



Joint Inspection of the Handling of Cases Involving Disability Hate Crime

October 2018



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Contents

1	Summary	1
	Strengths.....	3
	Issues to address.....	3
2	Context	5
3	Methodology	7
4	Applying the definition	9
	Clarifying decision-making.....	10
	Police charging of cases.....	12
5	Applying Section 146 of the Criminal Justice Act 2003	15
	Using the prosecutor app.....	18
	Clarifying sentence and uplift.....	19
	Section 146 letters.....	19
6	The quality of the CPS and police charging decision	21
	CPS charging decisions.....	21
	Police investigations, charging decisions and file quality.....	24
7	Victims and witnesses	27
	Victim care.....	30
8	Area Hate Crime Co-ordinators	33
9	Inclusion and Community Engagement Managers	35
	Annex	37
A	Annex A	37
	The composition of the HMCPSI file sample.....	37
	Findings from the file examination.....	37

1 Summary

1.1 In 2013, Her Majesty's Crown Prosecution Service Inspectorate (HMCPSI) and Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS)¹ published a joint report of the police and Crown Prosecution Service (CPS) response to disability hate crime. We made a series of recommendations aimed at improving practice to better protect victims and prevent offending.

1.2 A 2015 joint follow-up report on the progress made since 2013 found that real change had not fully materialised, even though the CPS had taken a number of actions – including producing the CPS Disability Hate Crime Ten-Point Action Plan (published in October 2014), followed by the introduction of a Hate Crime Assurance scheme in January 2015. As a result of the 2015 report, the then Chief Executive of the CPS assumed personal responsibility for driving improvements for outcomes and for handling disability hate crime cases in the CPS.

1.3 The findings from this joint inspection shows that the CPS focus has been maintained and there has been substantial progress in most respects. There has been welcome improvement in casework overall, but more needs to be done by prosecutors and police in handling disability hate crime cases.

1.4 At the start of this process, we found that all police force systems were able to record that a case involved elements of hate, using hate crime flags. However, these flags were not always applied to relevant cases. This means that some victims may not receive the specialist support to which they are entitled and that forces do not have accurate data on the extent or patterns of offending in their Areas.

1.5 Overall, more than half of the police files examined were assessed as requiring improvement or as inadequate. In particular, improvements are required at the investigation stage of disability hate crime cases, including in relation to timeliness, the quality of supervision and the creation of investigation plans. The police also sometimes inappropriately used out-of-court disposals in disability hate crime cases.

1.6 In relation to victim care, police officers attending the initial incident only carried out risk assessments or produced risk management plans in about half of the cases sampled. This contrasted with the findings for compliance with the Victims' Code of practice where, overall, the police performed well. Police referral to victim support services was also a more positive picture, with some police forces able to demonstrate effective referrals for all cases sampled.

¹ Prior to 19 July 2017 HMICFRS was Her Majesty's Inspectorate of Constabulary (HMIC).

1.7 Some of these findings reflect those of the recent HM Inspectorate of Constabulary and Fire and Rescue Services (HMICFRS) thematic report on the police response to all kinds of hate crime², which suggests the issues may be ingrained. To make improvements, efforts need to be stepped up.

1.8 At the point of a case reaching the CPS, we found some issues around the application of the disability hate crime definition, with prosecutors expressing different views about when it should be used. This was a finding in the 2015 follow-up report and our findings are that this still remains a problem.

1.9 In 2015, we described as ‘unacceptably low’ the number of cases receiving an ‘uplift’ on sentence because of the disability hate crime element, as recorded on the CPS case management system. Since then, there has been a sustained drive by the CPS to raise awareness of, and identify, these cases to ensure they are recorded on the system. In the 12 months to December 2017, the uplift was applied in 68.6% of cases where an application was made and performance continues to improve.

1.10 Area hate crime co-ordinators now carry out effective quality assurance checks of disability hate crime cases and inspectors were impressed by the use of feedback to staff, particularly on the use of Section 146 of the Criminal Justice Act 2003 (s146). Elements identified as good practice in our 2015 report are now embedded.

1.11 The CPS legal guidance on disability hate crimes is clear, although prosecutors do not always comply with what is required, particularly in the quality of their reviews. At the initial stage, when considering the Code for Crown Prosecutors, CPS casework decision-making is excellent. There was only one case examined in which the Code was not applied correctly, and that was in respect of a victim who was not disabled. There have also been substantial improvements in other aspects of casework relating to the quality of the charging decision, and these have greatly improved since the 2015 joint inspection follow-up. Nevertheless, more could be done to improve the quality of charging decisions, as inspectors rated 32.5% as good or excellent and 67.5% as fair or poor.

1.12 In conclusion, the findings from this joint inspection show there has been a significant and welcome improvement in some aspects of casework.

1.13 Whilst these are welcome improvements, we found that the police and prosecutors were still not considering sufficiently the needs of the victims, particularly with regard to whether they needed reasonable adjustments to give evidence effectively. Whilst the quality of the information received from the police could be a contributory factor, prosecutors need to be better at considering this important aspect of victim care at the charging stage or later review.

Strengths

We identified the following strengths:

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- 1 The correct application of the Code for Crown Prosecutors in disability hate crime cases.
 - 2 The quality assurance work carried out by the CPS Area Hate Crime Co-ordinators.
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Issues to address

The following issues need to be addressed by the CPS:

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- 1 The prosecutor at the charging stage, or initial review in police-charged cases, should comply with the CPS guidance and set out clearly why the case should be flagged on the CPS case management system as a disability hate crime.
 - 2 The CPS, in conjunction with the National Police Chiefs' Council, should revise the police section of the MG3 record of charging decision so it can be flagged clearly to identify cases where, in accordance with the definition, the police consider there to be a hate crime.
 - 3 Prosecutors should ensure that, in every case for which an s146 uplift is to be applied, they set out clearly at the charging stage the evidence or information that supports the application.
 - 4 The CPS should modify the prosecutor app to allow the prosecutor at court to check the relevant box on the case management system which shows that the s146 uplift has been applied by the court.
 - 5 The CPS should negotiate with Her Majesty's Courts and Tribunal Service to ensure that the court sentencing record distinguishes the basic and uplift elements of the offence.
 - 6 Prosecutors should comply with the requirement to send an s146 letter to the court and the defence and compliance should be monitored by Area Hate Crime Co-ordinators.
 - 7 The CPS and the National Police Chiefs' Council leads for out-of-court disposals should review the current guidance for hate crime out-of-court disposals and should revise this guidance to make it clear when these are appropriate for hate crime.
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The following issues need to be addressed by the police:

1 Chief constables should ensure that the system used to transfer information to the CPS regarding the request for charging advice clearly identifies cases where, in accordance with the definition, the police consider a case to be a hate crime.

2 Chief constables should ensure that all cases involving disability hate crime are accurately flagged in accordance with the Home Office counting rules for recorded crime.

3 Chief constables should ensure that there is effective supervision of all disability hate crime cases, to assure themselves that investigations and subsequent case file submissions to the CPS have been completed to an appropriate standard.

4 Chief constables should ensure that victims are offered an opportunity to make personal statements in all relevant cases, and that, when appropriate, these statements are taken and provided to the CPS.

2 Context

2.1 Her Majesty’s Crown Prosecution Service Inspectorate (HMCPIS) and Her Majesty’s Inspectorate of Constabulary and Fire and Rescue Services (HMICFRS) have carried out two previous joint inspections of the handling of disability hate crime casework. The first, *Living in a Different World*³, was published in March 2013⁴ and made a number of recommendations to improve how disability hate crime (DHC) cases were handled.

