

EXECUTIVE
SUMMARY OF
LIVING IN A
DIFFERENT WORLD:
JOINT REVIEW
OF DISABILITY
HATE CRIME

MARCH 2013

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EXECUTIVE SUMMARY

This joint review considered how the police, Crown Prosecution Service (CPS) and probation trusts deal with the complex area known as disability hate crime. This has involved a consideration of not only the policies/procedures and actions of the three agencies, but also social attitudes and barriers that exist in relation to disabled people more generally. They are linked together.

Whilst disability hate crime is one of the five hate crime strands, (the others being race, religion, sexual orientation or transgender identity) there needs to be an acknowledgment that it has a unique position and requires additional status, simply to ensure that it is treated on an equal footing to the other strands. Disability is an area where social attitudes are still ill informed.

Key findings

Identification and reporting of disability hate crime

Whilst definitions and guidance have been issued, this review reveals that there is a lack of clarity and understanding as to what constitutes a disability hate crime and confusion between policy definitions and the statutory sentencing provision contained within section 146 of the Criminal Justice Act 2003 (s.146 CJA 2003). (This is the statutory provision that allows the court to regard the defendant's behaviour as an aggravating feature if (a) the offender has demonstrated hostility based on a disability or (b) the offence was motivated by hostility towards persons who have a disability - see paragraph 2.3.) This causes difficulties not only for practitioners in the identification and recording of disability hate crime but also for members of the public, including victims who are disabled. Improvements need to be made by the police and CPS in how they identify and record disability hate crime. All police, CPS and probation staff need to be fully aware of the statutory provision in s.146 CJA 2003 and there needs to be a common policy definition that is universally recognised and applied at 'ground level', that is simple to interpret.

The under reporting of disability hate crime remains a significant concern and needs to be addressed. Whilst a number of initiatives have been put in place, further steps need to be taken to improve the confidence of disabled people to report matters to the police. A variety of effective reporting mechanisms are required. Once reports are made to the police, practitioners need to ensure that any disabilities are identified (including hidden impairments). Victims must then be supported sufficiently, their evidence given in the most effective manner and kept fully informed of what is happening in their case.

Whilst community engagement projects are currently undertaken by the police and CPS, these need to be jointly co-ordinated, and have specific aims. The immediate priority should be increasing reporting of disability hate crime. Probation trusts also need to increase their awareness of disability issues through engagement with disabled members of our community.

The police investigation and prosecution process

The police are failing to fully consider disability hate crime issues in day to day investigative work. This review reveals examples of poor understanding of different types of disabilities by officers and in addition there is frequently a failure to examine the offender's motivation for committing offences. As a consequence, insufficient evidence is obtained to support the requirement set out for the court to regard the defendant's actions as an aggravating feature under s.146 CJA 2003.

There is also a failure by the police to identify disability hate crimes to the CPS when seeking charging advice and a lack of provision of appropriate information to the CPS by the police.

Whilst CPS lawyers demonstrated the ability to identify disability hate crimes on occasion, they did not necessarily ensure that the police provided all of the required evidence and did not always analyse the disability hate crime issue sufficiently. There was also a lack of clarity displayed by CPS lawyers as to what essential information should be included within the initial charging advice.

The CPS needs to ensure that disability hate crime cases are correctly identified on its case management system. The number of administrative errors needs to be reduced substantially and lawyers need to identify cases against clear and understandable criteria. A process also needs to be in place to ensure that on every relevant file a decision is made whether the prosecutor will put forward s.146 CJA 2003 to the court. Clear records need to be maintained of the results of those cases where s.146 CJA 2003 is raised. The CPS needs to improve its performance in relation to the quality of case preparation to ensure that disability hate crimes are effectively prosecuted.

At court and post-conviction

Whilst inspectors witnessed examples of CPS lawyers raising s.146 CJA 2003 at court, it was of concern that all of the members of the judiciary who were interviewed as part of the review were of the view that they were not being invited to consider s.146 CJA 2003 on anything but a very exceptional basis. It does not appear that s.146 CJA 2003 has been embedded within the sentencing process.

The quality of CPS and police information supplied to probation trusts was limited and insufficient for the preparation of a pre-sentence report and there was an over reliance on information provided by the offender, who minimised the seriousness of the offence. This lack of provision of key information also impacted on probation trust offender managers carrying out the role effectively and resulted in a culture of accepting the offender's account, rather than placing the focus on the victim.

Training and leadership

As the Equality and Human Rights Commission (EHRC) report *Hidden in plain sight - Inquiry into disability-related harassment* (the EHRC report) states, 'many people can simply feel uncomfortable about disability' and the practitioners who are dealing with these cases will have widely varying levels of experience of interaction with disabled people. This is a difficulty that is not generally present when dealing with other crimes. There needs to be put in place an effective and comprehensive training programme for practitioners.

