

Written evidence submitted by CPS (ONL0016)

Hate crime legislation and online offending

Your report, and specifically recommendations 6, 7 and 8, discuss the current law in relation to disability hate crime. The current legal framework for prosecuting disability hate crime is provided by section 146 of the Criminal Justice Act (CJA) 2003. s.146 of the CJA 2003, gives courts the power to treat hostility towards disability as an aggravating factor increasing sentence.

In relation to online offending, there are a range of existing offences where technology is the enabler, for example fraud, sexual offences and stalking and harassment. Where these substantive offences cannot be used, there are also specific communications offences under s.127 Communications Act 2003 and s.1 Malicious Communications Act 1988. If any of these offences are motivated by hostility towards disability or demonstrate such hostility, the CPS will ask the court to increase the sentence under s.146 CJA 2003.

S.1 MCA 1988 and s.127 CA 2003 cover communications that are menacing, grossly offensive, indecent, obscene or false. The threshold for prosecuting these offences is set high to ensure it is compatible with Article 10 of the European Convention on Human Rights (ECHR) – the right to freedom of expression. Comments made must ‘go beyond what could conceivably be tolerable or acceptable in an open and diverse society which upholds and respects freedom of expression’.

The definition of the term ‘grossly offensive’ is set out in case law but is not always easy to interpret or apply. This is due to the complexity of the issue and the need to consider the changing context in which relevant incidents take place.

The high threshold at the evidential stage and the ECHR considerations apply to all cases including disability hate crimes committed online. However, the Code for Crown Prosecutors states that it is more likely that a prosecution is required if the offence was motivated by any form of prejudice against the victim’s actual or presumed disability, or if the suspect targeted or exploited the victim, or demonstrated hostility towards the victim, based on this characteristic.

The CPS does not have the power to legislate and can only prosecute offences in accordance with existing legislation. Extending or altering legislation is a matter for Parliament. As you are aware, the Government has commissioned the Law Commission to complete a wide-ranging review into hate crime to explore how to make current legislation more effective. This review follows on from the Law Commission’s 2014 report, which recommended parity in law across the five strands.

In addition, the Committee may be interested to read the report by the University of Sussex, [Hate Crime and the Legal Process](#), which looked at the challenges of prosecuting in this area and suggested possibilities for law reform.

Difficulties in prosecuting disability hate crime

Recommendation 10 within your report covers issues around 'hostility' and 'vulnerability'. Evidence given to the Home Affairs Select Committee inquiry into [hate crime and its violent consequences](#) by academics shows the difficulties of prosecuting disability hate crime and obtaining sentence uplifts, which is reflected in the data in our latest [Hate Crime Report](#). Academics stated that the word 'hostility' in hate crime legislation does not fit with the reality of a large portion of disability hate crime, where individuals are targeted because of a perceived vulnerability.

Some offenders are motivated by a perception that disabled people are 'vulnerable' or an 'easy target', rather than by hostility or hatred. This is an important distinction and the CPS is unable to apply for a statutory sentence uplift under s.146 CJA 2003 in these cases. 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, for example because of a perceived vulnerability, we will present evidence of statutory and other aggravating factors that may increase the seriousness of the case and the sentence.

Consultation and Inclusion

In recommendations 1 and 2, your Committee highlights the importance of ensuring that the voices of disabled people are at the heart of policy making. The CPS has a National Scrutiny Panel (NSP) on disability hate crime made up of experts and academics from disabled communities, including the National Autistic Society, Lemos and Crane, the Equality and Human Rights Commission, Dimensions UK, MIND; and Stop Hate UK. The NSP works with us to improve the prosecution process and our service to victims and witnesses.

The members of the disability hate crime NSP scrutinise the development of the CPS's revised public statement and legal guidance. . The resulting draft was subject to a full public consultation, which included Easy Read, audio and BSL versions, and the CPS conducted consultation events with representatives from disabled communities to ensure their input and feedback was included. As a direct result of the NSP's feedback, our policy now acknowledges the social model of disability as a valuable tool in removing barriers to justice; highlights that labelling disabled people as 'vulnerable' is unwelcome; and provides new guidance on the support available to disabled victims of crime. In recognition of the growth of disability hate crime perpetrated online, the new hate crime statement also includes a section on social media for the first time.

The CPS is currently working with the Foundation for People With Learning Disabilities (FPLD) and Dimensions UK to develop training for prosecutors based upon the social model of disability and aimed at removing barriers for disabled people and improving access to justice.

Recently FPLD, together with the Mental Health Foundation, launched their report, 'A Life without Fear?', and announced a new National Forum on hate crime impacting on learning disabled and

autistic people. The CPS is committed to supporting the work of the National Forum to provide a hub of knowledge that can advise those working to tackle hate crime.

In addition, the CPS is currently working with relevant community partners to develop policy and legal guidance on mental health, learning disabilities and autism. This work is wider than disability hate crime and covers both victims and defendants. The draft policy will be subject to a public consultation and the CPS will notify the Committee upon publication.

Support for victims and witnesses

At recommendation 9, your report covers the experience of victims and witnesses with learning disabilities and the need to recognise them as reliable witnesses.

In accordance with the social model of disability, the CPS' public statement on disability hate crime and other crimes against disabled people outlines our commitment to avoid incorrect judgements being made about disabled people's reliability or credibility and challenge others that do so. Such judgements may lead to an incorrect charging decision or could undermine the potential success of a prosecution.

The NSP on disability hate crime advised the CPS that disabled victims of crime can sometimes lack the confidence to report a crime or support a prosecution to completion because they can be unaware of the support options available to them. The CPS has therefore produced a [Support Guide for Disabled Victims and Witnesses of Crime](#). The support guide brings together information on support available to disabled victims of crime in one short and easily accessible place to increase confidence and ultimately reporting.

Disabled victims and witnesses may be eligible for Special Measures, which are a series of provisions that help 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.

Intermediaries can also be a source of support for those giving evidence. An intermediary facilitates communication between the police, prosecution and defence legal teams and/or the court and a witness to ensure that the communication process is as complete, coherent and accurate as possible. The intermediary is impartial and neutral and their duty is to the court.

The CPS [legal guidance on Special Measures](#) provides more detail on when the CPS can apply to the courts for these provisions.

The CPS' approach to disability hate crime has been praised by HM Crown Prosecution Service Inspectorate. The Inspectorate's [report](#) of a 2017-18 thematic inspection of how the CPS prosecutes disability hate crime highlights 'substantial progress' in this area, describing the quality

of CPS decision-making in disability hate crime cases as 'excellent', as well as identifying some areas for further improvement, which the CPS will continue to work towards.

The inspectorate noted there has been a sustained drive by the CPS to raise awareness of disability hate crime and improve the number of cases with recorded and announced sentence uplifts. The report also highlights the work of our hate crime coordinators for their engagement with the community via scrutiny panels, along with their efforts to make sure tougher sentences are passed where evidence of hostility is proven.

Hate Crime Education

At recommendation 12 you cover the need to educate young people in relation to disability hate crime and the effects of online bullying. As part of the cross-Government hate crime action plan, the CPS has committed to updating its hate crime resource packs for schools. These packs cover all strands including disability hate crime. The CPS will refresh the disability hate crime pack in consultation with community members and representatives of disabled people's organisations.

We would be very happy to receive any thoughts or observations from you on the previous version of the [disability hate crime schools pack](#) and any suggestions for how it could be updated.

November 2018