2.2 The findings of a follow-up inspection were published in May 2015⁵. The follow-up report made no further recommendations as it was designed to assess progress from the 2013 inspection. It was, however, critical of the lack of progress across the agencies in implementing improvements the initial report identified as needed.

2.3 It is against this background that this joint inspection looked at the handling of DHC cases by the Crown Prosecution Service (CPS) and police forces. This was part of a modular approach agreed by the chief inspectors of HMCPIS and HMICFRS, in which HMICFRS is undertaking a wider piece of work focusing on the effectiveness of the initial police response to all hate crime strands. This report should, therefore, be read in conjunction with report published by HMICFRS earlier in 2018⁶.

2.4 Although the focus of this inspection is the handling of casework, application of the National Police Chiefs’ Council’s definition of a DHC (which has been adopted by the CPS) is integral to how cases are handled. We therefore discuss our findings in respect of how this definition is applied.

2.5 We also considered how the CPS engages with relevant community groups to improve its awareness of the issues affecting disabled people and the quality of its casework.

3 Her Majesty’s Inspectorate of Probation also contributed to these two reports. At the time of those inspections, HMICFRS had not taken on statutory responsibility for the inspection of fire and rescue services and was known as Her Majesty’s Inspectorate of Constabulary.

4 www.justiceinspectorates.gov.uk/hmicfrs/publications/living-in-a-different-world-joint-review-of-disability-hate-crime/

5 www.justiceinspectorates.gov.uk/hmicfrs/publications/joint-review-of-disability-hate-crime-follow-up/

6 *Understanding the difference: the initial police response to hate crime*; HMICFRS; July 2018. www.justiceinspectorates.gov.uk/hmicfrs/publications/understanding-the-difference-the-initial-police-response-to-hate-crime/

2.6 In 2016-17, 5,558 DHCs were recorded by the police. This was a 53% increase from the previous year (when there were 3,629 DHCs recorded by the police). This was the largest percentage increase of recording of hate crime across the five different strands⁷. However we have some concern that this figure may be under recorded as we found that the DHC flag had only been used in 63 of the 90 cases we examined. We discuss at section 4 below, our concerns regarding the accuracy of how cases are flagged by the police.

2.7 In 2016-17, there were only 1,009 completed prosecutions for cases flagged as DHCs. However, the numbers are small when compared with other types of hate crime cases.

2.8 In the 12 months to December 2017, there was a successful outcome (either by way of a guilty plea or conviction after trial) in 84.6% of DHC cases. This compares favourably with 2016-17, when the successful outcome rate was 79.3%. Across the CPS Areas, performance was variable, ranging from 92.2% to 78.1%. However, the low volume of DHC cases recorded in some Areas means that there can be significant fluctuations in performance from quarter to quarter.

2.9 Performance has fluctuated, but this is the best national performance since 2013-14, when the successful outcome rate was 81.9%.

⁷ The other strands are race, religion, sexual orientation and transgender.

3 Methodology

3.1 HMCPSI inspectors examined 136 magistrates' courts and Crown Court files finalised between April and September 2017. They also examined a further 41 cases where the CPS had directed no further action at the charging stage. The files were selected from each of the 14 geographical CPS Areas and CPS Direct, which provides charging advice.

3.2 HMICFRS inspectors examined the counterpart police file in 42 of the cases examined by HMCPSI. These were drawn from six police forces: Cheshire, Devon and Cornwall, Hampshire and the Isle of Wight, the Metropolitan Police, Nottinghamshire, and South Wales. Additionally, they examined eight cases in each force (48 in total) where the police had not sent the case to the CPS. In these cases, the police may have taken some action, such as issuing a caution or a community resolution.

3.3 We refer at the relevant parts of the report to the key findings from these file examinations. The full findings, together with a detailed breakdown of the file sample, can be found in the annexes.

3.4 HMCPSI's fieldwork took place in January and February 2018. We visited six CPS Areas: Cymru-Wales, East Midlands, London South, Mersey-Cheshire, South West and Wessex. We spoke with prosecutors who handled DHC casework, Area Hate Crime Co-ordinators and Inclusion and Community Engagement Managers. We also spoke with prosecutors, the Hate Crime Co-ordinator in CPS Direct and national CPS policy leads.

3.5 HMICFRS inspectors conducted fieldwork in February and March 2018, consisting of an examination of DHC case files and background information relevant to the case held by the force.

3.6 We also spoke with national CPS policy leads, the Equality and Human Rights Commission and the Disability Hate Crime Network.

3.7 A questionnaire was sent to local community groups in each of the CPS Areas visited. The findings from their responses are included in the report.

3.8 We are grateful to everyone who gave their time, either by providing documents or speaking with us during the course of the inspection.



4 Applying the definition

4.1 The March 2013 report called for there to be a clear and simple definition of disability hate crime. After consideration, the Association of Chief Police Officers⁸ and the CPS agreed that they would keep the existing definition:

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

4.2 This is a cross-Government definition, formulated following the findings of the Macpherson inquiry into the death of Stephen Lawrence⁹.

4.3 It is a Home Office requirement¹⁰ that the police flag on their crime recording systems all cases of DHC that meet this definition.

4.4 In the files selected by HMCPSI that had a CPS DHC flag, the police records showed the DHC flag had only been used in 63 of the 90 cases. This indicates that either the police are failing to flag the cases correctly and/or the CPS is assessing a case as relating to DHC when the police are not.

4.5 HMICFRS also found problems with the police flagging of hate crime cases in their hate crime inspection, published earlier in 2018. Their report contains specific recommendations for improvement.

4.6 There is also an expectation that the police will identify hate crime cases to the CPS when seeking charging advice or supplying case papers¹¹. Very few police forces have the IT capability to be able to flag directly onto the CPS case management system when the file is initially submitted. This, therefore, has to be done manually by the CPS. The police should identify that the case relates to hate crime when charging advice is sought, to enable this to be done efficiently.

4.7 Police IT systems automatically place data into form MG3, which details case information for the CPS when the police are seeking charging decisions. The police also provide a case summary (MG5) or sensitive information form (MG6), which may also contain this information. However, the police IT systems do not currently allow officers to flag cases as relating to hate crime, or in this case, disability hate crime specifically. Therefore, it is not always clear to prosecutors on considering a case sent to them by

8 This has now been superseded by the National Police Chiefs' Council

9 www.gov.uk/government/publications/the-stephen-lawrence-inquiry

10 The Home Office counting rules for recorded crime help to ensure that crimes are recorded consistently and accurately by all police forces in England and Wales. www.gov.uk/government/publications/counting-rules-for-recorded-crime

11 College of Policing Manual of Guidance; ACPO London; 2011. 2.2.3

police that the case relates to hate crime.

4.8 The feedback from the prosecutors with whom we spoke indicates that police performance is variable with regard to how accurately they identify a case as having a DHC element. Inspectors consider that this is likely to be a similar position across all strands of hate crime. In our file sample, we found that the police had highlighted on either the MG3 or MG5 (police summary) that the case involved a DHC in 83 of the 177 cases (46.9%).

Issue to address

Chief constables should ensure that the system used to transfer information to the CPS regarding the request for charging advice clearly identifies cases where, in accordance with the definition, the police consider a case to be a hate crime.

