involved. Is there any actionable information e.g. should local policing be informed? Can a SID be submitted? (The submission of a SID should be in addition to any possible action that can be taken, not considered as an alternative).
- **Report from a TPR centre where the victim is anonymous:** Review nature of incident to identify if there are any concerns for the safety of any person involved? Is there any actionable information e.g. should local policing be informed? Can a SID be submitted? (The submission of a SID must be in addition to any possible action that can be taken, not considered as an alternative). Acknowledge receipt of the report with the TPR centre and advise them of any action taken (where appropriate).
- **Report from a TPR centre where police are requested to make contact with the victim/witness:** Check preferred contact method and raise Storm incident. Ensure the Storm incident accurately records and prioritises information relating to the reporters preferred method of contact, special requirements and any other additional information that would be useful for

## **NOT PROTECTIVELY MARKED**

attending officers e.g. telephone contact only/contact via another named person/do not contact reporter direct. Acknowledge receipt of the report with the TPR Centre and advise that the report will be actioned, with updates being provided directly to the victim/witness.

- **Social Media Related:** If the online report is complaining of offensive behaviour online consider the following:

**Named Reporter** – Check preferred contact method and raise Storm incident. Ensure Storm incident accurately records the reporters preferred method of contact and any additional information that would be useful for attending officers. If unsure of content on social media, send the link or user name to Internet Investigations ([scdinternetinvestigations@scotland.pnn.police.uk](mailto:scdinternetinvestigations@scotland.pnn.police.uk)), asking them to review the link for any offensive or actionable material. Internet Investigations will not take responsibility for the enquiry however can advise if there appears to be any immediate threat, concern or actionable information. Such feedback will assist with the decision making around the most appropriate course of action (on all occasions, inform the reporter of action taken, even if there is no police action, explaining the rationale).

**Anonymous Reporter** – Review nature of incident. Is there any concern for the safety of any person involved? If unsure of content on social media, send the link or user name to Internet Investigations ([scdinternetinvestigations@scotland.pnn.police.uk](mailto:scdinternetinvestigations@scotland.pnn.police.uk)) and request that they check the link for offensive/actionable material. Internet Investigations will not take responsibility for the enquiry however can advise if there appears to be any immediate threat, concern or actionable information. Are there any threats being made? Such feedback will assist with the decision making around the most appropriate course of action (on all occasions, inform the reporter of action taken, even if there is no police action, explaining the rationale).

- **Multiple reports relating to one incident:** On some occasions, Police Scotland may receive a large number of reports relating to one incident. Previous examples of this include the Scottish Referendum, football matches or comments made by high profile public figures, including social media comments. Initially you should deal with such reports as detailed above however if it becomes obvious that the number of reports is high, then it may be that it is not appropriate to raise individual Storm incidents for all reports. You should establish if there is a particular department or division dealing with the incidents that led to the reports. If you contact them, they will provide direction regarding an appropriate response. Agreement must be reached with the lead department or division regarding who will respond to all named reporters.
- **Out of Force Enquiries (original reporter resides in another part of the UK):** Send details of the incident to the home force to note a statement and conduct appropriate enquiries. If their enquiries identify the crime occurred in Scotland, only then will it be sent back to Scotland.

**NOT PROTECTIVELY MARKED**

## **NOT PROTECTIVELY MARKED**

**Reporter resides in another part of the UK but was a victim of crime whilst in Scotland:** Send details of the incident to the home force to note a statement and then it will be allocated to the relevant division for enquiry.

**Incidents on social media where the original reporter resides in another part of the UK but believes the suspect to reside in Scotland:** Send details of the incident to the home force to note a statement and conduct appropriate enquiries. If the enquiries identify the crime occurred in Scotland, only then will it be sent back to Scotland.

- **Incidents which may be mental health related:** If a report is received, the content of which leads to the belief that there may be mental health issues and/or concerns for the safety of the person involved, consider is this an adult or child concern? Consider contacting the relevant local Concern Hub to ascertain knowledge of reporter? Is there any actionable information e.g. should local policing be informed? Can a SID be submitted? (The submission of a SID must be in addition to action taken, not considered as an alternative).

7.5.3 For further guidance please refer to [Mental Health and Place of Safety SOP](#)

## **8. Responding to Hate Crime and Hate Incidents**

### **8.1 Initial Actions**

8.1.1 Police Scotland has a duty to undertake a thorough investigation of all reported hate crime and hate incidents. There may be instances where victims or witnesses are reluctant to engage with the police and there may be valid reasons for this. Therefore, it is important to treat victims and witnesses of hate crime sensitively and according to their diverse needs. The victim's first contact with police, for example reporting their experience to a call taker or a member of front desk staff, will influence their lasting impression of the police service. Police officers and staff should be alert to potential issues such as language barriers, religious, cultural and individual requirements such as accessibility and reasonable adjustments, which will need to be addressed to fully support the victim or witness.

### **8.1.2 Roles and Responsibilities of Contact Centre Staff / Front Desk Staff**

All police officers and police staff receiving notification of a potential hate crime or hate incident, should in all cases:

- Obtain full details of the incident sensitively and reassuringly, recording an accurate first account. Examples of appropriate questions include:  
“What happened?” or “Why do you think this happened?” and  
“Has it happened to you before?”
- Consider the police response required, based on any identified risks to the victim and/or witness, including any injuries and presence of the suspect at the scene.

