



Devon & Cornwall Police

Force Policy & Procedure	Sexual Behaviour in Public Places
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Policy Ownership	Local Policing & Partnerships
Portfolio Holder	Assistant Chief Constable (Local Policing & Partnerships)
Links or overlaps with other policies	D208 – Vice Related Matters

1.0 Policy Statement / Intentions [FOIA Open]

- 1.1 The Devon and Cornwall Police are committed to ensuring and protecting the safety and well being of all communities in the two counties of Devon, Cornwall and the Isles of Scilly. This policy sets out how sexual behaviour in public places (SBPP) will be dealt with by the Devon and Cornwall Police. It has been produced in consultation with the Devon, Cornwall and Isles of Scilly Independent Advisory Group.
- 1.2 The benchmark for the Devon and Cornwall Police is that it is our responsibility to protect and uphold the human rights of everybody in Devon, Cornwall and the Isles of Scilly. This includes people affected by SBPP and also those who engage in such behaviour.
- 1.3 The policy seeks to provide guidance suitable for policing this emotive issue within the parameters of the law, the concerns of the wider public, and the sensitivities and needs of minority sections of the community.
- 1.4 In the application of this policy staff are reminded of the need to comply with the standards and principles of the [Code of Ethics for policing](#).

2.0 Introduction / Implications [FOIA Open]

- 2.1 It is recognised that, historically, this is a sensitive and often emotionally charged subject for those who are affected by such behaviour and those who engage in it. To inform their decision making, police officers called to intervene in SBPP matters need to understand the guidance, based on human rights principles, set out in this policy so that their actions may be just and justifiable.
- 2.2 Any disclosure or action carrying a risk of disclosure must be carefully considered and consistent with the guidance set out below, so that negative outcomes are avoided and officers do not lay themselves open to significant risk of personal liability for the consequences.
- 2.3 Thoughtful and objective action is consistent with a problem solving approach and is most likely to minimise related disorder or offences against the person, whilst reinforcing policing by consent and enhancing the confidence in police of minority communities who can be vulnerable and the object of prejudice.
- 2.4 It is also important to recognise that despite the ill-founded common beliefs expressed to police by some members of the public, neither sexual orientation nor SBPP indicate paedophilia.
- 2.5 Whilst the attention of police can be called to isolated instances of SBPP, it is often the case that habitual experience of SBPP at a particular location gives rise to calls for police action. In either circumstance, the behaviour complained of, may fall short of a criminal offence or may extend to unlawful activity. This adds further complexity to the situations that police officers face. Thus, the task of police in reconciling public views and taking appropriate action can be extremely difficult.
- 2.6 Any action taken by an officer must be lawful, necessary, proportionate, and informed by the best information reasonably available. It is especially important that the basis for all decisions and actions is well documented to assure accountability in the event of challenge. It is the police officer rather than the complainant who may be called upon to demonstrate their fairness and who must be able to do so.
- 2.7 These principles apply to actions taken to prevent crime and disorder and to promote public safety as well as actions taken to detect crime. In SBPP matters, Article 8 of the ECHR (right to respect for private and family life), either alone or in conjunction with Article 14 (prohibition on discrimination), must be considered. Our policy in relation to SBPP therefore avoids discrimination on the basis of gender or sexual orientation.
- 2.8 The legal basis for action in relation to SBPP may come from:
 - (a) Sections (1) and (2) Sexual Offences Act 1985
 - (b) Section 71 Sexual Offences Act 2003
 - (c) Section 5 Public Order Act 1986
 - (d) Common Law Offences – Act of Outraging Public Decency
 - (e) Common Law – Public Nuisance
 - (f) Common Law – Breach of the Peace
- 2.9 Great sensitivity is needed in this area of policing because, particularly with same gender SBPP, many who engage in it manage their lives so that most of the people

they know are unaware of their sexual orientation or behaviour. Respecting confidentiality is of paramount importance.

- 2.10 Deliberately or unwittingly divulging information about a person's SBPP to their family, friends, workplace or neighbours can have devastating repercussions such as rejection by family, employer or community with loss of home, employment or even life when suicide has followed
- 2.11 Any incident involving SBPP has the potential to be a critical incident (see Force Policy [D350 Critical and Major Incident Management](#)) due to the considerable media interest it can attract. In this regard there has often been a disproportionate focus on same gender SBPP by men. Police action can be thrown into the spotlight and disclosures regarding both individuals and venues broadcast are amplified, creating added difficulties for both police and public.
- 2.12 In this area of activity, unlike theft or criminal damage, the spectrum of what people consider as unacceptable public behaviour and therefore worthy of complaint and police intervention is extremely broad. Those who engage in SBPP and those affected by it often hold vastly differing viewpoints. For cultural reasons, SBPP by men with men most often gives rise to offence and calls to the police.
- 2.13 Officers must be aware that many transgendered, transsexual and transvestite (TG, TS and TV) people are not necessarily lesbian, gay or bisexual, and that being cross-dressed for any reason gives no grounds to suspect any intention to engage in any public sexual behaviour.
- 2.14 The Force will not normally proceed to prosecution in a case where there are no victims and the source of the original information appears likely to have been motivated by prejudice.