Clarifying decision-making

4.9 Any offence that meets the agreed definition should also be flagged on the CPS case management system as a disability hate crime. The requirement is for the case to be flagged whether or not the police have already identified the DHC element and alerted the CPS to it.

4.10 The definition is subjective and the first person within the CPS who perceives the offence to be a DHC may be the prosecutor initially reviewing the case. As discussed, this can lead to an inconsistent approach to some aspects of the casework process. Some of the CPS Area Hate Crime Co-ordinators agreed that the subjective element of the definition could cause confusion, which is also an issue faced by police officers when they consider whether a case should be flagged.

4.11 The definition does not only encompass all victims who have a disability, but goes much wider. It includes cases where, using objective evidence, the prosecution considers that an application under s146 of the Criminal Justice Act 2003¹² can be made. This is the sentence uplift provision we discuss in detail later. The rationale behind this wider definition is to allow for consideration of all potentially relevant cases and to encourage public confidence in reporting.

¹² The prosecution can request that, due to the hostility of the offence being based on hate, the court increase the sentence that would have been given if the offence had not been motivated by hate. This is commonly referred to as the 'uplift'.

4.12 Discussions of factual scenarios in prosecutor focus groups confirmed that individual prosecutors could reach different conclusions about whether a scenario constituted a DHC or not. CPS Inclusion and Community Engagement Managers also said they had to explain to community groups why there were more cases flagged as DHCs on the CPS system than there were s146 applications. Some of those with whom we spoke considered that the perception of the victim or the circumstances of the case meant that the case should be flagged whether the prosecutor thought this was reasonable or not. Others thought the flag should be restricted to cases where there was a realistic prospect of an s146 uplift application being successful. The view of CPS Headquarters is that flagging can alert both prosecutors and the police to the need to try to secure sufficient evidence to show the hate crime element.

4.13 From our file sample selection, we discounted 25 cases that had been flagged as DHC on the system. On these files there was nothing to say why the prosecutor believed it to be a DHC, nor did the inspector examining the file perceive it to be a DHC. These cases accounted for 14% of those selected.

4.14 The difficulties prosecutors have in applying the definition is demonstrated by some of the review notes on the files examined. For example:

*Offence 3 – Can we prove S was a trespasser and stole:
It is a difficult offence. V has learning difficulties and it is his mother that has provided a statement. Although V is vulnerable (I have flagged it as a disability hate crime – there is no suggestion that the burglary was committed as a hostile act based on that disability.*

And

I am not satisfied that we can prove that the offence was either motivated by hostility or that the suspect has demonstrated hostility based on disability because although the victims are disabled and very vulnerable and he is alleged to have abused them both verbally and physically it is not clear that he has demonstrated hostility to them based on their disabilities or that his actions are motivated by hostility to disabled people. I have though flagged it for monitoring as a disability hate crime and also crime against older person.

4.15 One case examined had been reviewed by four different prosecutors, two of whom considered it a DHC and two did not. This shows that while the application of the current definition is necessarily both subjective and broad in scope, it could benefit from some further consideration to help clarify the position.

4.16 In our file sample, we found that in 48 of the 157 relevant cases (30.6%) the prosecutor had set out clearly on the MG3 why they considered it was a DHC. In the others, there was an insufficient record of the prosecutor’s reasoning. For example, a case had been flagged as a DHC but there was nothing in the review to indicate why, nor was there consideration of s146, or whether special measures¹³ or reasonable adjustments were required. We consider specifically the review endorsement where s146 applies in later chapters.

4.17 There were also cases in our file sample where the prosecutor’s perception of whether the case had a DHC element, regardless of whether or not s146 was triggered, occurred some way into the casework process. In some cases this was as a result of further review by different prosecutors and may be after it had been sent to the Crown Court.

4.18 The CPS guidance to prosecutors sets out clearly the review requirement, but our findings show that this is not being followed consistently.

Issue to address

The prosecutor at the charging stage, or initial review in police-charged cases, should comply with the CPS guidance and set out clearly why the case should be flagged on the CPS case management system as a disability hate crime.

Police charging of cases

4.19 The subjective element of the definition can also lead to inconsistencies in which cases can be charged by the police without reference to the CPS. *Charging (The Director’s Guidance) 2013 – fifth edition (DG5)*¹⁴ states at paragraph 15:

¹³ The Youth Justice and Criminal Evidence Act 1999 provides for a range of special measures to enable vulnerable or intimidated witnesses in a criminal trial to give their best evidence. Measures include giving evidence through a live TV link, screens around the witness box and intermediaries. A special measures application is made to the court within set time limits and can be made by the prosecution or defence.

¹⁴ www.cps.gov.uk/legal-guidance/charging-directors-guidance-2013-fifth-edition-may-2013-revised-arrangements

4.20 The police may charge:

- i *any Summary Only offence (including criminal damage where the value of the loss or damage is less than £5000) irrespective of plea;*
- ii *any offence of retail theft (shoplifting) or attempted retail theft irrespective of plea provided it is suitable for sentence in the magistrates' court; and*
- iii *any either way offence anticipated as a guilty plea and suitable for sentence in a magistrates' court; provided that this is not: [there then follows a list of exceptions including]*
 - *classified as Hate Crime or Domestic Violence under CPS Policies*

4.21 However, the police can charge if neither the victim nor the police perceive it to be a DHC (there being no evidence that brings the case within s146 territory).

4.22 In our file sample, we jointly looked at 42 cases that had resulted in a charge and been identified as DHC on the CPS case management system. Of these, 14 (33.3%) had been charged by the police without reference to the CPS in breach of the Director's Guidance. We have previously reported¹⁵ that the police are incorrectly making charging decisions in important cases and this inspection has highlighted that improvement still needs to be made.

4.23 In nine of the 14 cases (64.3%), police identified that the case related to DHC but nevertheless failed to send it to the CPS for a charging decision. In the other five, the perception that it was a DHC did not arise until the case was reviewed by a prosecutor. This shows that in these five cases either there was a difference of opinion between the police and the CPS as to what constituted DHC, or the police had failed to identify the DHC to the CPS.

4.24 In the nine cases police identified as DHC (and should have referred to the CPS), the prosecutor identified breach of the Director's Guidance in four and referred the case back to the police in three. This indicates that the CPS is not robustly assuring the quality of police charging decisions, nor working with them to make improvements.

¹⁵ *Joint Inspection of the Provision of Charging Decisions; CJI; May 2015.*
www.justiceinspectorates.gov.uk/cji/inspections/joint-inspection-of-the-provision-of-statutory-charging/

4.25 We noted that the proposed hate crime checklist (see Section 5) may help, as a section is proposed for the police to complete that sets out why a case is perceived to be a DHC.

Issue to address

Chief constables should ensure that all cases involving disability hate crime are accurately flagged in accordance with the Home Office counting rules for recorded crime.

The CPS, in conjunction with the National Police Chiefs' Council, should revise the police section of the MG3 record of charging decision so it can be flagged clearly to identify cases where, in accordance with the definition, the police consider there to be a hate crime.

