

challenging homophobic & transphobic hate crime

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LAWS THAT COVER HATE CRIME

**HOMOPHOBIC
TRANSPHOBIC
ABUSE?**

TELL US ABOUT IT

020 7704 2040

www.galop.org.uk

Homophobia and transphobia are crimes. Report them by calling or texting our helpline or online at our website.

Galop is part of the LGBT community. You do not have to give your name and we will treat what you tell us in confidence.

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Pink Law



School of Law, Queen Mary, University of London:
Breanne Becker, Frances Ridout, Gabriella Denlew,
Julie Pinborough, Karl Laird, Michael Southern-
Augustine

This guide explains how the law can protect LGBT people from different forms of abuse.

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What is a homophobic, biphobic or transphobic hate crime?

There are no specific offences of homophobic, biphobic or transphobic hate crime. Instead, hate crime against LGBT people is dealt with by the police and legal system by arresting/charging the perpetrator depending on the nature of the offence (these are called regular offences). For example, if you were assaulted by the perpetrator, they would be arrested and/or charged with assault. The homophobic, biphobic or transphobic element is an aggravating feature which is relevant when sentencing takes place.. Any regular criminal offence can be aggravated by having a hate element. Sometimes, a criminal offence where hate is a motivating factor can lead to a longer sentence.

How do I know if I've been a victim of a hate crime?

Sometimes it's really obvious when someone has been homophobic or transphobic towards you, for example if there's physical violence. But sometimes it's less clear. For example, if you're being harassed by a neighbour or someone uses 'humour' based on gender rules or sexuality as a put-down.

If you feel that someone has done or said something that's motivated by prejudice or hate then it's best to trust your instincts. Even if you're not sure or just want to talk about it, you can ask Galop for help or advice.

Guidance from the police says that it is for you (as the victim or witness) to decide if you've experienced homophobia or transphobia and not for someone else to decide for you! You don't have to feel responsible for knowing whether or not a crime has been committed against you before getting help.

People often contact Galop because they want advice about something homophobic or transphobic that's happened to them. Sometimes they want to know more information about what areas of the law cover certain offences. There is no simple explanation to these laws, but some experiences are more common than others. The examples given below are not exhaustive but cover some of the common forms of abuse.

Physical Violence

*I'm a gay man who went out to my local gay pub. As I was leaving I was followed and jumped on by a group of youths shouting 'f**king queer! I was able to identify one of the youths and the police arrested him. I'm not sure what he'll be charged with.*

Clearly, if you are a victim of a **physical assault** then an offence has been committed. Depending on the level of the violence used, a perpetrator can be charged with Common Assault, Actual Bodily Harm or Grievous Bodily Harm. If you think that the offence is wholly or partly motivated because of your sexuality or gender identity then you should make sure that the police (or other people you've told) are aware of this, as the incident should be investigated as a hate crime. For more information see Galop's factsheet What to do Following an Incident.

A perpetrator charged and convicted with physically assault can receive a longer sentence if they've demonstrated hostility based on the victim's sexual orientation or gender identity. For example if the perpetrator uses offensive language during the attack, or has specifically targeted someone because they are in or near an LGBT venue.

Verbal abuse in public

Verbal abuse, threats or 'name calling' is a common experiences for LGBT people. Victims of verbal abuse are often unclear whether or not an offence has been committed or think that there is little they can do. However, there are laws in place to protect you from verbal abuse.

I'm a bi-woman walking along the street with my female partner and someone threatens to beat us up because we're holding hands?

If someone uses threatening, abusive or insulting words or behaviour towards you, then it's a **Section 4 Public Order Offence (of the Public Order Act 1986)**, because you believe that they intend to cause you physical harm.

I'm a trans woman waiting to catch a bus. Two women stare at me and one shouts out, "You tranny freak, you shouldn't be allowed to walk the streets!" I felt really shaken and upset by the abuse.

If someone directs remarks and abuse with the intention of causing you alarm or distress, they are committing a **Section 4A Public Order Offence**.

You notice a rowdy group of men walking along a crowded street in central London on a Saturday night. They are chanting "we hate queers!" They aren't directing it at anyone in particular, so is it against the law?

Yes, the men are still committing a **Section 5 Public Order Offence**. Even though they aren't directing the abuse or threat towards any one individual, it's reasonable to believe that their language will cause alarm or distress - .

What about if I hear a religious person making what I perceive are homophobic remarks in the street – aren't they committing a Public Order Offence?

A religious preacher making remarks condemning homosexuality has the right to freedom of expression and it's unlikely that it would be dealt with as a Public Order Offence. 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 to be killed – isn't that just expressing an opinion?

Demonstrating hatred towards someone based on their sexual orientation or gender identity could lead to a charge of **Incitement to Hatred**. The offence occurs when someone acts in a way that is threatening and intended to stir up hatred, rather than it being an indirect outcome of their conduct. Below are some examples that could apply.

Incitement to hatred

Incitement to hatred can occur when an individual or group threatens to harass a person or a group of people because of their sexual orientation or gender identity. That could be in words, pictures, videos, and even music. It also includes information posted on websites. Illegal hate content may include:

- messages calling for violence against people due to their sexual orientation or gender identity
- web pages that show pictures, videos or descriptions of violence against anyone due to their sexual orientation or gender identity
- Chat forums where people ask other people to commit hate crimes against LGBTQ people.

