

DISABILITY HATE CRIME: BRIEFING NOTE FOR FRONTLINE STAFF

This briefing was produced in support of a series of workshops in 2012 and 2013 to raise awareness and understanding of disability hate crime and to encourage increased reporting of incidents. It is aimed primarily at frontline staff or contacts who might be the first to hear about an incident. Workshop delegates contributed to the briefing. It is not a definitive guide, but aims to point in the right direction.

Disability hate crime is under-reported. Reasons for this can include: fear of retaliation, of not being believed, a lack of confidence in the ability of agencies to understand and be supportive, resignation as to the way things are and a lack of awareness of just what a disability hate crime is.

1 What is a disability hate crime?

The term “hate crime” can be used to describe a range of criminal behaviour such as: abuse, harassment, assault, damage to property. It can include behaviour described as harassment, bullying, anti-social behaviour or hate crime. For the police and Crown Prosecution Service, it means:

“any criminal offence 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.”¹

When speaking to a client, be clear about this definition:

- any offence which is **perceived** to be motivated by hostility; do you or your client think that disability might have played any part in the incident(s) complained of?
- “the victim or **any other person**”: someone who sees the incident, hears about it from the victim or another witness, reads about it in a report e.g. a police officer, lawyer, housing officer, witness, doctor, carer etc.
- the hostility is based on a person’s disability or **perceived disability**. The offender may assume something about the victim that is quite wrong; it doesn’t matter because the hostility is still there, based on disability.

¹ The police and Crown Prosecution Service (CPS) share this definition.

The Crown Prosecution Service is the Government Department responsible for prosecuting criminal cases investigated by the police and other investigating bodies in England and Wales.

As the principal prosecuting authority in England and Wales, we are responsible for:

- advising the police on cases for possible prosecution;
- reviewing cases submitted by the police;
- determining any charges in more serious or complex cases;
- preparing cases for court;
- presenting cases at court.

2 What do we mean by hostility?

There is no legal definition of hostility so we use the everyday understanding of the word which includes: **ill-will, spite, contempt, prejudice, unfriendliness, antagonism, resentment and dislike**. Hostility can take the form of abusive language, but offenders can use deception to “befriend” individuals and then exploit them as in “mate crime”. An offender’s behaviour can show complete contempt whilst they are still smiling. Ask yourself: but for the disability, would this have happened?

Disabled people² can sometimes be described as vulnerable. In the context of crime, this emphasis tends to represent disabled people as weak, easy targets or requiring protection. It is really important to remember that a disabled person is not vulnerable per se, it is the situation that they find themselves in, just like anyone else. Our concern should be for the victim’s right to justice and tackling the offender’s behaviour. Think about early attitudes towards the victims of domestic violence where there was at times a tendency to blame the victim, not tackle the problem.

For more detail about hostility and other information see links below.³

3 Why should a hate crime be reported quickly?

Most crimes will have a time limit for prosecution. For disability hate crime, it is also important that the police have time to investigate fully and to gather all relevant evidence of hostility. If evidence of hostility is found, it can be presented to the court so that on conviction, the court can be asked to pass a longer or tougher sentence as a result. The other reason is that if Special Measures (see 6 below) are needed or if the individual

² The phrase “disabled people” is generally used to reflect the social model of disability. This model (as opposed to the medical model of disability which focuses on the impairment) recognises that a group of people has been viewed in such a way that their rights and opportunities are limited by society and its choices rather than any inherent characteristic of them as people e.g. where a library is fully accessible by wheelchair, the user is not “disabled” from using the building.

The social model distinguishes between impairment and disability. Impairments are certain functional limitations of the mind, body or senses. Disability is the disadvantage or restriction of activity caused by a society which takes little or no account of people who have impairments and thus excludes them from mainstream activity.

The implication is that the removal of attitudinal, physical and institutional barriers will improve the lives of disabled people, giving them the same opportunities as others on an equitable basis.

Some people prefer to use the more American phrase “people with disabilities”. Currently the CPS uses the term “disabled people”.

³ See CPS guidance: <http://www.cps.gov.uk/publications/prosecution/disability.html>

Disability Rights UK provides lots of really useful information and advice at: <http://www.disabilityrightsuk.org/how-we-can-help/independent-living/stop-disability-hate-crime>

victim needs other specific support, it is better to have more time to arrange and prepare to make sure everything goes well at court.

4 What evidence do we need to look out for?

The evidence might include words or actions at the time of the offence, or just before or just after it happened. Words might be abusive and action might, for example, target a mobility aid. It might be that the offender has done this kind of thing before or has expressed prejudice towards disabled people. It can be helpful for your client to keep a log or a diary of incidents, taking photos of any damage.