5 Applying Section 146 of the Criminal Justice Act 2003

5.1 The relevant parts of s146 of the Criminal Justice Act 2003 state:

Increase in sentences for aggravation related to disability, sexual orientation or transgender identity:

- 1 *This section applies where the court is considering the seriousness of an offence committed in any of the circumstances mentioned in subsection (2).*
- 2 *Those circumstances are:*
 - a *that, 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:*
 - i *disability (or presumed disability) of the victim*
 - b *that the offence is motivated (wholly or partly):*
 - i *by hostility towards persons who have a disability or a particular disability*
- 3 *The court:*
 - a *must treat the fact that the offence was committed in any of those circumstances as an aggravating factor, and*
 - b *must state in open court that the offence was committed in such circumstances.*
- 4 *It is immaterial for the purposes of paragraph (a) or (b) of subsection (2) whether or not the offender's hostility is also based, to any extent, on any other factor not mentioned in that paragraph.*
- 5 *In this section "disability" means any physical or mental impairment.*

5.2 The CPS legal guidance to prosecutors explains in detail how the section applies and the various elements that have to be covered for the court to apply the sentence uplift. The practice is for the court to announce what the sentence would have been and the uplift to the sentence when s146 is triggered.

5.3 However, there have been a number of decisions in the higher courts that have said that, where the hostility is the essence of the offence (for example the words used form the subject matter of a public order charge), then there is no separate uplift because the court will sentence on the aggravating factors that comprise the offence¹⁶.

¹⁶ R v Meehan [2016] EWCA Crim 1602, which approves the earlier decision of R v Fitzgerald [2004] 1 Cr. App.R (S) 74

5.4 During the course of our inspection, the CPS issued guidance that cases falling within this scenario should also be recorded because they met the requirements of s146. This would give a more accurate assessment of the number of cases where s146 has been requested. We understand why the CPS wants to record those cases where the court has not increased the sentence because of the DHC element due to inclusion of the aggravating factor. However, we suggest that the CPS should consider setting out this approach publicly when publishing data on cases where s146 applies.

5.5 Since publication of the 2015 follow-up report, the CPS has put substantial effort into ensuring an s146 application is made in all appropriate cases. Overall, we found a much greater awareness now amongst prosecutors of s146. However, there is still some confusion, as demonstrated by an endorsement on a file examined:

Objectively this could be perceived as a hate crime, however I am not certain the motivation is due to a hostility towards the disabilities of the patients. The Court should they deem this to be a disability hate crime can reflect this in the sentencing uplift.

5.6 In the 12 months to December 2017, the uplift was applied in 68.6% of cases where an application was made¹⁷. Across the CPS Areas, performance ranged from 57.6% to 79%, with every Area achieving the CPS level of ambition (55%). This continues a positive performance trend, with year-on-year improvements since 2015-16 when the application rate was only 33.8%.

5.7 Even if the court declines to apply the s146 uplift, it may nevertheless increase the sentence because they consider the victim's vulnerability an aggravating factor. An endorsement seen on a hearing record sheet (HRS) during the course of our file examination neatly sets out the issue:

The court take the view that the theft is aggravated by breach of trust and targeting of vulnerable person but do not consider that the circumstances demonstrated hostility towards the injured party on the grounds of his vulnerability, rather contempt/disregard for him. The aggravating features will be reflected in sentence but not hate crime and s146 does not apply.

5.8 The published CPS data shows a far less favourable position, recording an s146 uplift in only 14.6% of cases in 2016-17. This is because the proportion is measured against all successful cases flagged as a DHC. As we discussed in the previous section, many of the flagged cases will never support an s146 application.

¹⁷ CPS data does not distinguish between the characteristics referenced in s146 and, therefore, some of these cases will be because of the victim's sexual orientation or because they are transgender.

5.9 In our file sample, we found that prosecutors were better at setting out the basis for considering s146 applies, although there remains room for improvement. In 79 of the 125 relevant cases (63.2%), the MG3 contained an appropriate legal analysis of the law and facts as it related to the DHC issue under s146. This was a significant improvement on the findings of the 2015 follow-up inspection, where only 30% of files were assessed as good or fair. This still leaves some room for improvement.

5.10 Performance was much better in respect of the magistrates' court, where 39 of the 55 relevant cases (70.9%) met the requirement compared to 33 of 62 Crown Court cases (53.2%).

5.11 Overall, we found (and this view was shared by many we spoke with in the CPS) that magistrates' court performance was better than that in the Crown Court. This is illustrated by the following findings from our file examination:

Question	Answer	All cases	Magistrates' court cases	Crown Court cases
Does the HRS ¹⁹ contain an endorsement that an application was made under s146? [*]	Yes	42.1%	63.9%	22.5%
	No	56.6%	36.1%	75.0%
Does the HRS contain an endorsement detailing any decisions by the court regarding s.146 [*]	Yes	45.1%	70.6%	21.6%
	No	53.5%	29.4%	75.7%
Where an application was made (and the result recorded), did the court grant an uplift? ^{**}	Yes	65.7%	91.7%	9.1%
	No	22.9%	4.2%	63.6%

** In one Crown Court case, we could not find the relevant record sheet.*

*** In one magistrates' court case and three Crown Court cases, we could not determine whether the information had been recorded.*

5.12 One reason for the variation in performance is that the magistrates' court prosecutor application, on which hearing records are entered, provides a prompt to prosecutors about the s146 uplift provision. This reminds them of the need to record the relevant information.

5.13 Another reason is that, in Crown Court cases, a CPS member of staff might not be in court when the result is recorded and those instructed to prosecute on behalf of the CPS do not always record the required detail. We saw examples of this in our file sample, where Area Hate Crime Co-ordinators had to chase those instructed for a full record of the hearing. Some Areas had written generally to local chambers and solicitor agents reminding them of the requirement to make an s146 application when instructed and that non-compliance would be regarded as a performance issue.

Issue to address

Prosecutors should ensure that, in every case for which an s146 uplift is to be applied, they set out clearly at the charging stage the evidence or information that supports the application.

Using the prosecutor app

5.14 We would add that if, after the charging stage, there is a view that an s146 uplift can be applied for, the basis for that view needs to be clearly set out with supporting evidence or information.

5.15 If a magistrates' court case is finalised at the first hearing, the prosecutor app is designed to populate the CPS case management system with the result so that no further work is required. However, it does not currently allow the prosecutor at court to check the relevant box on the case management system to show that the s146 uplift was applied by the court. This still has to be done administratively and creates the risk that it might be missed.

5.16 The Area Hate Crime Co-ordinators with whom we spoke were diligent in checking this aspect and we noted they found cases that had been finalised, but where the necessary box had not been endorsed. In one Area, a monthly check found a 25% omission rate. This risk would be significantly mitigated if the prosecutor app was modified to enable the prosecutor at court to check directly the relevant box.

Issue to address

The CPS should modify the prosecutor app to allow the prosecutor at court to check the relevant box on the case management system which shows that the s146 uplift has been applied by the court.

Clarifying sentence and uplift

5.17 We were also told that the court records do not distinguish between the basic sentence and the uplift applied; all that is recorded is the overall sentence. One Area we visited had reached a local agreement with Her Majesty's Courts and Tribunals Service (HMCTS) managers that the court records would make the distinction, but others had been unsuccessful. One of the benefits in showing the split on the document of record is that, should the defendant offend in a similar manner again, the fact that they are a repeat offender will be clearly apparent.

5.18 We recognise that ensuring the sentence split is distinguished on the court record is not within the remit of the CPS. However, we see no reason why this could not be agreed at a national level with HMCTS (possibly in consultation with the Criminal Procedure Rules Committee).

Issue to address

The CPS should negotiate with Her Majesty's Courts and Tribunals Service to ensure that the court sentencing record distinguishes the basic and uplift elements of the offence.

