

HATE CRIME

Public statement on prosecuting
disability hate crime and other
crimes against disabled people



Hate crimes often have a disproportionate impact on the victim because they are being targeted for a personal characteristic. We recognise that hate crime not only impacts the individual victim but also the wider community. Hate incidents as one-offs or a related series of events can send reverberations through communities, just as they can reinforce established patterns of prejudice and discrimination. This is why it is so important for hate crime to be prosecuted effectively.

Our policy is to:

- Identify disability hate crimes and other offences targeted at disabled people as early as possible
- Build strong cases with our partners that satisfy the tests within the [Code for Crown Prosecutors](#)
- Remind the court of its powers to increase a sentence under s.146 Criminal Justice Act 2003 where there is evidence of disability hate crime i.e. hostility based on disability or presumed disability, including minor offending
- Apply for an increased sentence in all other cases where disability is an aggravating factor in the case
- Support disabled victims and witnesses to give their best evidence
- Work closely with the police, criminal justice agencies, academics, community stakeholders and other bodies to continuously refresh our understanding of disability hate crime and crimes against disabled people and to improve our response to it
- Improve awareness of disability hate crime and public confidence to report it
- Monitor the implementation of this policy.

When presented with cases that involve disabled people, we will be aware that:

- Disability hate crime and other crimes against disabled people may be underpinned by disability or prejudice against disabled people
- The stereotype based belief that disabled people as a group are somehow inherently vulnerable, weak and easy targets is an attitude that motivates some crimes against disabled people
- The prejudice, discrimination and social exclusion experienced by many disabled people is not the inevitable result of their impairments or medical conditions, but rather stems from specific barriers they experience on a daily basis: this is known as the social model of disability.

When deciding whether it is in the public interest to prosecute disability hate crime or crimes against disabled people, our prosecutors must have regard to the Code for Crown Prosecutors. The Code states that where the offence was motivated by any form of discrimination, including the victim's disability or whether the suspect demonstrated hostility towards the victim based on disability, the presence of any such motivation or hostility will mean that it is more likely that prosecution is required.

Monitored disability hate crime

In order to identify cases involving disability hate crime, we have agreed with the police a shared definition. This definition is wider than the legal definition of a hate crime within the CJA 2003 to ensure we capture all relevant cases:

“Any incident/crime which is perceived by the victim or any other person, to be motivated by hostility or prejudice based on a person’s disability or perceived disability.”

It is important that relevant incidents are identified as hate crimes as early as possible. This will assist the police to obtain the best available evidence in order to support the aggravating factor at court and at sentence.

Once a case has been flagged as a hate crime and received by the CPS, it is CPS policy not to remove the flag for any reason other than administrative error. This signals the CPS commitment to treat all such crimes seriously and to accept the victim’s perspective, even where we are unable to identify sufficient evidence to prosecute the case as a hate crime.

The legal framework for disability hate crime

1. Sentence uplift under s.146

S.146 CJA 2003 gives the court the power to increase the sentence of any offence that is aggravated by hostility on the grounds of disability. An offence will be a disability hate crime if:

- At the time of committing the offence, or immediately before or after doing so, the offender demonstrated towards the victim of the offence hostility based on a disability (or presumed disability) of the victim; **or**
- The offence is motivated (**wholly or partly**) by hostility towards persons who have a disability or a particular disability.

Both the CJA 2003 and the police/CPS definition refer to hostility, not hatred. There is no statutory definition of hostility and the everyday or dictionary definition is applied, encompassing a broad spectrum of behaviour.

For more information about the nature of disability hate crime, see [the CPS legal guidance](#).

Crimes against disabled people

It’s important to make a distinction between a disability hate crime and a crime committed against a disabled person because of his or her perceived disability. A disability hate crime is any crime committed in any of the circumstances explained in the section on s.146 CJA 2003 above. Some crimes are committed because the offender perceives the disabled person to be vulnerable and not because the offender dislikes or hates the person or disabled people. Our overriding aim is to protect disabled persons when they are targeted, even if the offence does not meet the legal definition of a

disability hate crime. We will therefore put before the court any evidence that a disabled person is targeted for this reason, so that the sentence reflects the gravity of such offending.

In this policy, we define crimes against disabled people as:

“Any crime in which disability is a factor, including the impact on the victim and where the perpetrator’s perception that the victim was disabled was a determining factor in his or her decision to offend against the specific victim.”