**NOT PROTECTIVELY MARKED**

## **NOT PROTECTIVELY MARKED**

- Instigate suitable interventions to remove or minimise any risks identified e.g. arranging for officers to attend the scene immediately or providing initial advice to the victim and/or witness.
- Conduct appropriate research into the background of the victim, (including any language or cultural barriers), the suspect and location on all available information databases e.g. intelligence and crime reporting systems, iVPD, and pass information to officers attending the scene.
- Consider previous history that may identify repeat victimisation (this could be established from the victim and a police database search (Chronologies on iVPD could provide valuable info on this).
- Consider any special requirements e.g. services of an interpreter or Appropriate Adult.
- Obtain any description or possible location of the suspect.
- Explain to the victim how the police will respond and what will happen next. An officer should attend any reported hate crime to provide reassurance and immediate support to the victim.
- Reported hate crime and incidents should be recorded as a priority 2 response (unless an emergency response is required). Where circumstances mean that a response within an hour is not appropriate (e.g. the victim is travelling and has reported by phone), a supervisor should endorse the Storm incident to verify this.
- A supervising officer of at least the rank of Sergeant must be informed of a reported hate crime.
- Any hate crime that has the potential to become a critical incident should be notified to an appropriate senior officer. For further information see [Critical Incident Management SOP](#).
- Always ask by what method the victim/reporter wishes to be contacted by police in the future.

### **8.2 Storm Unity Incident**

8.2.1 When creating a hate related incident on Storm Unity the following codes should be used:

- Correct initial hate crime code(s) have been added
- Disposal hate crime code, with one or more of the following “Qualifiers” added:
  - Racist
  - Homophobic
  - Religious
  - Disablist
  - Transphobic

**NOT PROTECTIVELY MARKED**

## NOT PROTECTIVELY MARKED

- 8.2.2 Full details of the incident should be added on Storm, highlighting if the person is a repeat victim and/or has any particular requirements, which may assist other staff or officers when dealing with the incident.
- 8.2.3 Prior to closing the incident, the Area Control Room (ACR) staff member must ensure that the enquiry officer has updated the incident with the iVPD number for all hate crimes and hate incidents and the crime reference number where criminality is identified.
- 8.2.4 Only through consultation with a supervisor, should a hate crime or hate incident be re-coded, with full rationale recorded.

## 9. Investigation of Hate Crimes and Hate Incidents

- 9.1 For advice on conducting an enquiry please refer to the Police Scotland [Crime Investigation SOP](#).
- 9.2 Initial Investigation - Victim and Witness Considerations
- Reassure the victim. Remember that the impact of hate crime or incidents on the victim can be significant, even if the crime type appears to be low level or minor. Take time to explain the police procedure, this can be particularly important where it is a hate incident, as despite there being no specific police powers available, a positive intervention can often be achieved with partners e.g. signposting the victim to Citizen Advice Bureau or advocacy group to seek advice regarding civil legislation. Maintain a 'victim centred approach' as empowering victims to make informed decisions, can bring back a sense of control in what happens to them next.
  - Understand what specific needs the victim (or witness) has e.g. any cultural considerations, language or alternative communication methods, or assistance of an Appropriate Adult. Make sure these are recorded wherever appropriate so these needs are met throughout the investigation.
  - In terms of section 8 of [the Victims and Witnesses \(Scotland\) Act 2014](#) a person who is, or appears to be, the victim of (offences listed below) must be afforded the opportunity to specify the gender of the interviewing officer (deemed to be the officer noting a full statement). these offences are:
    1. an offence listed in any of paragraphs 36 to 59 ZL of [Schedule 3 to the Sexual Offences Act 2003](#);
    2. an offence under [Section 22 of the Criminal Justice \(Scotland\) Act 2003](#) (traffic in prostitution, etc.);
    3. an offence under [Section 4 of the Asylum and Immigration Act \(Treatment of Claimants, etc.\) Act 2004](#) (trafficking people for exploitation);
    4. an offence, the commission of which involves Domestic Abuse;
    5. stalking;

NOT PROTECTIVELY MARKED

## NOT PROTECTIVELY MARKED

### 6. Honour Based Violence, Female Genital Mutilation and Forced Marriage

For further Guidance please refer to the [Vulnerable Witnesses \(Scotland\) Act](#) and [2004 Victim and Witnesses \(Scotland\) Act 2014](#)

- Whether or not the victim is actually a member of the social group being targeted, is immaterial. Officers and staff members should be aware of potential sensitivities when gaining information e.g. a victim may not wish to disclose their sexual orientation. Officers and staff members should therefore not directly question them about their race, religion, disability, sexuality or transgender identity. However if they choose to volunteer this information, then it should be recorded in the report but only if proportionate and relevant to the investigation. This information must be treated in the strictest confidence and recorded appropriately. Do not disclose such sensitive information to others without the expressed permission of the victim e.g. the victim may not have told friends or family about their sexuality or transgender identity and unwanted disclosure could seriously undermine victim and community confidence in the police, as well as potentially putting the victim at risk.
- Identify whether the victim is a repeat victim (either by recent disclosure or examination of Police Scotland databases). Police Scotland recognises that hate crime is vastly under-reported, so there is the potential for those reporting to the police apparently for the first time, to have been a victim or targeted previously. Consider whether repeat victimisation relates to the location. Ensure that any repeat victimisation is recorded.
- Explore perception, as it can reveal further evidence or incidents however do not challenge it. Even if only a little background to the perception exists, it must be accepted. In some circumstances people may struggle with expressing their perception. This may be particularly relevant to some people who have a learning disability or mental health issues. If investigating a hate crime or hate incident and the enquiry officer perceives the crime or incident to be motivated by malice and ill-will, even though the victim or other person has not highlighted this as an issue, it must be recorded as a hate crime or hate incident (as applicable).
- Consider what, if any, impact the hate crime or hate incident has had on the wider geographical or social community. Consider if the hate crime or hate incident is a critical incident. Seek further advice from a supervisor if in doubt and consideration must be given to raising a Community Impact Assessment (for further information see the [Community Impact Assessment SOP](#)).
- Ensure that the crime report and iVPD hate concern form includes a comprehensive summary of the Modus Operandi (MO). On many occasions, very abusive words are allegedly used by the offender. It is important that what the victim or witness reports being said or written is recorded verbatim, highlighting the remarks using quotation marks.
- Devise an investigation strategy based upon all the information gathered, ensuring that there are continued efforts to identify evidence of malice and ill-will.