Section 146 letters

5.19 During the course of our inspection, we became aware of an instruction issued by the CPS nationally in respect of s146. This requires a letter (contained within the CPS case management system) to be sent to the court and defendant stating that an s146 application would be made. There was a lack of clarity about when this instruction was circulated. It is not contained within the otherwise extensive CPS legal guidance on DHC cases, and most prosecutors with whom we spoke (excluding hate crime co-ordinators) were unaware of the requirement. We saw very few examples in the cases examined.

5.20 Some prosecutors questioned the added value of sending a letter in magistrates' court cases where there was an anticipated guilty plea. However, in light of our findings in respect of Crown Court cases, we see the merit, as a minimum, of adopting this approach for the Crown Court. It puts the court and defence on notice and, if included in counsel's instructions, is another reminder of the need to make the application.

Issue to address

Prosecutors should comply with the requirement to send an s146 letter to the court and the defence and compliance should be monitored by Area Hate Crime Co-ordinators.



6 The quality of the CPS and police charging decision

CPS charging decisions

6.1 The quality of the application of the Code for Crown Prosecutors¹⁹ is excellent in DHC cases. The Code was applied correctly at the charging stage by the CPS in 162 of the 163 cases examined (99.4%). This is better than HMCPSI findings in CPS Area inspections. In the one case, charges were directed in respect of two victims, one of whom was not a disabled person. It was in respect of this victim that the Code was not applied correctly.

6.2 There were 14 police-charged cases and the Code was applied correctly in each.

6.3 The CPS has a continuing duty to ensure that the Code test is met until the close of the prosecution case at trial. Inspectors found that post-charge, the Code was applied correctly in 126 of the 127 applicable cases (99.2%). The one case that did not meet the Code at the charging stage was allowed to proceed to the trial stage before being discontinued.

6.4 A total of 25 cases were discontinued after charge. The Code was applied correctly in each of them with regard to the decision to discontinue.

Strength

The correct application of the Code for Crown Prosecutors in disability hate crime cases.

6.5 However, with regard to the overall quality of the charging decision and the information that passes between the CPS and the police at the charging stage, there remains room for improvement.

6.6 HMCPSI inspectors assessed the overall quality of the initial information supplied by the police in relation to DHC issues. It was assessed as good in 23 of the 160 relevant cases (14.4%), fair in 82 (51.3%) and poor in 50 (31.3%). In five cases, the document used by the police to provide the information was no longer on the CPS system.

¹⁹ Code for Crown Prosecutors – every case must be assessed against the Code. There are two strands to the Code and each case has to pass each test before it is charged. HMCPSI assesses whether the legal decision-making against the Code is correct.

6.7 The quality of the information provided was particularly poor in relation to what reasonable adjustments the victim would need to ensure they could give their evidence effectively. For example – would they need breaks, an intermediary,²⁰ or did they communicate by signing? Only 16 of the 160 relevant cases (10%) contained initial information from the police about whether reasonable adjustments were needed. This is unsatisfactory and we discuss victim and witness arrangements further in Section 7.

6.8 This issue was compounded by prosecutors not identifying the potential need for adjustments. For example, in a case where it was clear on the police MG3 that the victim was deaf, there was no consideration at the charging stage about whether signing would be needed.

6.9 There were 92 cases in the file sample in which inspectors considered that the prosecutor should have asked for further information on DHC issues at the charging stage. This was carried out in 45 (48.9%).

6.10 When considering DHC cases, it is important to consider the background detail as part of the case strategy. This ensures that the background issues in the case are effectively identified to develop the approach to the prosecution of the case. In those cases where the CPS directed that the defendant should be charged, there was appropriate consideration in 32 of the 51 relevant magistrates’ court cases (62.7%) and 34 of the 60 relevant Crown Court cases (56.7%).

6.11 We assessed the quality of each record of the charging decision specifically in relation to DHC aspects, along with overall quality. The tables illustrate our findings.

Disability hate crime aspects				
Assessment	All	Magistrates’ court cases	Crown Court cases	No further action
Excellent	0.6%	0.0%	0.0%	2.6%
Good	29.9%	36.4%	29.7%	21.1%
Fair	38.2%	29.1%	35.9%	55.3%
Poor	31.2%	34.5%	34.4%	21.1%

²⁰ A Registered Intermediary facilitates communication between a witness/suspect and the police, prosecution and defence teams, and court. This ensures that the communication process is as complete, coherent and accurate as possible. The Intermediary is impartial and neutral and ultimately their duties to the court are paramount. The Intermediary is allowed to explain the questions or answers so far as is necessary to enable them to be understood by the witness or the questioner, but without changing the substance of the evidence.

Overall quality				
Assessment	All	Magistrates' court cases	Crown Court cases	No further action
Excellent	0.6%	0.0%	0.0%	2.4%
Good	31.9%	28.6%	31.8%	36.6%
Fair	53.4%	55.4%	50.0%	56.1%
Poor	14.1%	16.1%	18.2%	4.9%

6.12 These findings, although indicating clearly that improvement is still needed, are significantly better than found in our 2015 follow-up inspection. Then, only 7.4% of cases examined were assessed as good with regard to the DHC aspect and 60.3% were assessed as poor.

6.13 Whilst overall more charging decisions in Crown Court cases were assessed as good, the position was reversed when assessing the specific DHC aspects. For example, in some cases lawyers did not clearly outline how there was evidence of targeting and cases were flagged because the victim was disabled.

6.14 CPS Direct lawyers have an aide memoire that reminds prosecutors of what to include when considering a DHC case. The benefit of this is supported by the findings from our file sample where, in respect of DHC aspects, 37.3% of CPS Direct MG3s were assessed as good, compared with 22.2% of Area charging decisions. Overall, 32.5% of assessments for CPS Direct were good compared with 25.6% for the Areas, although more CPS Direct decisions were assessed as poor in this category (18.1%) compared to the Areas (15.4%).

6.15 During our fieldwork, we were given a draft hate crime checklist drawn up by the CPS and National Police Chiefs' Council (NPCC). It is similar to the one that has been used for some time for domestic abuse cases. This is a significant initiative that should help focus the minds of police investigators and prosecutors on what information needs to be provided.

6.16 The checklist is comprehensive, although it could benefit from a specific section asking what reasonable adjustments the victim needs, in addition to the section on special measures. The CPS and NPCC want to introduce this checklist as soon as reasonably practical.

Police investigations, charging decisions and file quality

6.17 HMICFRS inspectors examined 42 cases from our overall sample that had been sent to the CPS. They also examined 48 cases that the police had not sent to the CPS because the police had decided to take no further action, made a community resolution²¹ or given a caution or conditional caution. Community resolutions, cautions and conditional cautions are collectively known as out-of-court disposals.

6.18 HMICFRS inspectors examined how well police had investigated the case to come to a decision about the most appropriate outcome. They found that in 19 (21.3%) of the cases sampled there were avoidable delays in the investigation. All reasonable lines of enquiry were only explored in 69 (76.6%) and an investigation plan was missing from 39 (43.3%).

6.19 In 51 out of the 90 (56.7%) police cases examined by HMICFRS, they considered the cases to be in need of improvement or to be inadequate.