We define disability as any physical or mental impairment, which is the definition used in the Criminal Justice Act 2003. This definition fully incorporates the definition of disability for the purposes of the Equality Act 2010.

Examples of types of crimes committed against disabled people are:

- “Mate crime” or “befriending crime”: the victim is groomed or befriended and subjected to financial or sexual exploitation; or made to commit minor criminal offences such as shoplifting; or the victim's accommodation is taken over to commit further offences, such as taking/selling drugs, handling stolen goods, encouraging under-age drinking and sexual behaviour
- Criminal assault, abuse or neglect of a disabled person where there is an existing relationship and an expectation of trust: for example, where the perpetrator is a paid carer, family member, friend, support worker or volunteer.

For more detailed information on the types of crimes committed against disabled people see the [hate crime page on the CPS website](#).

Offending behaviour

Hate crime can take many forms, ranging from verbal abuse to physical and sexual assault and can include threats, criminal damage, harassment, stalking and anti-social behaviour. Incidents can be one-off events or form part of a series of repeated and targeted offending. The hostility may be targeted at individuals, groups, those associated with such groups, or property e.g. homes, places of work or worship, and community venues. Hate crime can occur anywhere.

Hostility and hatred might be based on misconceptions about the individual’s characteristics. However, there is no need to confirm a victim’s personal characteristics in order to prosecute a hate crime. Evidence of hostility based on the perpetrator’s presumption of the victim’s disability is sufficient.

We recognise that the victims of hate crime can be repeatedly targeted. We will encourage the police to investigate any previous incidents or allegations. We will bring charges that reflect the overall picture of offending or if possible make a [bad character application](#) to the court to present evidence of previous conduct towards the victim or others.

We recognise that people can be targeted for a combination of reasons, including sexual orientation and transgender identity, race and religion in addition to their disability. Prosecutors will consider the most appropriate charges and apply to courts for an appropriate increase in sentence, based upon all relevant aggravating features.

The social model of disability

We understand the social model of disability to mean that the prejudice, discrimination and social exclusion experienced by many disabled people is not the inevitable result of their impairments or medical conditions, but rather stems from specific barriers they experience on a daily basis. These barriers can be environmental (inaccessible buildings and services), attitudinal (stereotyping, prejudice and discrimination), and organisational (inflexible policies, practices and procedures). Using the social model helps us to dismantle or reduce the effects of those barriers that are within our power, and improve the safety and security of disabled people.

Reporting a crime, giving a statement and being called to give evidence in court can be very daunting experiences for anyone. We recognise that disabled people can experience specific barriers in this regard. These can include a failure by criminal justice agencies to identify an incident as a potential disability hate crime, inaccessible courtrooms, witness waiting areas or an absence of sign language interpreters.

We are concerned to avoid incorrect judgments being made about disabled people's reliability or credibility as a witness giving evidence in court. Such judgments may lead to an incorrect charging decision or could undermine the potential success of a prosecution.

Thus we will:

- Not make assumptions about a disabled victim's reliability or credibility, and challenge others who do so
- Ensure that disabled people are aware of the support that is available to them to give their best evidence
- Be more likely to prosecute cases where disability is a factor, including disability hate crimes where there is sufficient evidence to do so.
- Be mindful that language is important and only use the term 'vulnerable' in relation to disabled people when it is appropriate in the context of the law and facts of the case
- Recognise that the stereotype based belief that a disabled person is 'vulnerable' forms the backdrop of disability hate crime and crimes against disabled people and can even be a motivating factor in crimes committed against them.

Situational risk and 'vulnerable victims'

We are aware that disabled people are regularly labelled as "vulnerable".

This labelling has been repeatedly criticised by disabled people and others and is not in line with the social model of disability. We understand that use of this label can give the message that disabled

people are inherently “weak” or “dependent” as individuals and as a group, when in fact it is physical barriers and social attitudes that create inaccessible, unsafe and therefore vulnerable situations for disabled people.

Moreover, the belief that disabled people are vulnerable may be disabling in itself and can lead to decisions and actions that adversely affect disabled people’s independence, safety and security. Crucially, in the context of the criminal justice system, this attitude can undermine their perceived competence, credibility and reliability as a witness, and, therefore, their access to justice.

