



HM INSPECTORATE OF CONSTABULARY IN SCOTLAND

Thematic Inspection of Hate Crime – Terms of Reference

January 2020

Improving Policing Across Scotland

HM Inspectorate of Constabulary in Scotland

HM Inspectorate of Constabulary in Scotland (HMICS) is established under the Police and Fire Reform (Scotland) Act 2012¹ and has wide ranging powers to look into the 'state, effectiveness and efficiency' of both the Police Service of Scotland (Police Scotland) and the Scottish Police Authority (SPA).

We have a statutory duty to ensure that the Chief Constable and the SPA meet their obligations in terms of best value and continuous improvement. If necessary, we can be directed by Scottish Ministers to look into anything relating to the SPA or Police Scotland as they consider appropriate. We also have an established role in providing professional advice and guidance on policing in Scotland.

- Our powers allow us to do anything we consider necessary or expedient for the purposes of, or in connection with, the carrying out of our functions
- The SPA and the Chief Constable must provide us with such assistance and co-operation as we may require to enable us to carry out our functions
- When we publish a report, the SPA and the Chief Constable must also consider what we have found and take such measures, if any, as they think fit
- Where our report identifies that the SPA or Police Scotland is not efficient or effective (or best value not secured), or will, unless remedial measures are taken, cease to be efficient or effective, Scottish Ministers may direct the SPA to take such measures as may be required. The SPA must comply with any direction given
- Where we make recommendations, we will follow them up and report publicly on progress
- We will identify good practice that can be applied across Scotland
- We work with other inspectorates and agencies across the public sector and co-ordinate our activities to reduce the burden of inspection and avoid unnecessary duplication
- We aim to add value and strengthen public confidence in Scottish policing and will do this through independent scrutiny and objective, evidence-led reporting about what we find.

Our approach is to support Police Scotland and the SPA to deliver services that are high quality, continually improving, effective and responsive to local needs.²

This inspection will be undertaken by HMICS under section 74(2)(a) of the Police and Fire Reform (Scotland) Act 2012 and a report will be laid before the Scottish Parliament under section 79(3) of the Act.

¹ Chapter 11, Police and Fire Reform (Scotland) Act 2012.

² HMICS, [Corporate Strategy 2017-20](#) (2017).

Our inspection

Introduction

1. HM Inspectorate of Constabulary in Scotland (HMICS) has committed to a statutory inspection of the policing response to Hate Crime³ as part of its Scrutiny Plan for 2019-20. Hate Crime is not in itself a specific crime or offence but a descriptive term covering crime and incidents which are motivated by hate. The difference between a Hate Crime and Hate Incident may merely be whether the circumstances amount to a crime.
2. It is acknowledged that being the victim of any crime can for many be a distressing experience and have an enduring impact. When that crime is motivated by prejudice, hatred or intolerance and where the beliefs, culture and ethnicity of the victim are an integral part, that experience can be even more distressing, impactful and have an effect upon the wider community.
3. It is therefore critical that policing and their key partners prioritise the prevention and investigation of Hate Crime and Police Scotland through their Safer Communities Division have a series of policies and procedures in place to support local policing, ensure best practice and develop community cohesion.
4. Following a series of events including UK terrorism and the EU referendum, a number of assessments and reviews anticipated that prejudice, division and hatred may become more prevalent across the UK due to the political environmental changes and the increased prevalence of online abuse and intolerance.⁴ Whilst Police Scotland does not publish regular statistical information in this regard, a number of disclosure requests under the Freedom of Information Act have indicated that Hate Crime in Scotland has remained largely static.⁵
5. It is recognised that Hate Crime is complex social issue with a wide partnership response necessary to ensure that preventive strategies and interventions are effective. The purpose behind the inspection is to ensure that the Police Scotland is meeting its obligations in terms of the response to crime and additionally are working effectively with partners to support victims, reduce offending and ensure that Scotland continues to strive towards being more tolerant, inclusive and safer. This is embodied by the Scottish Government's 'One Scotland'⁶ campaign where equality and human rights are respected and every individual and minority group feels valued and a true partnership approach is adopted across a wide spectrum of organisations.