If you become aware of material then you may want to alert others to it. You may also consider reporting it to the police, or through a third party, such as Galop. You should supply the web address and any other relevant detail, such as the identity of the person posting illegal material.

I've come across an internet chat room. Someone posted a comment saying he thought gay people were 'sick' and 'homosexuality was against the laws of nature – isn't that inciting homophobia?

While the Internet and postings on social networking sites contain material that may be offensive, very little of it is actually illegal. UK laws are written to allow freedom of speech/expression and to be illegal the content must match the descriptions listed above. For example if you come across a website where people are expressing anti-gay sentiments, you might not like what's being said, or you may be angry or upset by those views but they are not necessarily breaking any laws.

However, even if such material does not seem to be illegal, you can take the steps to have it removed if it upsets, scares or offends you. For example you can report the material to the site moderator. Many sites have their own rules on what is/isn't acceptable and there are fairly simple ways to complain. You can also contact the hosting company who usually have their own guidelines.

Let them know they are hosting a website that breaks their rules, and ask them to stop. You can find out which company hosts a website by entering their web address on the website <http://www.whoishostingthis.com>.

If you aren't sure if the material is illegal or it has 'crossed the line' then you can contact Galop for advice. Galop can help make a report to the police.

Alternatively you can report to the police directly through

www.report-it.org.uk

Abuse or harassment via electronic means

I'm a trans man and my neighbour has discovered some information regarding my gender history. Since then he keeps sending me abusive texts which I find very offensive

Perpetrators of hate crime can also use electronic communications such as emails and texts to abuse and harass victims. These individuals (and their victims) may think that abuse via an email or text isn't the same as verbally abusing you to your face. However receiving such material can have a devastating impact on an individual and the person abusing you may still be committing an offence under the **Malicious Communication Act 2003 (Section 127 of the Communications Act 2003)**. Malicious Communication only applies to communications directed at a specific individual rather than groups of people.

Malicious Communication is similar to a Public Order offence, where someone sends you a text (or other form of letter or electronic communication) that makes a threat or writes something that is untrue and which the sender knows to be untrue. The sender must intend to cause you anxiety or distress by sending the text or email.

If you do experience abuse via letter or other electronic means you should keep hold of any letters, texts or emails you receive. It's a good idea to tell someone in confidence about what's going on. Galop can give you advice on how to deal with electronic abuse, including reporting to the police or other measures such as asking for a social networking account to be closed.

It's your right to live as the gender(s) you know yourself to be. You should be able to present, dress or behave as you like and be treated with dignity and respect. If someone reacts negatively towards you, it's not your fault and you should never feel (or be made to feel) that you are responsible for transphobia directed at you.

Harassment

If someone harasses you they can also be charged with harassment. The harassing behaviour must occur on at least two occasions, but they can be separated by a considerable period of time. The harasser does not have to intend to cause harassment in order to commit the offence, so long as a reasonable person would feel harassed by the actions. For more information, including what to do if you experience harassment, see Galop's factsheet Harassment.

Blackmail

I'm a bi-man. I'm married. An ex-work colleague has found out I'm bi and he's threatened to 'tell everyone at work and my neighbours that I'm really gay'. He threatened to tell everyone unless I give him £5000.

It is a crime for someone to make a menacing demand for the purposes of gaining something or causing you some loss, (unless they have reasonable grounds for doing so). As well as obvious demands such as money, blackmailers can sometimes make implicit and unspoken threats towards you, such as suggesting gifts. It's best to trust your instincts – if something feels wrong then it's a good idea to get some advice.

Blackmail is a serious criminal offence. If you think someone is trying to blackmail you it's advisable to tell someone immediately and to get help with the situation. It is strongly advised never to hand over money, as it's likely that the perpetrator will continue to try and extort money from you. Even if you don't want to report to the police, you can get advice from other organisations such as Galop or Pink Law in confidence.

What if you've been refused goods, facilities and services?

I'm a trans woman using my local sports centre. A member of staff told me I can't use the women's changing facilities because it might upset the other users and I'd have to get changed in the disabled toilets. I felt it was really demeaning, but what can I do?

Being refused goods, facilities or services because of your gender identity or sexual orientation is discrimination and it's illegal under the **2010 Equality Act**. There are several things you might consider doing. For example:

- You should contact Galop or another advice service to consider your options. Galop can give you information about your rights.
- If you are dealing with a larger organisation you could ask to contact the manager or customer services department about your experience and make a complaint.
- Be persistent – point out they don't have the right to stop you accessing goods, facilities or services. If you are trans, you are not required to produce a Gender Recognition Certificate in order to access facilities or services.
- You might decide to take legal action against someone who refused you goods, facilities or services.

My partner and I were holding hands in a café – the owner asked us stop or we'd have to leave – isn't that a hate crime?

Being refused goods, facilities and services is against the law, but it is not a criminal offence. For example, if you were refused a booking at a restaurant or hotel the matter would not be subject to police action unless another offence, such as verbal abuse, took place. If someone also said something derogatory towards you, then you should consider reporting it.

If you have been a victim of a biphobic, homophobic or transphobic hate crime and want to get advice or support contact Galop.

Advice line and reporting: 020 7704 2040

Online help and reporting: www.galop.org.uk

If you need to get further legal advice on any aspect of your case Galop can put you in contact with Pink Law: Tel: 020 7882 3931

Online info: www.advicecentre.law.qmul.ac.uk

Always dial 999 if it is an emergency and you think you are in immediate danger.

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HOMOPHOBIC TRANSPHOBIC ABUSE?

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