

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

MARCH 2013

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## FOREWORD

Concerns have been raised in relation to how the criminal justice system has dealt with disability hate crime in recent years. Whilst there is an acknowledgment that progress has been made in relation to certain hate crimes, there is a lack of confidence that society's attitudes towards those with disabilities has progressed at the same pace.

Media reports of poor handling of cases involving the targeting of those with disabilities (which have caused unease amongst disabled groups), together with a number of tragic cases where victims have died, provided the background to this review.

We acknowledge that the police, CPS and probation trusts have introduced initiatives designed to improve performance in relation to disability hate crime. However, the review reveals that progress has been slow. A new impetus is required.

All criminal justice agencies have a role to play in (a) improving awareness of what disability hate crime is, (b) increasing the reporting of disability hate crime and (c) enhancing how they identify and progress these cases. Disability hate crime processes need to be embedded within the routine working practices of police, CPS and probation trust staff.

Our recommendations, together with the opportunities presented in the Government plan to tackle hate crime, *Challenge it, Report it, Stop it*, provide a unique opportunity for the police, CPS and probation trusts to implement changes to policies and procedures. Practices need to be changed in order to work towards improved outcomes for victims and contribute to changing society's attitudes.

In April 2005 section 146 of the Criminal Justice Act 2003 (s.146 CJA 2003) was introduced which created the 'sentencing provision' relating to disability hate crime. Its use and the approach taken by Parliament of creating a sentencing provision, rather than creating separate disability hate crime offences, has been debated by many of the contributors to this review. Our work focused on how the current provisions are working for the police, CPS and probation trusts. The effectiveness of the statutory provision was not part of this review. However, the Law Commission may consider it appropriate to evaluate s.146 CJA 2003 as part of its future work. Such a review could reassure those with concerns about the creation of a sentencing provision rather than specific disability hate crime offences.

The phrase 'I am now living in a different world' was used by a member of the public (who had been involved in a road traffic collision which had resulted in permanent disabilities) to describe his experience. In many ways the phrase represents the findings of the review - the need to look at life from the perspective of a person with disabilities. The criminal justice system (and society) must adapt and change to provide an improved experience for all.



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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:

- 
- 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:

- 
- 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:

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

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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).

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### *Probation trusts*

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

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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).

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### *Good practice*

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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).

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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).

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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).

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- 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).

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  - 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).

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  - 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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# 1 INTRODUCTION

- 1.1 This is the report of a review by the Chief Inspectors of Her Majesty's Crown Prosecution Service Inspectorate (HMCPSI), Her Majesty's Inspectorate of Constabulary (HMIC) and Her Majesty's Inspectorate of Probation (HMI Probation) of how the police, CPS and probation trusts deal with disability hate crime.

## Background

- 1.2 There have been a number of high profile incidents relating to disability hate crime in recent years where the criminal justice system (CJS) has been seen to have failed.
- 1.3 The police have been the subject of adverse findings in relation to disability hate crime including<sup>1</sup> (i) the deaths in 2007 of Francecca Hardwick, and her mother Fiona Pilkington whose suicide note made specific reference amongst other things to the fact that she was disillusioned with the police response to the behaviour that they had been subject to from others and (ii) the death of David Askew in 2010, who collapsed and died after an incident involving local youths and who had suffered harassment and anti-social behaviour over a number of years.
- 1.4 The Crown Prosecution Service (CPS) has also received criticism in relation to how it has dealt with victims who have disabilities, for example in 2009, the Administrative Court gave a critical judgment in the case of *R (on the application of B) v DPP (2009) EWHC 106 (Admin)* relating to a CPS decision to discontinue a prosecution brought against an individual who was alleged to have bitten off part of the complainant's left ear. The Administrative Court was clear in its view that the decision to discontinue was flawed, 'increased the victim's sense of vulnerability and of being beyond the protection of the law' and 'was a violation of his rights under Article 3' (of the Human Rights Convention).
- 1.5 The role of the National Offender Management Service (NOMS) or probation trusts in relation to disability hate crime has received little public attention, yet there are high profile cases involving these agencies. For example, members of the Watts family, who were known to Bedfordshire Probation Area (now a probation trust) during the period that they tortured and murdered Michael Gilbert<sup>2</sup>. Probation trusts have a significant role to play in ensuring offenders receive the appropriate rehabilitation.
- 1.6 It was against this background that a decision was made to undertake a joint review into how the police, CPS and probation trusts deal with disability hate crime.
- 1.7 Whilst this review was being planned the Equality and Human Rights Commission (EHRC) published its report *Hidden in plain sight - Inquiry into disability-related harassment* (the EHRC report). It also describes a number of incidents that are of serious concern, and criticism was levelled at the CPS, police and other agencies.