³ 'Hate Crime' as a descriptive term includes Hate Crimes as well as Hate Incidents which may not amount to a criminal act.

⁴ HMICFRS Understanding the difference - The initial police response to hate crime.

⁵ Commonsense, [Police Scotland: No rise in hate crime in Scotland since Brexit](#)

⁶ <https://onescotland.org>



Aim

6. The aim of this inspection will be to assess the effectiveness and efficiency of Police Scotland's response to Hate Crime.⁷ The inspection will examine in detail the accessibility and ease with which communities can record crime and incidents where hatred and intolerance features. HMICS will also review call handling procedures in place to identify and prioritise this form of crime.
7. During April 2017, Police Scotland published its Equality and Diversity Outcomes⁸ as part of its legislative requirement to prepare and publish an Equality and Diversity plan for 2017-21. The plans sets out a number of equality and diversity outcomes including;
 - Victims, witnesses and partner agencies feel more confident in reporting hate incidents through a variety of methods (Outcome 1)
 - All incidents involving harassment of people based on their protected characteristics are recorded and subject to a holistic assessment of wellbeing concerns and needs: to influence wider multi-agency investigation, intervention and support tailored to individual needs, and to prevent repeat victimisation (Outcome 2)
 - Everyone accesses services, communication and information from Police Scotland in ways or methods that best suit their needs (Outcome 5).
8. Whilst this published plan is reviewed as part of the monitoring process, HMICS will examine Police Scotland's progress against these outcomes as part of the inspection process.
9. HMICS will review both routine business and initiatives in place to engage with hard to reach communities and to ensure that victims of this crime type have the confidence and ability to report them in a manner which acknowledges their traditions and sensitivities.
10. The Inspection will also examine the standard of Police investigation and review detection rates, crime and incident recording and the use of the Interim Vulnerable Persons Database (iVPD)⁹ together with reviewing the effectiveness of initiatives Police Scotland have in place to ensure consistency.
11. HMICS will also look at the procedures and policies implemented by Police Scotland which support the investigation and prioritisation together with intelligence recording and gathering methodology as well as arrangements in place to identify repeat offenders, prevent offending and support repeat victims.

⁷ 'Hate Crime' includes crimes as well as incidents which may not amount to a criminal act.

⁸ Police Scotland, [Equality and Diversity Outcomes 2017-2021](#).

⁹ The interim Vulnerable Persons Database (iVPD) is an incident based database that allows officers from Police Scotland to record common concerns that may be a risk to a person's current or future wellbeing.



Background

12. Hate incidents and crimes are defined as any criminal offence or incident which is perceived by the victim, or any other person, to be motivated by hostility or prejudice towards someone based on a protected characteristic. Those characteristics are stipulated within the Equality Act 2010 as being age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
13. This definition was adopted by criminal justice organisations in 2007, to promote consistency in the absence of a definition set out in law. This definition places significant emphasis on the perception of either the victim or another person (for example a witness to a crime, or the Police Officer or staff member who is helping the victim). There is no requirement for the victim to provide the Police with any evidence or justification to support this perception.
14. Hate crime legislation in Scotland comprises a mixture of statutory aggravations in relation to each of the protected characteristics, which can be attached to any offence, but do not themselves create any new offences. There are five groups with characteristics which are protected under Hate Crime legislation. These are disability, race, religion, sexual orientation and gender reassignment.
15. Although the statutory aggravations can attach to any offence, some offences are more commonly charged in conjunction with statutory aggravations than others. Although not an exhaustive list, the most common are Breach of the Peace, Threats, Threatening or Abusive Behaviour,¹⁰ Stalking¹¹ and a series of communications offences.
16. The following paragraphs 17 to 21 relate to stand alone offences.
17. While racist crimes can occur in many forms, the racially motivated crimes introduced by the Criminal Law (Consolidation) (Scotland) Act 1995 created the statutory offences of:
 - Racially Aggravated Harassment - Section 50A(1)(A) - intended to address cases of serial harassment
 - 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.
18. An offence is racially aggravated by Section 96 of the Crime and Disorder Act 1998 if either:
 - at the time of the 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 (of presumed membership) of a racial group
 - 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 that an offence is racially aggravated.
19. The Public Order Act 1986 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.