We recognise that it is therefore preferable to refer to a ‘situational risk’, or an ‘at risk situation’ that a disabled person may find themselves in, due to particular circumstances, as opposed to referring to the disabled person as ‘vulnerable’. Like many people, those who are disabled experience situational risks, which may be taken advantage of by an offender, or provide the opportunity for the offender to act on their hostility towards disabled people. These risks can be connected to a person’s gender, job, disability or other factors and characteristics.

We will avoid the use of the term “vulnerable” where possible and we will always avoid any use of the term which may suggest disabled people are inherently weak or dependent.

However, the term is unfortunately sometimes unavoidable in the context of criminal proceedings, due to the wording of the law and relevant Sentencing Guidelines. For example, if prosecutors do not use the term in court, they may be unable to properly explain that an offence is aggravated because of a victim’s “vulnerability”, and should attract an increased sentence. This would in turn disadvantage the disabled victim, as the perpetrator may receive a more lenient sentence than is appropriate.

Our [legal guidance on Prosecuting cases of Disability Hate Crime](#) also sometimes refers to a “vulnerable” victim or person. But it does so only where necessary. This will be in the context of the person being in an ‘at risk situation’ in relation to a particular criminal offence, in particular circumstances, for the purposes of a Sentencing Guideline, or an application for special measures for a “vulnerable witness”.

Reporting hate crime

It is important that all hate crime incidents are reported to the police. It is also invaluable for the police to be made aware of any previous behaviour or patterns of behaviour which relate to the same victim or perpetrator, so that all circumstances can be appropriately taken into account. It is for the police to investigate the incident and to decide whether to refer the case to the CPS for a decision on whether to charge the suspect and, if so, with what offence.

Internet and social media

Hate crime can be perpetrated online or offline, or there can be a pattern of behaviour that includes both. The internet and social media in particular have provided new platforms for offending behaviour and our revised [guidance on the prosecution of social media cases](#) provides more detail.

In approaching online hate crime, we will:

- Recognise that modern communications technology provides opportunities for hate crime
- Understand internet and social media platforms as well as their community standards and policies for taking down material
- Be familiar with the relevant law and referral systems
- Be alert to the need to identify originators as well as amplifiers or disseminators
- Prosecute complaints of hate crime online with the same robust and proactive approach used with offline offending, whilst recognising that children may not appreciate the potential harm and seriousness of their communications
- Consider the potential impact on a targeted individual or community
- Treat online complaints as seriously as offline complaints and encourage all to be reported to the police.

As with all hate crime offences the police will be required to seek a charging decision from us.

Criminal investigation

We adopt a proactive approach and will seek further evidence where necessary from the police, to assist in the identification of evidence of hostility to support a sentence uplift application.

In some cases, we may advise the police to follow up other possible lines of enquiry. This may include looking at previous reported incidents involving the same victim, or the same suspect. It may also involve seeking information or evidence from other agencies such as Social Services, NHS, specialist support groups and community groups working with disabled people.

Charging decisions

When making charging decisions in cases of disability hate crime and other crimes against disabled people, as in all cases, prosecutors must apply the [Code for Crown Prosecutors](#).

Bail

If there is a risk of danger or threats or repeat offences, we will seek to protect victims and witnesses by applying to the court to remand the defendant in custody where appropriate, or by asking the court to impose conditions on bail where possible (for example, not to approach any named person or to keep away from a certain area).

Prosecution and sentencing

In prosecutions involving disability hate crime, we will build cases to enable us to present evidence of hostility based on disability where possible.

We will remind the court of its powers to increase the sentence under s.146. [The Sentencing Council Guidelines](#) provide an offence by offence basis on the way in which the s.146 uplift is determined. Where there is insufficient evidence of disability hostility for the purposes of s.146, but disability was

a factor in the case in some other way, we will present evidence of statutory and other aggravating factors that may increase the seriousness of the case and the sentence.

For example, in some cases the victim's disability is not a factor in the offender's decision to target him or her. However the impact of the crime on the victim is significant because of his or her disability. This evidence of harm caused to the victim will be brought to the court's attention as a factor that increases the seriousness of the offence.

We shall draw the court's attention to a [Victim Personal Statement](#) (VPS), which gives victims an opportunity to describe the effects of the crime upon them, express their concerns and indicate whether or not they require any support. Making a VPS is entirely optional. Victims are entitled to choose whether they would like to read their VPS aloud in court, whether they would like someone else to read it aloud or whether it should be played back, if recorded, for them. A [Community Impact Statement](#) may also be made to show the impact of offending on the wider community, including the disabled community.