NOT PROTECTIVELY MARKED



## **NOT PROTECTIVELY MARKED**

- In planning your investigation strategy, consider seeking support from other departments such as CID/Divisional Hate Crime Champion/Safer Communities Equality and Diversity Unit. Considerations for facilitating interview could include the use of an interpreter or Appropriate Adult, if appropriate.
- In some circumstances the victim may not wish to make a formal complaint for a variety of reasons. After taking the initial report and carrying out a review of the full circumstances, where there is sufficient evidence, the decision may be to arrest the suspect, which will remove responsibility from the victim. In these circumstances, it is important that this information is explained to both victim and suspect.
- Whilst victims or witnesses may appear to be uncooperative, there may be valid reasons for this. Victims may have fears around providing information about their private life and may not wish to draw further attention to them or they may have had previous negative experiences with the police. Officers should be mindful to take a supportive approach to encourage victims / witnesses to engage with the police. Where victims do not initially engage they should be revisited/re-contacted by the police in a way which does not compromise them. Therefore it is important to ascertain the victims preferred method of contact i.e. via mobile phone/email, to arrange to obtain a statement rather than being visited at their home.
- When submitting an iVPD hate concern for a hate crime, only record the crime which is motivated by prejudice e.g. when officers attend a call of a neighbour complaint, they are informed that the neighbour had been shouting homophobic remarks towards the victim and this was witnessed by the victim's friend. Officers trace and arrest the offender, when carrying out routine checks; it is established the offender is on bail. Whilst both crimes will be recorded on the associated crime report, at the time of creating the iVPD, only the Section 38 CJ&L (Scot) Act 2010, with sexual orientation marker should be listed in the charge field, not the breach of bail offence.

### **9.3 Internet Enquiries**

9.3.1 Police officers and staff may receive complaints regarding the content of websites, chat rooms, newsgroup, and unsolicited emails and text messages sent on mobile phone and other devices.

9.3.2 Police key responsibilities are to:

- Record a complaint as a hate crime or hate incident in line with this guidance.
- Ensure the safety and wellbeing of the victim/witness from the offender or other individuals motivated by the offender.
- Bring the offenders to justice.
- Prevent further crime.
- Reduce community tension and fear of crime.
- Build community confidence that the police are both willing and able to deal effectively with hate crime.

**NOT PROTECTIVELY MARKED**

### **9.3.3 International Jurisdiction**

- 9.3.3.1 Internet hate crime offenders are not limited by national or international boundaries. Even though communications may be of short duration, many computers are located in easily identifiable places. Computers can be accessed remotely, regardless of the location of the person who is posting, sending, viewing or receiving information online. Wherever the computer or the individual is located, there will be an electronic audit trail that will have a significant evidential value.
- 9.3.3.2 Many sites carrying messages are hosted in countries outside the UK where their content may be protected by laws, such as safe guarding free speech under the First Amendment of the United States Constitution. This means that the hosts are not willing to pass on user information without a USA Court order, which is not attainable for a majority of hate crime reports the police receive.
- 9.3.3.3 Further guidance can be found in the [Digitally Stored Evidence PSoS SOP](#) and [Internet Research and Investigations PSoS SOP](#).

### **9.4 Role of Police Inspector**

- If the hate crime or hate incident is declared a critical incident, ensure appropriate supervisory attendance at the scene.
- Where there is concern about community tensions, carry out a Community Impact Assessment and liaise with Safer Communities Equality and Diversity Unit (for further information see the [Community Impact Assessment SOP](#)).

### **9.5 Role of Police Sergeant**

- Assess all reports of hate crimes and hate incidents and consider if scene attendance is required and inform the local Inspector accordingly.
- Identify potential critical incidents and thereafter follow force guidance on how to manage critical incidents. Attend the scene if the hate crime or hate incident is declared a critical incident, and inform the local Inspector accordingly.
- Ensure that the investigating officer is taking a positive intervention approach providing victims with the necessary support and referral to appropriate agencies (where deemed necessary and consented obtained).
- Ensure that the investigating officer has:
  - Updated the Storm incident with the correct result codes;
  - Where required, raise an iVPD hate concern for a hate crime or hate incident depending on the circumstances, prior to the officer going off duty.
  - Where appropriate, submitted a SID log.

## **NOT PROTECTIVELY MARKED**

- When reviewing an iVPD hate concern ensure only the crime motivated by prejudice is entered in the charge field.
- When a hate crime occurs and the offender is not traced at the time, the supervising officer should ensure that a crime report and iVPD for an undetected hate crime is submitted. If the offender is traced and charged at a later date, the supervising officer should ensure that the enquiry officer updates the crime report and iVPD to show the enquiry as detected.
- Where the hate related incident refers to a police officer or staff member, in the course of their duty, ensure an iVPD hate concern is raised (preferably not by the victim) and a welfare check is made prior to the police officer or staff member going off duty (see section 22 for further information). This process allows for incidents to be recorded, concerns to be assessed and appropriate support to be provided (see paragraph 11.1 for further information).
- Hate related incidents can significantly impact on the wellbeing of officers, therefore the principles of this guidance will apply as equally to police officers and staff members who are victims, as it does to members of the public.

### **9.6 Divisional Crime Management Team**

9.6.1 The Divisional Crime Management Team (DCMT) or its equivalent, will ensure that hate crime reports are processed timeously and in accordance with divisional procedures. More specifically, the DCMT will:

- Be responsible for quality assuring all hate crimes and prior to finalisation, will endorse each crime report accordingly.
- Having received notification that the relevant enquiry has been completed, will ensure that prior to finalising the report, the victim or witness has been updated with the results of the enquiry.
- Notify the enquiry officer to update the iVPD hate concern indicating if the crime has been detected.
- To facilitate this, notification of completed enquiries must be endorsed by the relevant supervisor and e-mailed to the appropriate divisional DCMT or equivalent.