¹⁰ Section 38 of the Criminal Justice and Licensing (Scotland) Act 2010.

¹¹ Section 39 of the Criminal Justice and Licensing (Scotland) Act 2010.



20. 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 which 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 sentence.
21. Section 74 of the Criminal Justice (Scotland) Act 2003 places an onus on the Court to take account of any religious prejudicial 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.
22. The Scottish Government monitors Police data on offending motivated by hostility towards any of the following protected characteristics:
 - race or ethnicity
 - religion or beliefs
 - sexual orientation
 - disability
 - transgender identity.
23. These motivating factors are the same for hate incidents and crimes. The difference is merely whether the circumstances amount to a crime. However, to the victim, this distinction may not be immediately apparent and a fine line may exist between a crime or an incident.
24. In 2016, the Independent Advisory Group on Hate Crime, Prejudice and Community Cohesion,¹² published a wide ranging report which examined education, public and community services and other areas, as well as the criminal justice system. The report recommended that the Scottish Government should lead discussion on the development of clearer terminology around Hate Crime and consider whether there should be any additions to the existing protected characteristics.
25. During January 2017, Lord Bracadale was appointed by the Minister for Community Safety and Legal Affairs, to conduct an independent review of Hate Crime legislation in Scotland. This independent review was published during May 2018 and made 22 recommendations with regard to legislation and policy. These recommendations focused upon improving specific areas and the Scottish Government are currently drafting legislative amendments which are intended to be a natural evolution of existing legislation.

¹² Scottish Government, [Report of Independent Advisory Group on Hate Crime, Prejudice and Community Cohesion](#), 23 September 2016.

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26. A long standing observation regarding Hate Crime is that it is under reported and whilst not a specific recommendation, Lord Bracadale's report¹³ identified that there was a 'serious problem with under reporting of Hate Crime'. The reasons for under-reporting are varied and Police Scotland and the Scottish Government have introduced a number of measures in an attempt to capture and record the experiences of victims as much as possible. This inspection will examine reporting structures and accessibility, to assess the extent to which victims have the confidence and trust to report these issues.

Inspection Terms of Reference

27. This inspection will be undertaken by HMICS in terms of the Section 74(2)(a) of the Police and Fire Reform (Scotland) Act 2012.

Scope

28. HMICS will inspect aspects of what is categorised as Hate Crime and incidents. A number of comprehensive reviews of legislation and other aspects of Hate Crime have recently taken place and HMICS is keen to examine Police Scotland's approach towards recording, investigating and preventing Hate Crime and the role police play with others in building strong and cohesive communities.
29. The inspection will examine under-reporting, accessibility to reporting mechanisms and attempting to understand the barriers perceived by victims in reporting Hate Crime and incidents. We will look at call handling, the use of third-party reporting and the relationships between partners to exchange information.
30. HMICS will examine the methods used across Scotland to record crime and incidents including technical call handling and the use of iVPD and crime recording systems. We will inspect a sample of local policing divisions across Scotland representing rural, mixed and urban communities. We will establish the prioritisation of Hate Crime within their local policing plans, overall management and the systems in place to manage Hate Crime and support victims. We will audit a meaningful cross section of incidents across Scotland and establish the standard of investigation, supervision and strategic direction together with establishing compliance against national policy and process.
31. As part of the inspection scope we will also look at the policies, procedure and arrangements existing within Police Scotland and immediate partners to manage Hate Crime, develop effective partnerships and to deliver on the Scottish Government's strategic priorities. This will include the relationships built between Police Scotland and groups and individuals, including Community Advisors, who represent the diverse communities across Scotland. HMICS intend to look at areas of recent development including Hate Crime Champions, Hate Crime Tactical Advisors and the initiatives implemented to strengthen Police Scotland's approach and to make the overall response consistent and effective.
32. We will also examine the linkage and relationships between national policing divisions including safer communities and Contact, Command and Control Division (C3) and local policing divisions establishing the effect national policy has upon service delivery and operational effectiveness.

¹³ Scottish Government, [Independent review of hate crime legislation in Scotland: final report](#), 31 May 2018.