1 IPCC report into the contact between Fiona Pilkington and Leicestershire Constabulary 2004-2007. IPCC reference: 2009/016872.

2 See the Equality and Human Rights Commission report *Hidden in plain sight - Inquiry into disability-related harassment*.

- 1.8 The EHRC subsequently published in October 2012 its follow-up report *Out in the open. Tackling disability-related harassment. A manifesto for change*. This identifies the positive and encouraging responses that the EHRC had received in relation to the initial report but also highlights the need for further work. This review is not a response to the EHRC reports and has a different focus. The EHRC reports do, however, reaffirm a key proposition that needs to be understood by all of those involved in the CJS - disability hate crime does exist and it needs to be handled well.
- 1.9 The Government has highlighted its commitment to reduce hate crime and protect victims in its publication of *Challenge it, Report it, Stop it - The Government's Plan to Tackle Hate Crime* (March 2012), which acknowledges that whilst attitudes and behaviours have changed over time, progress should not be mistaken for a problem having been solved.

#### **Aim**

- 1.10 This review set out to highlight the barriers to the identification, investigation and prosecution of disability hate crime, to identify good practice and make recommendations which would inform the decision-making of the police, CPS and probation trusts.

In order to achieve this, the review set out to evaluate:

- a) The effectiveness of the police and/or CPS at identifying disability as being a motivating factor in offending perpetrated against disabled victims.
- b) The effectiveness of the police, CPS and the probation trusts in dealing with disability hate crime.
- c) The barriers in the systems and processes of the police, the CPS and the probation trusts to achieving successful outcomes for victims of disability hate crimes.
- d) The impact of recommendations made by a number of third party organisations (in the past couple of years), on policing/CPS/probation trusts procedure.

#### **Methodology**

- 1.11 The methodology adopted for the review is set out in Annex A.

#### **Acknowledgements**

- 1.12 The team are grateful for the time and input of those who contributed to this review in interviews and focus groups. Particular thanks go to the liaison officers in each of the criminal justice agencies who were responsible for co-ordinating the fieldwork arrangements so efficiently.

#### **The police - background**

- 1.13 The deaths of Francessca Hardwick and Fiona Pilkington in Leicestershire in October 2007 are significant events in the history of policing disability hate crime. These tragic events illustrated clearly what can happen if the police, in particular, and public services, in general, fail to provide the service expected of them. The deaths sent out shock waves across police forces all over England and Wales.