## **10. Scottish Crime Recording Standard**

10.1 Instruction is provided in the [Crime Recording PSoS SOP](#).

**NOT PROTECTIVELY MARKED**

## **11. Interim Vulnerable Persons Database**

- 11.1 The interim Vulnerable Persons Database (iVPD) is the national database used to record all hate crimes and hate incidents. It is an incident based database that allows officers from Police Scotland, to record and assess concerns that may be a risk to a person's current or future wellbeing.
- 11.2 Recording all incidents, whereby individuals are targeted based on their personal characteristics, allows for a holistic assessment of wellbeing concerns and needs. This includes influencing wider multi-agency investigation, intervention and support tailored to individual needs and preventing repeat victimisation.
- 11.3 The data contained within hate concerns is also used for statistical information and can be utilised by analysts to identify crime patterns, trends and as an indicator of community tensions. A hate concern must be recorded on every occasion.
- 11.4 For further information refer to the [Interim VPD Rules, Conventions and Data Input Standards](#) guidance and flow chart in appendix E.
- 11.5 Police officers and staff must ensure a hate concern is raised in relation to every hate crime or hate incident reported to police. The iVPD must contain sufficient information to allow another police officer or member of staff to conduct further enquires where necessary.

### **11.6 Considerations when raising an iVPD hate concern**

11.6.1 When creating the hate concern form the submitting officer should:

- Indicate if the report refers to an 'adult concern' or a 'child concern' or 'youth offender'.
- Highlight hate concern on the Overview page
- When entering the nominal details, indicate if a repeat victim.
- Where the person identifies as having a disability, tick the appropriate marker in the nominal field and consider if the person is the victim of a disability prejudice or harassment.
- If the report refers to a 'child concern', ensure the appropriate 'Getting it Right For Every Child' wellbeing indicators are highlighted.
- Indicate if a crime has been committed within the relevant section of the concern report. This will allow Concern Hub staff to confirm if the incident is a hate crime or hate incident.
- Highlight all appropriate hate aggravators (if more than one protected characteristic has been targeted, then multiple aggravators can be highlighted).

## **NOT PROTECTIVELY MARKED**

- If the incident relates to a hate crime, in the charge field enter only the crime which was motivated by prejudice behaviour (unless the hate concern also refers to a domestic incident (as outlined in section 9)).
- In the incident field, detail who perceived the incident to be hate related, why they perceived it to be so and what, if any impact there has been on them, their family or the wider community.
- If the offender is traced, mark the report as detected and create a perpetrator to the incident.
  
- A hate concern must be created and the police officer/staff entered as a subject of concern in all instances where the victim is a police officer or member of police staff.
- Where there is a named suspect or an unknown suspect who is identified, cautioned and charged at a later date, ensure the iVPD is updated accordingly.

11.6.2 It is the responsibility of the enquiry officer to ensure that all relevant information is contained within the hate concern form. Once the concern form is complete, it should be sent on to a supervising officer to ensure all relevant information is contained within the iVPD. If all local checks have been completed, the supervising officer should forward the hate concern form to the Concern Hub to be triaged.

## **12. Concern Hub Staff Role**

12.1 Staff within the Concern Hub will research and assess the content and if deemed necessary and consented to, refer the victim to appropriate support groups. A copy of the report should be sent to the Divisional Hate Crime Co-ordinator, Divisional DCU or Divisional Safer Communities Department for overview (Please revert to local arrangements).

## **13. Local Area Commanders Responsibilities**

13.1 Local Area Commanders have an overall responsibility to ensure that officers and staff have conducted robust investigations and exhausted all lines of enquiry and to ensure that offenders are brought to justice. They have direct responsibility for ensuring:

- All staff under their command are familiar with the content of this SOP and are cognisant with how to effectively deal with all hate crimes and hate incidents.
- Incidents are not treated in isolation and steps are taken to identify repeat victims, offenders and locations.
- Effective governance, of all recording systems.

**NOT PROTECTIVELY MARKED**

## **NOT PROTECTIVELY MARKED**

- That police officers have exhausted all lines of enquiry, especially with regards to victims who do not wish to make a complaint or do not identify themselves as a victim of a hate crime or hate incident and that prior to any crime report and hate concern form being finalised, they are satisfied that an offender cannot be identified.
- Victims have received comprehensive update(s) regarding their enquiry.
- Regular and effective multi agency liaison (where appropriate and consented to).
- The overall effective management of hate crimes and hate concerns within their area of responsibility.

### **14. Safer Communities Department – Equality & Diversity Unit**

14.1 The Equality and Diversity Unit within Specialist Crime Division, Safer Communities have a national role in providing advice, assistance and support in terms of dealing with hate crime and other related matters. For further information please contact:

[Diversityunit@scotland.pnn.police.uk](mailto:Diversityunit@scotland.pnn.police.uk)

### **15. Arrest of Suspects**

15.1 For information in respect of an accused person please refer to the [Criminal Justice \(Scotland\) Act 2016 \(Arrest Process SOP\)](#)

15.2 In cases of hate crime where evidence is sufficient to merit a report to the Procurator Fiscal, accused person(s) should be reported as custody cases where consistent with the revised Lord Advocate's existing Guidelines on Bail.

15.3 When considering whether to hold a person in police custody or release them by way of an undertaking, police officers and custody staff must have regard for the following factors:

- The terms of the Lord Advocates guideline on liberation by the Police and any other relevant legislation used by Police Scotland.
- The nature and circumstances of the offence including the severity of the conduct and the likely forum for the prosecution e.g Procurator Fiscal (PF) or Scottish Children Reporter Administration (SCRA)
- The likelihood of reoffending, having regard to the frequency of repeat victimisation.
- On-going risk to the victim, the witness or any other member of the community.
- Any other previous convictions, pending cases, bail orders or any other court orders in place including history of non-compliance undertakings or bails court order.

**NOT PROTECTIVELY MARKED**

## **NOT PROTECTIVELY MARKED**

- Whether an incident is reported as part of a course of conduct or pattern of behaviour. In assessing this, officers must consider any previous history of hate crime, including incidents which have not previously been brought to the attention of the police.
- Whether further lines of enquiry have been identified which may establish sufficient corroborative evidence for additional crimes or offences. In such circumstances, subject to considerations regarding the risk posed to the victim, it may be considered more appropriate to release the accused on an undertaking, pending full investigation.