Whilst progress has been made in relation to disability hate crime, the leaders of the police, CPS and probation trusts need to regard it as a key strategic priority. The relatively low numbers of disability hate crimes currently recorded should not be allowed to be used to devalue the importance of these types of crimes. There are reasons why the current figures are so low and many relate to the inability of the criminal justice system to combat prevalent social attitudes and to deal effectively with cases that can have inherent complexities. Given the demands on staff, without determination on the part of the leadership to achieve real change, there is unlikely to be any significant progress.

Conclusion, recommendations and good practice

Conclusion

Disability hate crime is a complex area and has a number of unique features. In many ways it is the hate crime that has been left behind.

The Government report *Challenge it, Report it, Stop it - The Government's Plan to Tackle Hate Crime* (March 2012) highlights the importance of dealing with hate crime appropriately, not only for the individuals and their families, but also because of the negative impact these types of crimes have on communities in relation to cohesion and integration. It also sets an agenda for the criminal justice agencies to improve their performance in relation to all hate crimes and this presents a unique opportunity for the police, CPS and probation trusts to contribute to tackling the underlying prejudice and ignorance that drives hate crime.

A new impetus that focuses on (a) improving awareness of what disability hate crime is, (b) increasing the reporting of disability hate crime and (c) embedding disability hate crime processes within the routine working practices of police, CPS and probation trust staff is required.

Recommendations

Joint

The following is a priority and should be achieved within three months of publication of this review:

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- 1 The police, CPS and probation trusts should adopt and publish a single, clear and uncomplicated definition of a disability hate crime that is communicated effectively to the public and staff (paragraph 2.7).
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The following should be considered within six months of publication of this review:

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- 2 The police, CPS and probation trusts, when developing their strategic aims, should consider disability hate crime and the need for its reporting to be increased (paragraph 3.7).
 - 3 The police, CPS and probation trusts should consider how their front-line staff participate in effective disability hate crime training to improve (as appropriate) investigative, prosecution and rehabilitation skills (paragraph 8.8).
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Police

The following should be considered within six months of publication of this review:

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- 4 It is in the interest of each police force to review the different methods by which information is received from the public to ensure that every opportunity is being taken to identify victims of disability hate crime (paragraph 2.17).
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CPS

The following should be considered within three months of publication of this review:

5 Regular checks should be put in place to ensure the accuracy of all CPS data relating to disability hate crime (paragraph 2.31).

6 Advocates should refer to section 146 of the Criminal Justice Act 2003 as part of the sentencing process (where appropriate) and the application/outcome should be recorded (paragraph 2.31).

Probation trusts

The following should be considered within six months of publication of this review:

7 Disability hate crime must have a higher priority within the work of probation trusts. They should put in place procedures to ensure that offender managers preparing pre-sentence reports have all necessary CPS case papers available to them and ensure that plans, where relevant, always contain (a) objectives to address victim safety/victim awareness and (b) manage the risk posed by the offender to the victim or other potential victims (paragraph 7.6).

Good practice

1 Cumbria Constabulary had placed student officers who were undertaking their Initial Police Learning and Development Programme with local disabled groups for their community placement. This was considered by the police and the groups to be highly successful. The groups felt it provided their members with the opportunity to meet police officers and build confidence through being able to speak to and approach them. They also felt it provided police officers with an insight into different types of disability which in turn provided them with the confidence to communicate and engage with disabled people (paragraph 3.3).

2 Cumbria Constabulary also adopts a process whereby it monitors and directs contact with specific community groups. All visits by officers and other staff are recorded and at regular intervals the overall contact is reviewed. Where a particular grouping or group is assessed as requiring more contact, direction is given for officers and staff to focus on that area and this is subsequently monitored. This facility allows the force to focus attention on particular groups (paragraph 3.3).

3 The West Midlands Police used their Disability Hate Crime Reference Group to dynamically promote the use of third party reporting. A large number of centres used by disabled people were aware of the facility and how to use it. In addition negotiations with the Coventry and Warwickshire Health Trust resulted in each member of staff receiving a briefing document about disability hate crime (paragraph 3.7).

- 4 CPS North West called an extraordinary Local Scrutiny and Involvement Panel to examine a disability hate crime case that had received a considerable amount of adverse media attention. This facilitated direct communication with disability groups and demonstrates an open and transparent approach by the CPS (paragraph 3.11).

 - 5 CPS North West had a specific procedure for monitoring disability hate crimes post-charge. The CPS hate crime co-ordinator obtained a list of all the cases flagged as disability hate crimes on the case management system (CMS) each quarter and then highlighted these to the local disability hate crime co-ordinators to conduct a quality assurance check on the files. This system has the advantage that it acts as an assurance that the files have been correctly identified and allows them to be reviewed by lawyers who have specific skills. Checks were also made on other categories of flagged files and media reports to see if any disability hate crimes had been misidentified (paragraph 8.16).

 - 6 The CPS North West area hate crime co-ordinator worked closely with CPS equality diversity and community engagement managers to establish good links with disabled community groups and this resulted in a proactive consideration of the issue of under reporting. For example, participating in a project involving the University of Central Lancashire and the Cumbria Equality and Diversity Partnership, to facilitate a study of disability hate crime within Cumbria (paragraph 8.19).
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