Exclusions from Scope

33. HMICS will not review any aspects of the legislative framework of Hate Crime, given that this was subject to a comprehensive and recent review by Lord Bracadale and that the recommendations are still being actively progressed.
34. This inspection will also not consider individual forms of Hate Crime or its specific characteristics but will focus on the procedures and policies adopted by Police Scotland in order to determine an overall effective response to Hate Crime.

Objectives and Outcomes

35. The HMICS objective for this inspection is to assess the policing response to Hate Crime. This will include the how Police Scotland identifies, understands and categorises Hate Crime together with how effectively it records Hate Crime and safeguards victims.
36. The intended outcomes from this inspection and its publication are to:
 - Provide independent assurance as to the efficiency and effectiveness of Police Scotland's response to Hate Crime
 - Provide independent assurance as to the methods and practices in place to ensure accurate and consistent recording of Hate Crime and make recommendations on potential options for improvement
 - Identify any areas of improvement which will improved the overall effectiveness and efficiency of the way in which Police respond to Hate Crime.
 - Highlight areas of good practice and any areas for improvement.

User perspective

37. As set out in the Public Services Reform (Scotland) Act 2010, HMICS has a duty to demonstrate continuous improvement in user focus, i.e. involving users in the scrutiny process. We will endeavour to obtain an accurate as possible perspective of victims and communities affected by Hate Crimes through public engagement and consultation together with groups and organisations who support the victims of crime and represent hard to reach communities. HMICS will engage directly with key governance groups and stakeholders. We will also engage with victims and relevant community groups to ensure that the views of local communities are reflected. Similarly, direct engagement with staff associations and unions, staff and professionals from the organisations involved will also form part of the inspection process. This will include organisations that support Police employees including, the Scottish Police Federation, Supporting Ethnic Minority Police employees for Equality in Race (SEMPER) and the Muslim Police Association.



Methodology

38. We will use the HMICS Inspection Framework which is based on the European Foundation for Quality Management (EFQM) Excellence Model and Best Value Characteristics.
39. The Inspection Framework will provide a structure to our inspection which will be risk-based, proportionate and focused on improving the delivery of policing in Scotland. We will structure our inspection around six themes:
 - Outcomes
 - Leadership and Governance
 - Planning and Processes
 - People
 - Resources
 - Partnership.
40. Between January 2020 - March 2020 we will:
 - Identify a single point of contact for HMICS in Police Scotland to support the inspection process and to facilitate appropriate access to people and information'
 - Liaise regularly with Police Scotland and Scottish Government and maintain ongoing engagement with other key stakeholders including the National Independent Strategic Advisory Group (NISAG)'
 - Observe a number of Police Scotland internal meetings and any relevant external meetings (Public and Private)'
 - Examine relevant documentation including policies, procedures, performance and management information including strategies, plans and course materials. Where possible we will access these documents from open sources, but this phase may require Police Scotland to provide information directly to us. This information will assist in determining our overall judgement as to how well Police Scotland fulfils its role relative to the defined scope of this inspection'
 - Conduct a comparative overview of the response to Hate Crime in other jurisdictions and assess how well the Police Scotland Standard Operating Procedures/Toolkit for Hate Crime investigations work and align to wider national UK policies and procedures'
 - Review of the Police Scotland Strategic Assessments for Hate Crime investigations and supporting intelligence products'
 - Examine the Police Scotland Hate Crime strategy to understand the strategic direction'
 - Interviews with staff with strategic and tactical responsibilities and focus groups internally within Police Scotland and also externally with partners, community groups and service users'
 - Review crime and incident recording procedures within Police Scotland and audit the effectiveness of crime and intelligence recording.



Publication and Reporting Timescales

41. We anticipate publishing a report of our findings in April 2020. Our report will be published in terms of Section 79 of the Police and Fire Reform (Scotland) Act 2012. A copy of the report will also be provided to the Chief Constable, the Scottish Police Authority and the Cabinet Secretary for Justice and laid before the Scottish Parliament. A copy will also be made publicly available on the HMICS website.
42. For further information about the inspection of Hate Crime please contact Martin Mackay, Lead Inspector - Martin.Mackay@gov.scot.

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HM Chief Inspector of Constabulary in Scotland
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