- 15.4 If having given full consideration to the factors listed above, it is considered that there is a likelihood of the accused reoffending, failing to comply with undertaking conditions or where there is significant safety risk to the victim, witness or the community, the accused should be detained in police custody pending appearance at court.
- 15.5 Where an accused is released on an undertaking, the reason for the release should be detailed on the police report with reference to the factors noted above.
- 15.6 Consideration must be given to any appropriate further conditions of the Undertaking that ought to be imposed, including conditions not to approach the victim/witnesses directly or indirectly and not to enter a street in which the victim/witnesses resides, a premises where they work or via social media. It is important that the appropriateness of the special conditions of the undertaking is taken on a case by case basis.
- 15.7 Where a custody case is not appropriate, the accused should be liberated to appear on Undertaking in early course unless there is a good reason not to proceed in this way. The victim must be notified as soon as reasonably practical of the accused's release and any conditions to that release.
- 15.8 In cases where an early arrest is not possible, the police should ensure that an early report is submitted to the Procurator Fiscal, in order that consideration may be given to an application for a warrant to arrest.

**NOT PROTECTIVELY MARKED**

## **16. Children's Provisions**

- 16.1 Where the offender is a child and the hate crime is attached to a serious or solemn offence, then a joint report to the Procurator Fiscal and the Scottish Children's Reporter Administration (SCRA) should be submitted. If this test is not met, the enquiry officer should consider if the matter requires to be referred to the SCRA alone.
- 16.2 Section 61 of the Children's Hearing (Scotland) Act 2011, sets out the following duties and requirements for police officers to decide if a referral to the Children's Reporter is required:
- (1) A constable has a duty to provide information to the Principal Reporter where a constable considers:
    - (a) that a child is in need of protection, guidance, treatment or control, and
    - (b) that it might be necessary for a compulsory supervision order to be made in relation to the child.
  - (2) The constable must give the Principal Reporter all relevant information which the constable has been able to discover in relation to the child.
- 16.3 For the purposes of this legislation, a child is defined as under the age of 16 years or 16/17 years if on a Compulsory Supervision Order or 'open' case to SCRA. (See Section 199 of the Children's Hearing (Scotland) Act 2011 for the full definition).
- 16.4 If the case does not meet either of the above tests, the matter should be referred through the local EEI process (or equivalent process). It is imperative that enquiry officers fully consider the serious nature of hate crimes when deciding how to refer the matter when the accused is a child. This must also consider if there is an appropriate service available within the local area to respond effectively to such offences. The rationale for this decision should be fully recorded on the IVPD Concern Form and should be endorsed accordingly by the enquiry officer's supervisor.
- 16.5 For further advice and the full definition of younger and older children, refer to the [Offending by Children SOP](#).

## **17. Hate Crime Prosecution**

- 17.1 The region-specific guidance given in the geographical appendices attached to the [Case Reporting SOP](#) should be followed when completing the Standard Police Report (SPR). In addition, the following must be also considered for inclusion in the SPR:
- That the 'charge' field is completed correctly. Ensuring where an incident is an offence of Aggravation by Prejudice, the correct aggravators are



## **NOT PROTECTIVELY MARKED**

highlighted e.g. sexual orientation/transgender identity/disability/race/religion. Please note, more than one aggravator may be highlighted i.e. race and religion where there is sufficient evidence to libel both.

- In cases of a transgender incident, full details of the victim/offender must be updated, with any previous and current names or identities highlighted. The name the victim wishes to be known as must be made clear in the SPR.
- A transgender person's previous name is highly personal information which is associated with an identity they may no longer recognise. Officers should therefore ask for such information with the utmost sensitivity, where possible, in private, and reassure the person that it will be treated as confidential.
- Where it appears the victim or witnesses' family may have specific cultural or religious needs, the SPR should clearly specify their ethnic and religious background to ensure that liaison takes place in a manner sensitive to both needs. If the victim or witnesses indicate there are no special requirements and this section is not applicable, this information should still be included, to advise the Procurator Fiscal that these issues have been explored.
- Highlight the victims preferred language in written and spoken word i.e. when requesting an interpreter for face to face or using telephone interpreting service. The accused, victim or witnesses should be asked whether any correspondence or documentation sent to them, will require to be translated. The language and dialect should be specified in the report and in any subsequent statements which are submitted to the Procurator Fiscal.
- Highlight any disabilities which may require special measures when the victim/offender attend at court. Inclusion of such details may also add to the overall circumstances of the report by highlighting the existence of a disability.
- Highlight if the victim has been the subject of any previous crimes/incidents.
- Be sure to include the impact the crime has had on the victim and any impact upon the wider community (geographical or social).

**Note:** The police must ascertain the perception of the victim and witnesses as to the motive. In all cases of hate crime, including cases where police officers/staff are the victims, the analysis of evidence section of the case to the PF must include:

- Who perceived the incident to be a hate crime?
- Why that person perceived it to be a hate crime e.g. witness A perceived this to be a hate crime because.....).

**NOT PROTECTIVELY MARKED**

## NOT PROTECTIVELY MARKED

- What the impact, or potential impact, has been on the victim or wider community. If there is no impact, this does not mean a hate crime has not been committed. (Who perceived and why they perceived it are essential for the legislation. The impact element is not necessary to substantiate a hate crime however, if there is an impact on the victim or the wider community, this must be highlighted in the SPR).

### 18. Lord Advocate's Guidelines

- 18.1 The victim's belief alone that the offence was aggravated by prejudice does not justify the charging of a statutory aggravation. If there is evidence however to support that opinion, whether from one or more sources (including the victim), that should be reflected in the draft charge presented to the Procurator Fiscal, by including the relevant aggravation. This evidence will most frequently come from words spoken by the accused, but the important point is that there is evidence and not simply a belief on behalf of the victim.
- 18.2 A hate crime is reportable to COPFS when the charge in aggravated form is assessed as having sufficient evidence of malice and ill-will to be put before the court. In the absence of words spoken, any report submitted should detail course of conduct by the accused that would evidence the crime was motivated by malice and ill-will.
- 18.3 Further guidance is provided in the [Case Reporting SOP](#) and [Lord Advocates Guidelines on Offences Aggravated by Prejudice](#).