Judgements on the effectiveness of the investigation

	Inadequate	Requires improvement	Good	Outstanding
Total	24	27	28	11

6.20 HMICFRS concluded, therefore, that the standard of investigation of DHC was unacceptable in many cases.

6.21 The provisions of the Director’s Guidance on Charging state that, where the police consider an investigation has reached the stage where there is sufficient evidence to charge (known as the evidential test), and where the police consider that a case meets the definition of a hate crime, then the police have to refer the case to the CPS and cannot give an out-of-court disposal. It is possible thereafter however, that the CPS may advise that outcomes other than prosecution would be more suitable. DG5 is supported by a number of other documents²² that guide the police on out-of-court disposals.

²¹ Community resolution is the nationally recognised term for the resolution of a less serious offence or anti-social behaviour incident, where an offender has been identified, through informal agreement between the parties involved as opposed to progression through the traditional criminal justice process. *Guidelines on the use of community resolutions*; ACP0; 2012.

²² These include: *Ministry of Justice Simple Cautions for Adult Offenders* April 2015 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/708595/cautions-guidance-2015.pdf *ACPO Gravity Matrix for Adults* – April 2013.

6.22 Of the 48 cases that had not been sent to the CPS, 14 had been dealt with by community resolution and three by caution and conditional caution. Therefore in these cases, where the police had decided on outcomes without reference to the CPS, there may have been a breach of DG5.

6.23 Under the terms of DG5, police should not be able to use community resolutions in hate crime cases without reference to the CPS. Community resolutions can only be given when the offender has accepted responsibility for an offence and, therefore, the evidential test has been met. In such circumstances, the case should be referred to the CPS. The current guidance to police²³ specifically excludes the use of community resolutions in hate crime cases.

6.24 However, there may be some very limited circumstances when a community resolution could be the most suitable outcome, especially after the views of the victim, and the age of the offender, have been taken into account. Of the 14 cases dealt with by community resolution, HMICFRS concluded that seven had been issued appropriately, based on the circumstances of the case.

6.25 In relation to adult cautions, the position is more complex. It would appear from some guidance²⁴, that a simple caution can be given for some hate crime cases without reference to the CPS. This contradicts DG5. The guidance for adult conditional cautions is clearer and states that these can only be given in hate crime cases with the consent of the CPS.

6.26 HMICFRS found that two of the three cases that had received a caution or conditional caution had been dealt with inappropriately.

6.27 In the case file examinations, HMICFRS inspectors found that 12 of the 17 cases (70.6%) where an out-of-court disposal had been given related to a child or young person. Such cases are usually dealt with by Youth Offending Teams (YOT)²⁵. In contrast to adult offenders, children and young people can be given cautions and conditional cautions for hate crime without reference to the CPS²⁶.

6.28 It was not possible to make a comprehensive judgment about whether the decision-

23 *College of Policing Guidelines on the Use of Community Resolutions (incorporating Restorative Justice) 2012.*
<http://library.college.police.uk/docs/appref/Community-Resolutions-Incorporating-RJ-Final-Aug-2012-2.pdf>

24 <https://www.cps.gov.uk/legal-guidance/cautioning-and-diversion>

25 In England and Wales, a Youth Offending Team is a multi-agency team that is co-ordinated by a local authority, overseen by the Youth Justice Board.

26 *ACPO youth offender case disposal gravity factor matrix*; ACPO; 2013.

making was appropriate in these cases because HMICFRS inspectors did not have access to YOT records²⁷.

6.29 Overall, HMICFRS found that 20 out of 90 cases (22.2%) had inappropriate outcomes. Nine of the 20 inappropriate outcomes related to decisions in cases that had been dealt with by out-of-court disposal²⁸.

6.30 We have concluded that some of the guidance in relation to out-of-court disposal for hate crime is contradictory and should be revised.

6.31 HMICFRS inspectors found that police supervision in cases involving DHC was not good enough. This is likely to have contributed to some of the performance highlighted above. In 42 out of the 90 (46.7%) cases, police supervision of the investigation was found to be ineffective. Supervision of the case file was found to be effective in only 15 out of 42 cases (35.7%) sent to the CPS.

Issue to address

The CPS and the NPCC lead for out-of-court disposals should review the current guidance for out-of-court disposals for hate crime, and should revise this guidance to make it clear when these are appropriate for hate crime.

Chief constables should ensure that there is effective supervision of all disability hate crime cases, to assure themselves that investigations and subsequent case file submissions to the CPS have been completed to an appropriate standard.

²⁷ In 2018, HMICFRS worked with Her Majesty's Inspectorate of Probation on an inspection of out-of-court disposal work in Youth Offending Teams and more information can be found at: www.justiceinspectorates.gov.uk/hmiprobation/oocd032018/

²⁸ Other reasons for inappropriate outcomes included delays in investigations and lack of referral to the CPS.

7 Victims and witnesses

7.1 The CPS's support for disabled victims and witnesses of crime guide²⁹ clearly sets out what disabled victims and witnesses can expect with regard to how they are treated. However, as the findings in this section illustrate, there is some way to go before the standard set out in the guide is achieved. In August 2017, the CPS published a new public statement on how it would prosecute disability hate crime³⁰.

7.2 Police consider the needs of victims and witnesses at various stages of the investigative and criminal justice process. The police should firstly consider the risks to victims (risk assessment³¹) and manage these risks to keep the victims safe (risk management³²).

7.3 A risk assessment was carried out by the attending officer in 41 of the 90 (45.6%) cases examined by HMICFRS. In 51 (56.7%), there was no risk management plan put in place by police and crime prevention advice was provided to the victim in only 29 (32.2%).

7.4 The HMICFRS inspection of hate crime³³ made similar findings and has made recommendations for improvement.

7.5 The police should also consider whether the victim or witnesses are vulnerable and/or intimidated and, if so, require measures to enable them to give their evidence in court. These are known as special measures and reasonable adjustments.

7.6 The use of special measures is different from that of reasonable adjustments, which only make it possible for the victim to give their evidence effectively. There is a statutory procedure and set timescales for making special measures applications.

29 www.cps.gov.uk/sites/default/files/documents/publications/guide-to-support-for-disabled-victims-and-witnesses-of-crime.pdf

30 www.cps.gov.uk/legal-guidance/disability-hate-crime-and-other-crimes-against-disabled-people-prosecution-guidance

31 Risk assessment is "the process of estimating and regularly reviewing the likelihood and nature of a risk posed by a perpetrator to a particular victim, children or others". *Understanding risk and vulnerability in the context of domestic abuse*, College of Policing APP, London, 2015.

32 Risk management is the "Management of the responses adopted in cases where risk is identified, to minimise risk of further harm by the offender". *Understanding risk and vulnerability in the context of domestic abuse*, College of Policing APP, London, 2015.

33 www.justiceinspectorates.gov.uk/hmicfrs/publications/understanding-difference-the-polices-initial-response-to-hate-crime/

7.7 Police should set out on a standard form (MG2) which special measures a witness requires and the evidence to support an application. In accordance with the National File Standard³⁴, the MG2, where applicable, should be submitted to the CPS when the file is initially submitted for the first court hearing.

7.8 In the HMCPSI file sample, a detailed MG2 was not sent to the CPS in 53 of the 93 relevant cases (57%). In 43 of the 53 (81.1%) the prosecutor should have asked the police for more detail to support their consideration of why a special measures application needed to be made.

7.9 Despite this, an appropriate application for special measures was made in 50 of the 56 relevant cases (89.3%), but the application was only timely in 29 of the 53 cases (54.7%) where it could be determined when the application was made³⁵.