By examining its casework, the CPS has identified behaviour that regularly features in disability hate crime and which can help clarify motivation or hostility:

- There may have been previous incidents of a similar nature
- Opportunistic offences become systematic
- Perpetrators are often “friends”, carers, acquaintances, neighbours etc
- Incidents escalate in severity and frequency
- Multiple perpetrators can be involved
- False accusations of the victim being a paedophile or a “grass”
- Sustained attacks and excessive violence
- Cruelty, humiliation and degrading treatment often related to the nature of the disability e.g. blindfolding someone who is profoundly deaf, throwing away a walking support, tipping out of a wheelchair.

Gathering all relevant information is very important because for the CPS to prosecute there will need to be enough evidence to offer a realistic chance of conviction. If the offence was motivated by hostility, it will almost always be in the public interest to prosecute.

5 What support is available to victims and witnesses?

It is important that the police are aware of the needs of the victim as early as possible. If for instance a Registered Intermediary is needed to carry out the Achieving Best Evidence interview, the police will need to tell the CPS who will in turn apply to the Court. As much time as is possible will be needed for both victim and intermediary to develop a working relationship.

The Witness Care Unit (WCU) is run jointly by the police and CPS and will provide core services to all witnesses. The victims of hate crime may be eligible for an enhanced service depending on the circumstances. There may also be specialised services in your areas that the WCU can refer your client on to.

Victim Support provides a range of support to victims and witnesses, including the Witness Service, which is available in all criminal courts. The service is able to offer where possible, an opportunity to view the court room prior to the case, support with applying for Special Measures and emotional support on the day.

www.victimsupport.org.uk/

There may be a third party reporting centre in your area. These are locations where individuals can report a hate crime without the need to go directly to a police station. The organisation Stop Hate UK also operates reporting services in different parts of the country see: www.stophateuk.org/where and now operates a free-phone service concerning learning disability hate crime.

6 What support can the Court make available?

Special Measures can be granted by the Court to support vulnerable and intimidated witnesses to help them give their best evidence. These include:

- Screens in the courtroom
- Live links allowing witnesses to give evidence away from the courtroom
- Evidence in “private” when the public gallery can be cleared in certain cases
- Removal of wigs and gowns by judges & barristers
- Visually recorded statements
- Intermediaries to help witnesses with communication difficulties
- Communication aids
- Reporting restrictions

Receiving this support is not automatic. Any victim or witness will need to meet the statutory criteria for eligibility before an application is made to the court. An application will set out which special measure(s) is required, and how it will assist a witness in giving their best evidence. The court will then decide whether to grant the application.

Vulnerable witnesses:

- Under 18 at time of hearing
- Suffers from a mental disorder within meaning of Mental Health Act 1983
- Has significant impairment of intelligence or social functioning
- Has a physical disability or disorder

Intimidated witnesses:

- Anyone whose evidence is likely to be diminished due to fear or distress in connection with giving evidence

Vulnerable witnesses may apply for a Registered Intermediary to facilitate communication between the police, the court and prosecution and/or defence teams.

The CPS will apply to the Court with information provided to the police by the victim or witness. Victim Support can also help support these applications

Even if your client is not eligible for these particular measures, it is always worth asking, as the Court has the discretion to allow for friends to attend in order to provide moral support for instance.

The Ministry of Justice has published a short guide to special measures: <http://www.justice.gov.uk/downloads/victims-and-witnesses/vulnerable-witnesses/special-measures-factsheet.pdf>

The Royal College of Speech and Language Therapists has developed short FAQs on Registered Intermediaries, see:
http://www.rcslt.org/about/docs/rcslt_registered_intermediary_faqs_augst_2012

7 How can you best support a client?

- Be aware of what is meant by a disability hate crime, how it can happen and what to look for.
- Be aware how disability hate crime might be seen within some anti-social behaviour and safeguarding cases
- Encourage your client to report to the police if they have not done so already
- Encourage your client to take someone with them to help report if necessary.
- Highlight the element of hostility to the police and make sure it is recorded as a disability hate crime
- Make sure the police are aware of any specific needs.
- Be prepared to chase a response if your client doesn't get any updates.

Your client may mention something that's happened to them or refer to something in passing that's happened on the way to meet you. If your client seems upset by what has happened or gives you any cause for concern, be prepared to ask a few questions; you might want to consider the following:

- Try to establish what happened, who was involved, where and when it happened and whether this kind of thing has happened before
- Ask about how it has made your client feel.
- Does your client know the person/people involved?
- And if so, for how long?
- Does your client see the person/people involved as friends?
- Ask your client why this might have happened
- Whether it might have been about your client's disability
- Did your client tell the person/people to stop?
- Ask whether your client has told anyone else and
- Whether they want to talk to someone about what happened

Take the time to consider these questions with your client as you might provide the best opportunity he or she might have for being listening to. People's reluctance to report can be helped with a sympathetic hearing, the right information and effective support.

Consider with your client the option of telling the police or a local hate crime/disabled person's organisation or reporting online at True Vision.

True Vision is the website developed by the Association of Chief Police Officers to enable people to report hate crime directly to their local force through one website. The site also contains a lot of practical information and updates. www.report-it.org.uk/

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