### 19. Key Legislation

#### 19.1 Hate Crime Legislation - Race

##### 19.1.1 Criminal Law (Consolidation) (Scotland) Act 1995

While racist crimes can occur in many forms, the racially motivated crimes introduced by the [Criminal Law \(Consolidation\) \(Scotland\) Act 1995](#), are of particular significance. This Act created the crime categories of:

- Racially aggravated harassment - [Section 50A\(1\)\(A\)](#) - intended to address cases of serial harassment, i.e. two or more related incidents and should be labelled as an offence in its own right.
- Racially aggravated conduct - [Section 50A\(1\)\(B\)](#) - designed for use in relation to one off cases and may be likened to a statutory racist Breach of the Peace.

NOT PROTECTIVELY MARKED

19.1.2 These offences should only be recorded where there is corroborative evidence of racial motivation as per SCRS guidelines. Examples of such evidence are written word or remarks made. Where no such evidence exists and a crime is perceived to be racist by the victim or any other person, a crime under common law or statute should be recorded as normal with the appropriate hate crime marker applied to the crime.

19.1.3 A person convicted of either offence will effectively acquire a conviction for being racist.

#### **19.1.4 Racial Aggravation of Offences – Section 96 Crime and Disorder Act 1998**

An offence is racially aggravated for the purposes of this section if:

(a) at the time of committing the offence, or immediately before or after doing so, the offender evinces towards the victim (if any) of the offence malice and ill-will based on the victim's membership (or presumed membership) of a racial group; or

(b) the offence is motivated (wholly or partly) by malice and ill-will towards members of a racial group based on their membership of that group and evidence from a single source shall be sufficient evidence to establish, for the purposes of this subsection, that an offence is racially aggravated.

19.1.5 Other legislation by which a hate crime may be committed include [The Public Order Act 1986](#), which contains various offences for inciting racial hatred, including publishing or displaying written material of a racist nature or public performances or plays which are intended to stir up racial hatred.

## **19.2 Disability, Sexual Orientation and Transgender Identity Legislation**

19.2.1 The [Offences \(Aggravation by Prejudice\) \(Scotland\) Act 2009](#), creates a statutory aggravation to protect victims of crime who are targeted as a result of hatred of their actual or presumed disability, sexual orientation or transgender identity. These are:

- [Section 1](#) - places an onus on the Court to take account of any element relating to disability prejudice to a crime or offence when determining an appropriate sentence;
- [Section 2](#) - places an onus on the Court to take account of any prejudice element relating to sexual orientation or transgender identity to a crime or offence when determining an appropriate sentence.

## **NOT PROTECTIVELY MARKED**

19.2.2 The substantive charge will be subject to the normal standard of proof in criminal cases, i.e. beyond reasonable doubt. However the prejudice element will not require corroboration. The evidence of a single witness will be sufficient to establish the offence as aggravated.

19.2.3 These aggravations are not criminal offences alone and can only be used in conjunction with a separate substantive corroborated crime

### **19.3 Religious Hate Crime legislation**

19.3.1 [Section 74 of the Criminal Justice \(Scotland\) Act 2003](#) places an onus on the Court to take account of any religious prejudice element to a crime or offence when determining an appropriate sentence. Where a crime has been established which is, or is perceived to be, aggravated by religious prejudice, the appropriate crime should be labelled, with the relevant aggravation highlighted to the PF.

## **20. Miscellaneous Legislation**

### **20.1 The Criminal Procedure (Scotland) Act 1995**

20.1.1 [Section 234A of the Criminal Procedure \(Scotland\) Act 1995](#), which was inserted by the [Protection from Harassment Act 1997](#), provides Courts with powers to impose Non-Harassment Orders on any person convicted of an offence involving harassment.

20.1.2 This is designed to protect the victim of the offence from further harassment or fear of violence. Case law decided that in order to grant a Non-Harassment Order, there must have been harassing conduct on at least two occasions.

20.1.3 Officers should consider carefully the circumstances of any offences of aggravated behaviour and on each occasion discuss with the complainer if they wish application made for an Order under this section. If they do, the relevant information should be included in the Offence Report to the Procurator Fiscal. A negative response should also be included.

20.1.4 [Part 2 of the Antisocial Behaviour etc. \(Scotland\) Act 2004](#), replaced the provisions of [the Crime and Disorder Act 1998](#), regarding Antisocial Behaviour Orders (ASBOs), which provide a further option for perpetrator-based action regarding antisocial behaviour impacting on diversity issues.

20.1.5 Information on reporting sectarian offences at football matches can be found in the [Football Banning Orders SOP](#) and within the [National Strategy for Policing Football in Scotland](#).