7.10 The primary cause for delay was the failure by police to submit an MG2 with the initial file and it then not being chased promptly by the prosecutor.

7.11 It was not always clear from the file on the CPS case management system whether the prosecutor had, when required, asked for reasonable adjustments for the victim. One respondent to our community group questionnaire said that it was normally the Witness Care Unit that alerted the prosecutor to any requirements the victim might have. There were 52 cases in the file sample where a reasonable adjustment could have improved the effectiveness of how the victim gave their evidence. The appropriate arrangements were made in 17 cases (32.7%). In six (11.5%), there was insufficient evidence on the file to determine whether the arrangements were made. The inclusion of this as a specific element in the proposed hate crime checklist should help to improve this aspect of performance.

7.12 Whilst prosecutors were aware of the process for using intermediaries, there were concerns that the need to assess for this requirement was taking place too late in the process. This is supported by the findings from our file sample, where often it was the prosecutor who first queried whether an intermediary was needed. In one case examined, the police were adamant that an intermediary was not required despite repeated queries from the prosecutor. It was only when a report from a third party made it clear that an intermediary was needed that any action was taken.

7.13 Prosecutors told us consistently that the failure to identify the need for an

³⁴ www.cps.gov.uk/publication/contents-charging-reports-and-national-file-standard

³⁵ There were three cases where inspectors could not determine from the information on the file whether the application was timely.

intermediary at the investigative stage led to delays in the trial process. When they did use them, they said, they were considered to be of considerable benefit.

7.14 In one CPS Area, there had been specific training on the use of intermediaries organised by the Inclusion and Community Engagement Manager. This training highlighted that prosecutors were unclear about how intermediaries were used and about the funding process.

7.15 The CPS has a responsibility under the Victims' Code³⁶ to communicate with victims if certain events arise – this includes where the case is discontinued or the charge is altered substantially. If, under the Victims' Code, they are entitled to an enhanced service³⁷, this should take place within 24 hours, otherwise within five working days. The timeliness of letters to victims, primarily if a case is discontinued or there is a substantial charge alteration, needs to improve. There were 35 cases in our file sample where a letter should have been sent. Where this occurred, it was timely in 14 (40%), late in eight (22.9%) and not sent at all in 13 (37.1%).

7.16 In DHC cases where a letter is written to the victim, it is especially important that it is tailored to their needs. Performance in this regard was mixed. Inspectors assessed 22 letters to determine whether they were of an appropriate content and quality for the victim. In 20 (91%), they found that this requirement was fully or partially met, and not met in two. Respondents from community groups confirmed that victims often didn't understand the language used in the letters. None of the letters in our file sample had been adjusted to assist the recipient – by including an Easy Read version, for example. We recognise, however, that this causes a difficulty in achieving the timeliness requirement for victims entitled to an enhanced service, who should receive a letter within 24 hours.

³⁶ www.gov.uk/government/publications/the-code-of-practice-for-victims-of-crime

³⁷ This includes victims who are vulnerable or intimidated, but not all disabled people will automatically be entitled to the enhanced service.

7.17 Overall, there was a view that the CPS national Speaking to Witnesses at Court³⁸ initiative had led to improved communication, but that victims did not always understand why prosecutors might paraphrase their Victim Personal Statement (VPS)³⁹.

7.18 Another implication for victims is that if a victim personal statement is not taken and the offender pleads guilty at the first court appearance, the court will not have all the information available to consider the negative effect on the victim and impose an appropriate sentence. Victim personal statements are therefore of vital significance to the criminal justice process.

7.19 In only 37 (41.6%) cases was there evidence that the victim was offered an opportunity to complete a VPS by the police. This opportunity was taken up in only 18 cases (20.2%). As a result, a low number of victim personal statements were actually taken. We have found in other joint inspections⁴⁰ that improvements need to be made by police in this regard.

Issue to be addressed

Chief Constables should ensure that victims are offered an opportunity to make Victim Personal Statements in all relevant cases and that, when appropriate, these statements are taken and provided to the CPS.

Victim care

7.20 Overall, for victim care, 41 of the 90 (45.6%) cases were judged as inadequate or requiring improvement and only 49 (54.4%) as good or outstanding.

Judgements on victim care

	Inadequate	Requires improvement	Good	Outstanding
Total	13	28	43	6

³⁸ www.cps.gov.uk/legal-guidance/speaking-witnesses-court

³⁹ www.gov.uk/government/publications/victim-personal-statement

⁴⁰ For example: *Living in fear – the police and CPS response to harassment and stalking*. A joint inspection by HMIC and HMCPSI. HMIC 2017. www.justiceinspectorates.gov.uk/hmicfrs/publications/living-in-fear-the-police-and-cps-response-to-harassment-and-stalking/

7.21 HMICFRS inspectors considered how the six forces inspected referred victims to support services. At the time of our inspection, forces operated one of two systems:

- Opt-in – where victims are not referred unless they specifically consent for their information to be passed to the referral organisation.
- Opt-out – where victims’ details are automatically passed to victim support services unless they specifically state that they do not want this to happen.

The police file examination revealed that in 60 (66.7%) of cases sampled there was evidence the victim was referred to victim support services.

7.22 However, there was a difference between which system the force used. In the three forces using an opt-out system, 33 out of 45 (73.3%) of victims were referred to victim services. In contrast, for the three forces operating an opt-in system, 27 out of 45 (60%) were referred.

7.23 A similar finding regarding the referral rates by the police was made in the HMICFRS hate crime inspection.

7.24 Compliance with the Victims’ Code, including notifying the victim where no further action is taken, was positive in 81 (90%) cases. In one case, this could not be assessed as there was no evidence in the papers. Some police forces performed considerably better than others, and some achieved compliance in all relevant cases.



8 Area Hate Crime Co-ordinators

8.1 We spoke with the Area Hate Crime Co-ordinators in each of the Areas visited, and CPS Direct. All the co-ordinators have to combine their role with other duties and the level of the post-holder varied across the Areas visited. The effectiveness of this role has improved significantly since our follow-up report. We were impressed with the level of quality assurance work carried out by the co-ordinators, and the level of feedback they gave to prosecutors on how they handled their DHC cases. There is a monthly dial-in between all co-ordinators, which allows them to share good practice or discuss difficult issues.

8.2 Every newly flagged DHC case is reviewed by the co-ordinators, who also review the case when it is finalised. We saw good examples of where, at an early stage of cases, co-ordinators had raised queries about proposed s146 uplifts or where they considered an application could be made that hadn't been identified by the prosecutor.

8.3 They also added value by carrying out checks to ensure that the relevant information had been added to the case management system to record that the s146 uplift had been applied.

Strength

The quality assurance work carried out by the Area Hate Crime Co-ordinators.

8.4 All the co-ordinators were involved with their Local Scrutiny and Involvement Panels (LSIPs) or the equivalent. Each LSIP included DHC cases as part of their scrutiny, either as one of a variety of hate crime cases or looked at in rotation. Internally, at least one Area has case management panels to review how DHC cases are managed and one Area had used the Individual Quality Assessment⁴¹ process to assess DHC case management. Additionally, co-ordinators sat on, or chaired, relevant Local Criminal Justice Board sub-groups that dealt with hate crimes or victim and witness issues.⁴²

⁴¹ For a more detailed analysis of the Individual Quality Assessment process, see *The Operation of Individual Quality Assessments in the CPS*; HMCPSI; March 2018. www.justiceinspectorates.gov.uk/hmcpsi/inspections/the-operation-of-individual-quality-assessments-in-the-cps-mar-18/

⁴² There are a number of Local Criminal Justice Boards in England and Wales, which bring together the chief officers of all the criminal justice agencies and partnerships to co-ordinate delivery in the criminal justice system.