3.0 Procedures / Principles / Ethos of Policy [FOIA Open]

- 3.1 No action will be directed towards SBPP other than in response to documented information which supports the need for it. Equality and Forcewide consistency of response will be applied to SBPP matters within our problem solving partnership style of policing. ACC (Operations) will be responsible for monitoring the implementation of this policy and for taking action to ensure compliance whilst the Head of People Management and Learning will be responsible for meeting any identified training needs.
- 3.2 Where SBPP is also linked to suspected offences such as rape, sexual or other assault, violent disorder, or blackmail, these will be investigated with full diligence with a view to pursuing a successful prosecution whilst retaining a sensitivity of approach proportionate to the broader circumstances set out above.
- 3.3 Where an incident involves only young persons (under 18s) and/or other vulnerable people whose well-being is covered by the Children Act 1989, the incident will be dealt with in accordance with this policy and must take into account the age and/or vulnerability of the persons involved; any circumstances that may be relevant under the Children Act; and the primary necessity not to put vulnerable people at risk of

harm (e.g. from peers, carers or family members). All appropriate steps in accordance with the Act and Force policies will be taken in partnership with other relevant agencies to ensure the young and/or vulnerable young person's well-being.

- 3.4 The Force will not disclose a young person's self-identified sexual orientation or gender status to any other person, including a member of her/his family without the young person's informed consent. If, in exceptional circumstances, human rights considerations identify the compelling need for such disclosure, it should take place only after consultation with the Child Protection Team and the Head of Equality and Diversity. This should ensure the provision of appropriate support, and consideration of all the issues that may affect the young person's well-being. (Both Child Protection Teams and the Head of Equality and Diversity are subject of emergency call-out systems should the need arise.)
- 3.5 Where an SBPP incident is under investigation and one of the parties engaged in the sexual behaviour was a young and/or vulnerable person whilst the other was not, then the young and/or vulnerable person shall, in the first instance, be treated as a victim.
- 3.6 Subject to the provisions relating to young and/or vulnerable persons above, wherever it is considered appropriate to investigate a SBPP incident, the investigation will proceed with the same diligence and to the same standard irrespective of the gender of any of the individuals concerned.
- 3.7 In every case, officers must always consider what their imperative for action would be if the behaviour constituting the alleged offence involved a man and a woman rather than two men. In this case, before any charge is preferred, the officer in the case should consult with the BCU Commander who will consult with the Head of Equality and Diversity.
- 3.8 No action will be taken in response to incidents of SBPP unless it can be demonstrated that it is directed towards:
 - (a) Ensuring that a public place does not, in consequence, become less usable by the general public; or
 - (b) Securing the conviction of an offender for a crime which has a specific victim.
- 3.9 Whatever the level of public concern or pressure about SBPP activity at a particular location, action against any individual must be strictly proportionate to the evidence which relates to them, personally. Action against any identifiable individual may not prevent future offending by others at the same location.
- 3.10 If the police are considering an environmental solution at a location due to SBPP incidents this must be progressed in concert with interested parties, including LGBT organisations (if relevant) and the Local Authority and in accordance with the principles set out in this policy.
- 3.11 A graded, problem solving approach must be applied to issues of SBPP rather than a simple enforcement model. The Force has adopted a four-stage approach when

action is required at a specific location. This staged approach is detailed in the associated [step by step guide](#) which must be followed in all cases.

Risk Assessments and Health and Safety Considerations

- 3.12 Investigating officers must attain an adequate understanding of the likely consequences of each action they consider, to ensure that it is proportionate to:
- a) Harm done to members of the public;
 - b) The likelihood of such harm being caused in all the specific circumstances;
 - c) The risk of harm being done to individuals as a result of the investigation or a course of police action;
 - d) Potential harm to the public if there is reason to believe the offence may be repeated by the same individuals or others at the same place;
 - e) The strength of evidence to support prosecution.
 - f) An assessment of the motivation of the original informant.

4.0 Assessment Compliance [FOIA Open]

- 4.1 This policy has been drafted and audited to comply with the principles of the Human Rights Act. Equality and diversity issues have also been considered to ensure compliance with Equality legislation and policies. In addition Data Protection, Freedom of Information, Management of Police Information and Health and Safety issues have been considered. Adherence to this document will therefore ensure compliance with all relevant legislation and internal policies.

5.0 Review and Ownership [FOIA Open]

- 5.1 The review of the contents of this policy is the responsibility of the Head of Local Policing and Partnership. Review of the policy will be undertaken annually.