20.1.6 Although not a hate crime, officers may require to refer to the [Gender Recognition Act 2004](#).

**NOT PROTECTIVELY MARKED**

## **21. Hate Crimes at Public Order Events**

- 21.1 The Police have statutory powers and duties in relation to the policing of protest, including those set out in [The Public Order Act 1986](#), [the Civic Government \(Scotland\) Act 1982](#), [the Criminal Justice and Public Order Act 1994](#), [the Police and Fire Reform \(Scotland\) Act 2012](#), and common law powers and duties, including powers to prevent breaches of the peace.
- 21.2 Accordingly, the use of all police powers under public order legislation and common law must be in accordance with the European Convention on Human Rights (ECHR). The following ECHR Articles, taken together, form the basis of an individual's right to participate in peaceful protest:
- ECHR Article 9 - Freedom of Thought Conscience and Religion
  - ECHR Article 10 - Freedom of Expression
  - ECHR Article 11 - Freedom of Assembly and Association
- 21.3 The right to freedom of peaceful assembly under ECHR Article 11 protects the right to protest in a peaceful way. It includes static protests, marches, parades and processions, demonstrations and rallies. It does not include participation in violent protests.
- 21.4 The right to freedom of peaceful assembly places contrary duties upon on the police. The police must not prevent, hinder or restrict peaceful assembly e.g. imposing conditions that a counter-demonstration takes place after the demonstration has dispersed or imposing a condition on the location of a protest which effectively negates the purpose of the protest.
- 21.5 Conversely, the police also have a duty, in most circumstances, to safeguard the right to peaceful assembly.
- 21.6 Where there is a threat of disruption or disorder from others, the police are under a duty to take reasonable steps to protect those who want to exercise their rights peacefully. Accordingly, the starting point for policing public protest is the presumption in favour of facilitating peaceful assembly.
- 21.7 Hate Crime Tactical Advisors (HCTAs) have been deployed to public order related events and their intimate knowledge and understanding of hate crime legislation and stated cases, has proved beneficial to Bronze Commanders in identifying offenders, as well as providing a specialist briefing to public order officers prior to deployment.
- 21.8 Accordingly, it is assessed that where deemed appropriate by the Gold Commander, HCTAs should become an intrinsic part of the public order deployment model.

## **22 Hate Crimes / Hate Incidents Involving Staff**

22.1 Police Scotland aims to deliver high quality policing services to the communities it serves across Scotland. Whether on or off duty, officers should:

- Demonstrate self-control and tolerance, treating members of the public and colleagues with respect and courtesy in line with our values.
- Respect the rights of all individuals and not abuse our powers or authority.
- Act with fairness and impartially. We do not discriminate unlawfully or unfairly.
- Treat information with respect and access or disclose it only in the proper course of our duties.
- Behave in a manner which does not bring the Police Service into disrepute or undermine public confidence in it.
- Report, challenge or take action against the conduct of others which has fallen below the Standards of Professional Behaviour.

22.2 Hate crimes and incidents can occur within the police organisation as staff carry out their duties. It can originate from other police officers/staff members or the public. The nature of policing can place officers and staff in situations of conflict and as a result, hate crime is a risk. Preventative and effective responses to such crimes are essential to maintaining an inclusive and effective service.

22.3 Hate crime will not be tolerated and the principles of this guidance will apply as equally to police officers and staff members who are victims, as it does to members of the public. As a service, Police Scotland is committed to dealing appropriately with hate crime and hate incidents and all other forms of discrimination. It is vital that we provide the same high level of investigative process, respect and support to internal victims, as we provide to members of the public.

### **22.4 Types of Internal Hate Crime**

22.4.1 There are a number of ways in which a police officer or member of police staff may be the victim of hate crime or hate incident. These include:

- A crime or incident committed by a colleague.
- A crime or incident committed by a member of the public.

## **22.5 Committed by Police Officer / Staff Member**

22.5.1 Behaviour by a police officer/staff member towards another, which targets an individual because of prejudice towards their personal characteristics, is not acceptable. Internal hate crimes and incidents should not be dismissed as police culture, mockery or a bit of fun. If a hate crime or hate incident takes place, it should be recorded as such and appropriate disciplinary procedures should be followed.

22.5.2 Reporting a crime or complaint against another police officer/staff member is often difficult and can be even more so, where it is perceived to be fuelled by prejudice. Whilst the wishes of the victim should be considered in the decision making process, it has the potential to place them under additional pressure, as they can effectively influence the fate of another police officer/staff member. It is not however for the victim to decide if any action should be taken, or what action should be taken. An internal report should be recorded at the time the matter is reported, in accordance with normal crime recording and Professional Standards policy.

22.5.3 For further guidance please refer to the [Complaints about the Police SOP](#), [Police Service of Scotland \(Conduct\) Regulations 2014](#) or [PSOS/SPA Grievance SOP](#).

## **22.6 Committed By Members of the Public**

22.6.1 Police officers and staff members may be targeted by a member of the public e.g. whilst they are on patrol, attending an incident or dealing with a member of the public at the front desk or by telephone.

22.6.2 These crimes or incidents should be treated in the same way as any other report of a hate crime or hate incident and recorded and investigated in the same way.

## **22.7 Support for Police Officer / Staff Member**

22.7.1 The impact of a hate crime or incident on a victim should not be underestimated simply because the victim is a police officer or staff member.

22.7.2 As a supervisor the following should be taken into consideration when dealing with a police officer or staff member, who has been the victim of a hate crime or hate incident:

- Ensure understanding of the Police Scotland legislative duties and policy commitments.
- In line with an overarching duty of care, supervisors have responsibility for the welfare of all officers and staff under their supervision. Speak to the affected individual as soon as reasonably possible to ensure their wellbeing, informing them of available support mechanisms where applicable.

## **NOT PROTECTIVELY MARKED**

- It must be recognised that confidentiality to victims and those who report hate crimes or hate incidents cannot always be guaranteed. This should be addressed in discussions with victims, at an early stage.
- Decisions are made in consultation with the affected individual.
- Decisions are made after taking legal and other expert advice (where deemed appropriate).
- Consider a referral to internal support groups that can enhance the quality of service delivered to the victim such as Divisional Welfare Champion, Occupational Health Referral, Human Resources, Police Federation, police staff union Unison and Police Scotland Staff Associations (a full list of staff associations can be found within the [Police Scotland intranet](#)).

### **22.8 Investigation of Internal Hate Crimes**

22.8.1 Internal allegations of hate crimes or incidents shall be investigated by an appropriately trained member of staff. The overriding consideration is that investigations into allegations of internal hate crime should be treated with the same level of professional expertise, as that given to an external hate crime, with the extra consideration given to the moral and legal duty to protect colleagues from abuse. Investigators need to be mindful of their data protection responsibilities and avoid unwanted disclosure of sensitive personal data e.g. sexual orientation, disability.