8.5 The co-ordinators also oversaw prosecutor training in the various hate crime strands, in conjunction with the Inclusion and Community Engagement Managers (ICEMs). There was a significant national training programme on DHC in 2015. Since then, though, the focus has been on other strands. The lack of any recent training has had a variable impact on the Areas visited, depending on the number of new prosecutors appointed in that time. Some planned to do some local hate crime training with a focus on DHC or were targeting specific roles, for example Crown Court paralegal officers. One Area, with a high turnover of staff, had started specific refresher training on DHC. Prosecutors who had been trained also said that they handled very few DHC cases and, therefore, had limited opportunity to apply what they had learnt.

8.6 We recognise that the CPS has conflicting training priorities, but will wish to consider whether cross-Area training might be arranged for prosecutors who didn't benefit from the 2015 course. During the course of our fieldwork, one Area had issued local guidance to prosecutors on dealing with DHC cases, which has been shared with other Area co-ordinators.

9 Inclusion and Community Engagement Managers

9.1 Each Area we visited had an Inclusion and Community Engagement Manager, all of whom worked closely with their Hate Crime Co-ordinators. Some ICEMs were comparatively new to the post and some had been appointed from outside the CPS. They come under the national CPS Prosecution Policy and Inclusion Directorate and there is a national network that was generally considered useful in exchanging ideas and good practice on DHC and the other hate crime strands.

9.2 At the time of our inspection, the ICEMs were waiting for publication of the national inclusion strategy to inform them on national priorities. The proposed national strategy was subsequently sent out for consultation. In the interim, at a local level, the ICEMs were developing initiatives. These included:

- producing Easy Read versions of key documents, for example the local Area community engagement strategy
- refreshing public websites with Easy Read documents
- using theatre productions to illustrate the impact of DHC
- holding lunch and learn sessions for staff with representatives of disability groups

9.3 The ICEMs work with the Hate Crime Co-ordinators to ensure the effectiveness of the LSIPs, and some were reviewing the local membership at the time of the inspection. This was to ensure a fair reflection of all community groups and to raise awareness of any new or emerging issues. To ensure wider public confidence, it will be important to be able to show that the outcomes from the LSIPs lead to casework improvements, as part of the new national strategy.



Annex A

Composition of the HMCPSI file sample

Case category	Magistrates' Court	Crown Court	Total
No further action	n/a	n/a	41
Timely guilty plea	19	16	35
Late guilty plea	6	25	31
Conviction after trial	16	7	23
Acquittal after trial	10	11	21
Discontinued	18	7	25
Judge-directed acquittal	n/a	1	1
	n/a	n/a	177

Findings from the file examination

Question	Answer	All cases
The case was flagged correctly on the CPS Case Management System (CMS) as a DHC	Yes	92.7%
	No	6.8%
	NK	0.6%
It was flagged/not flagged incorrectly because...	Was DHC	16.7%
	Not DHC	83.3%
	NK	0%
If not flagged on CMS at charge, was it flagged at the first reasonable opportunity?	Yes	87.8%
	No	12.2%
	NK	0%

Question	Answer	All cases
Did the police charge in breach of the Director’s Guidance (DG5)	Yes	64.3%
	No	35.7%
	NK	0%
Was the breach of DG5 identified?	Yes	44.4%
	No	55.6%
	NK	0%
Was the breach drawn to police attention?	Yes	33.3%
	No	55.6%
	NK	11.1%
Was the police charge in accordance with the Code for Crown Prosecutors?	Yes	100.0%
	No	0.0%
	NK	0%
Was the CPS directed charge (or no further action) in accordance with the Code?	Yes	99.4%
	No	0.6%
	NK	0%
Had the case been highlighted on the charging report or police summary or other charging documents as DHC by the police?	Yes	46.9%
	No	49.7%
	NK	3.4%
What was the quality of the initial information supplied by the police in relation to the DHC issue?	Excellent	0%
	Good	14.4%
	Fair	51.3%
	Poor	31.3%
	NK	3.0%
Did the police refer in the charging report or police summary to any adjustments the disabled person may need to support an effective prosecution – such as intermediaries or physical adaptations?	Yes	13.0%
	No	82.9%
	NK	4.1%

Question	Answer	All cases
Did the prosecutor seek further information from the police in relation to the DHC issue?	Yes	32.1%
	No	67.2%
	NK	0.7%
If the answer is no, should the prosecutor have requested further details of the DHC issue?	Yes	49.5%
	No	48.4%
	NK	2.1%
Does the record of charging decision (where appropriate) demonstrate the prosecutor's knowledge of the need to consider the background details as part of case strategy?	Yes	62.5%
	No	36.7%
	NK	0.8%
Does the record of charging decision contain an appropriate legal analysis on the law/facts as it relates to the DHC issue under s146?	Yes	63.2%
	No	36.8%
	NK	0%
Did the record of charging decision refer to any ancillary orders relevant to the DHC aspect?	Yes	51.8%
	No	48.2%
	NK	0%
Rate the overall quality of the record of charging decision in relation to DHC aspects	Excellent	0.6%
	Good	29.9%
	Fair	38.2%
	Poor	31.3%
Rate the overall quality of the record of charging decision	Excellent	0.6%
	Good	31.9%
	Fair	53.4%
	Poor	14.1%
Was the full Code test applied correctly at any post-charge review?	Yes	99.2%
	No	0.8%

Question	Answer	All cases
Was a detailed form requesting special measures supplied to the CPS in relation to the victim?	Yes	41.7%
	No	55.2%
	NK	3.1%
Should the CPS have requested further information from the police relating to special measures?	Yes	41.0%
	No	59.0%
	NK	0%
Were the appropriate special measures applied for?	Yes	84.7%
	No	10.2%
	NK	5.1%
Was the application timely?	Yes	52.7%
	No	43.6%
	NK	3.7%
Where an application for special measures was made, was an offer to meet the prosecutor made to the victim?	Yes	8.9%
	No	75.6%
	NK	15.5%
Were reasonable adjustments applied for?	Yes	32.7%
	No	55.8%
	NK	11.5%
Was there effective communication between the CPS and Witness Care Unit on victims' needs etc?	Yes	66.7%
	No	33.3%
	NK	0%
Does the Hearing Record Sheet contain an endorsement that an application was made under s146?	Yes	42.1%
	No	56.6%
	NK	1.3%

Question	Answer	All cases
Does the HRS contain an endorsement detailing any decisions by the court regarding s146?	Yes	45.1%
	No	53.5%
	NK	1.4%
Where an application was made (and the result recorded), did the court grant an uplift?	Yes	65.7%
	No	22.9%
	NK	11.4%
Was any discontinuance in accordance with the Code?	Yes	100.0%
	No	0%
Was any victim letter timely?	Yes	40.0%
	No	22.9%
	Not done	37.1%
	NK	0%
Did any victim letter meet the required standard?	FM	45.5%
	PM	45.5%
	NM	9.0%
	NK	0%
Was there an offer to meet the victim to explain the decision?	Yes	29.4%
	No	70.6%
	NK	0%
Was the form of communication appropriate for the victim?	Yes	91.6%
	No	4.2%
	NK	4.2%

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