We have a responsibility to assist the court in sentencing. Prosecutors will apply for appropriate additional or ancillary orders, including restraining orders and compensation for loss, injury or damage. We will always have regard to the victim's needs, including the question of their future protection.

The court has a duty to give reasons for, and explain the effect of, the sentence that it imposes.

Withdrawal

Sometimes a victim will ask the police not to proceed any further with the case or will ask to withdraw the complaint. We will consider the impact on the victim of not proceeding, including the risk of further harm to the victim, however this does not necessarily mean that the case will automatically be stopped. Applying the Code for Crown Prosecutors, we will prosecute all cases where there is sufficient evidence; it is in the public interest to do so and there are no factors that prevent us from doing so.

Case progress - information for victims

Information on how victims of crime are kept informed of case progress can be found in the [Code of Practice for Victims of Crime](#).

Victims' Right to Review

For qualifying decisions, if a victim requests a review of our decision not to bring proceedings, or to end all proceedings, we will look again at the decision to establish if it was correct. For information on how to ask for a review of a decision see [The Victims' Right to Review Guidance](#).

Support

It is important to note that the majority of disability hate crime prosecutions result in a guilty plea from defendants, reducing the need for victims and witnesses to give evidence in court. However where victims and witnesses are required to give evidence, we are committed to supporting them to give their best evidence.

Victims of hate crime are entitled to enhanced support services. Victims who are intimidated can be supported by applications to the court for [Special Measures](#). Special Measures are a series of provisions that help 'vulnerable' and 'intimidated' witnesses give their best evidence in court and help to relieve some of the stress associated with giving evidence. Special measures can include the use of screens in court so the victim or witness does not have to see the defendant, or giving evidence from a separate courtroom via a video link. These measures can help reduce stress and anxiety. Automatic reporting restrictions apply to persons under the age of 18 in cases in the Youth Court and to victims of rape and other serious sexual offences, irrespective of age. [Reporting restrictions](#) can also be applied for in other circumstances, if specific criteria are satisfied, to protect the identity of the victim.

We have published a specific [Support Guide for disabled victims and witnesses of crime](#), to accompany this Public Statement. The Support Guide sets out the range of support available to disabled victims of crime, from the CPS, the police and other criminal justice agencies. The aim of the Guide is to support victims and witnesses to give their best evidence.

More information can be found on the [Victims and Witnesses section of the CPS website](#).

Equality duty

We are a public authority for the purposes of equality legislation. This policy and our related legal guidance, and our new Support Guide form a key part of our efforts to meet our obligations under the Public Sector Equality Duty to eliminate unlawful discrimination, harassment and victimisation of disabled people and to promote equality and good relations.

Working with stakeholders

We work locally and nationally with the police and other partners who have a role in addressing hate crime, as well as with individuals, community groups and academics with experience and expertise in relation to hate crime. This ensures that we are able to continuously refresh our understanding of the nature of disability hate crime and can improve our response to it.

Monitoring and Implementation

We will monitor our performance through our Hate Crime Assurance Scheme, under the oversight of our hate crime governance structures. We will also receive feedback on our performance through our local and national panels that provide scrutiny of CPS cases, decisions and policies.

Our Hate Crime Annual Report provides transparent accountability in respect to our performance.

It should be noted that the CPS can only monitor the work of the CPS.

Hate Crime Webpage

We have created a [hate crime page on the CPS website](#), to provide more detail on the CPS approach to hate crime. The webpage includes the following information on disability hate crime and crimes against disabled people:

- The legal context of disability hate crime
- Witnesses' competence, reliability and credibility
- Behaviours and related offences, including "mate crime"
- What happens if a victim withdraws or no longer wishes to give evidence
- Sentencing
- Implementation of the CPS Policy

About the Crown Prosecution Service

The CPS is responsible for prosecuting most cases heard in the criminal courts in England and Wales. It is led by the Director of Public Prosecutions and acts independently on criminal cases investigated by the police and other agencies. The CPS is responsible for deciding the appropriate charge in more serious or complex cases and provides information, assistance and support to victims and witnesses.

[cps.gov.uk](https://www.cps.gov.uk)

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