**List of Associated Legislation**

- [Antisocial Behaviour etc. \(Scotland\) Act 2004](#)
- [Criminal Law \(Consolidation\) \(Scotland\) Act 1995](#)
- [Criminal Procedure \(Scotland\) Act 1995](#)
- [Gender Recognition Act 2004](#)
- [Protection from Harassment Act 1997](#)
- [Public Order Act 1986](#)
- [The Offences \(Aggravation by Prejudice\) \(Scotland\) Act 2009](#)
- [Vulnerable Witnesses \(Scotland\) Act 2004](#)
- [Victim and Witnesses \(Scotland\) Act 2014](#)
- [Offensive Behaviour at Football and Threatening Communications \(Scotland\) Act 2012](#)
- [Police Service of Scotland \(Conduct\) Regulations 2014](#)

## **List of Associated Reference Documents**

### **Policy**

- [Equality, Diversity and Dignity Policy](#)

### **Standard Operating Procedures**

- [Appropriate Adult SOP](#)
- [Digitally Stored Evidence SOP](#)
- [Interpreting and Translating Services SOP](#)
- [Internet Research and Investigations SOP](#)
- [Community Advisor SOP](#)
- [Mental Health and Place of Safety SOP](#)
- [Third Party Reporting SOP](#)
- [Victim Support SOP](#)
- [Police Scotland / SPA Grievance SOP](#)
- [Crime Investigations SOP](#)
- [Criminal Justice \(Scotland\) Act 2016 \( Arrest Process SOP\)](#)
- [Offending by children SOP](#)
- [Community Impact Assessment SOP](#)
- [Case Reporting SOP](#)
- [Complaints about the Police SOP](#)

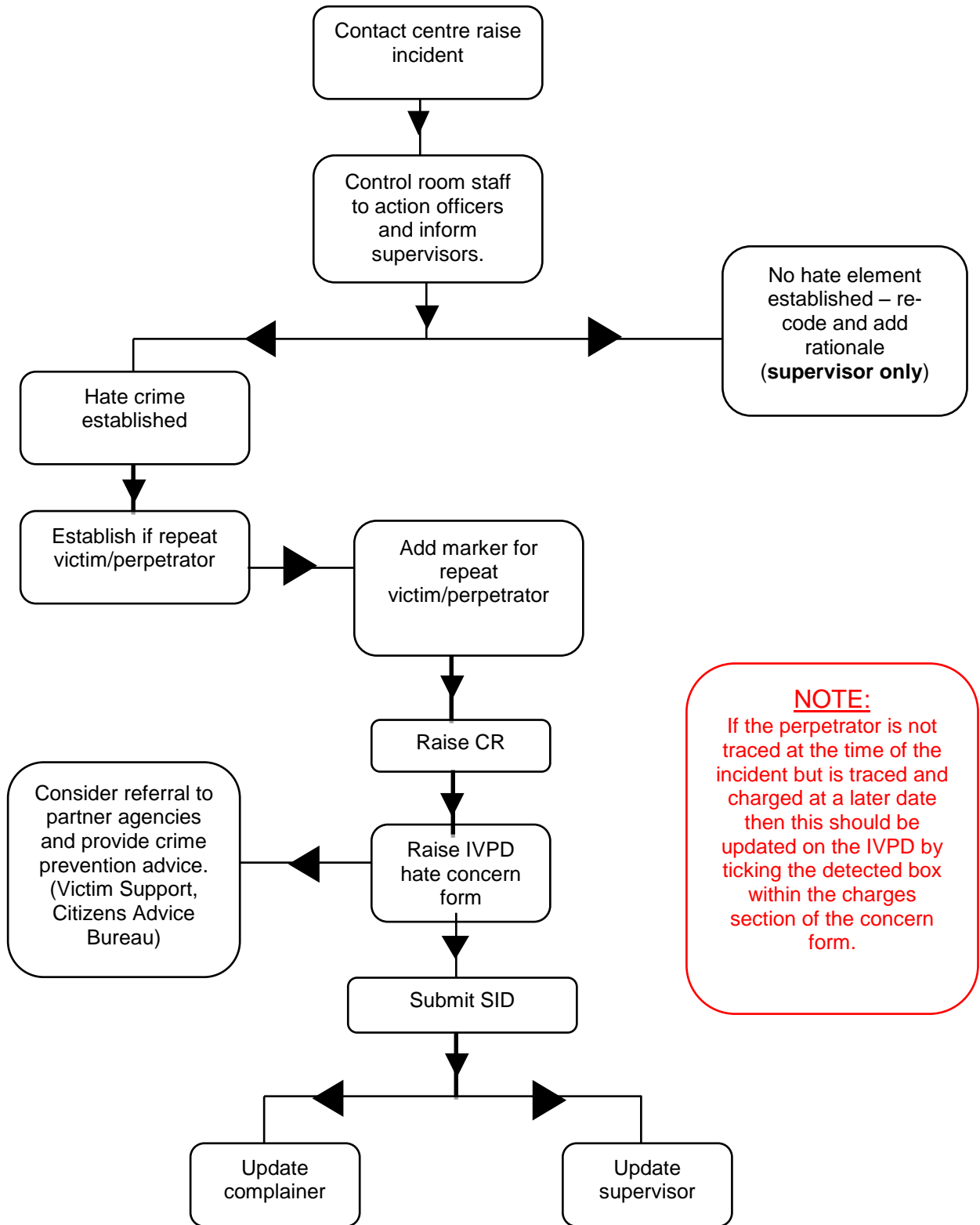
### **Guidance**

- [Diversity Booklet \(A Practical Guide\)](#)
- [Interim VPD Rules, Conventions and Data Input Standards](#)
- [Lord Advocates Guidelines for the Investigation and Reporting of Racist Crime](#)
- [Lord Advocates Guidelines on Offences Aggravated by Prejudice](#)

**NOT PROTECTIVELY MARKED**

- [National Strategy for Policing Football in Scotland](#)
- [Lord Advocate's Guidelines to the Chief Constable on the Reporting to Procurators Fiscal of offences alleged to have been committed by children](#)

### Hate Crime Flow Chart



### Hate Incident Flow Chart