- 1.14 A number of reports have been published in relation to policing and disability hate crime since the deaths including:
- a) The Independent Police Complaints Commission (IPCC) Investigation Report in relation to the deaths of Francessca Hardwick and Fiona Pilkington, published in May 2011. The report made a number of findings relating to the police service including, a lack of use of information already available to the police, a lack of a structured approach to evaluating the reports that were made and a failure to consider their treatment as a hate crime.
  - b) In June 2011, Mencap produced its report entitled *Stand by me* announcing its assessment of how 14 police forces across England and Wales were responding to disability hate crime. The report identified that although some of the forces were responding positively a number needed to improve. The key points identified included, more time being allowed for interviews, a lack of understanding of how to identify different disabilities, discriminatory attitudes/language needing to be challenged and that disability hate crime should be identified as a specific crime and dealt with accordingly.
- 1.15 Both reports acknowledge that improvements have been made by the police and Mencap has subsequently published *How to Stand by me*, which highlights that more than 30 police forces have signed up to support their campaign. However, there is still a view amongst many disabled members of our society that the response has been slow and lacked co-ordination. There are concerns that many forces simply do not regard it as a priority, due to the low volume of reported incidents and the pressure of other demands on their services. Government statistics reveal that approximately 21%<sup>3</sup> of the population are disabled in some way, yet according to data detailing hate crimes recorded by the police in England and Wales for 2011-12 by police force areas, only 1,744 were recorded as disability hate crimes<sup>4</sup>.

#### **The Crown Prosecution Service - background**

- 1.16 Both the current and former Directors of Public Prosecutions (DPPs) have emphasised the importance of disability hate crime to the CPS and additional provision is made for all hate crimes within its operating activity.
- 1.17 Examples of steps taken by the CPS to ensure that disability hate crimes are dealt with effectively at an operational level include:
- 1 Each of the 13 CPS areas and CPS Direct (which deals with telephone charging) has a hate crime co-ordinator whose role is to focus on hate crimes.
  - 2 The CPS has a written policy dealing with disability hate crime which was launched in February 2007 (currently under review). Further guidance for prosecutors was published in February 2010 providing a focus on recognising hostility in cases involving disabled people and how to work with the police to build cases. In addition the CPS has issued guidance to prosecutors which highlights the dangers of making assumptions about the credibility and reliability of victims and witnesses with mental health issues and/or learning disabilities. There is also mandatory electronic learning training on hate crimes and supporting vulnerable and intimidated witnesses.

<sup>3</sup> See ONS (Office for National Statistics) Population Survey Period October 2010-September 2011.

<sup>4</sup> [www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/crime-research/hate-crimes-1112/hate-crimes-1112](http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/crime-research/hate-crimes-1112/hate-crimes-1112)

- 3 With effect from 1 April 2011 each CPS area has been required to set up a Local Scrutiny and Involvement Panel (LSIP).
- 4 The CPS publishes annual disability hate crime data and uses this to evaluate performance. This information is derived from the CPS electronic case management system (CMS) and associated management information system (MIS). This system enables staff to 'flag' cases as disability hate crime.
- 5 The CPS has provided a response to the EHRC report and has developed a draft Action Plan detailing how it intends to continue with its work over the coming years.

1.18 The CPS at a senior level acknowledges that whilst work has been undertaken in relation to disability hate crime there is still much that needs to be done.

#### **Probation trusts - background**

1.19 Little guidance had been offered to probation trusts by NOMS. All probation trusts stress their commitment to work with offenders who commit disability hate crimes and the EHRC report commented on a number of initiatives taken by probation trusts to address hate crimes committed by offenders. However, there has been a limited focus on the effectiveness of their work and a lack of evaluation of the work carried out specifically in relation to disability hate crime.

#### **Summary**

1.20 Whilst inspectors acknowledge that progress has been made the publication of the EHRC reports, the Government's plan to tackle hate crime *Challenge it, Report it, Stop it*, and reports from organisations such as Mencap and Scope, reveal that there are still concerns being raised as to how disability hate crime is dealt with by the criminal justice system at ground level.

## 2 THE EFFECTIVENESS OF THE POLICE, CPS AND PROBATION TRUSTS AT IDENTIFYING AND RECORDING DISABILITY HATE CRIME

2.1 It is important to consider what exactly is meant by the phrase ‘disability hate crime’ as there are a number of definitions.

### The legislation

2.2 There are currently no separate criminal offences relating to ‘disability hate crime’ (unlike racially and religiously aggravated crime) as the existing legislation provides for the issue to be considered when sentencing any offender (if certain conditions are met) for any offence.

2.3 The relevant provisions are set out in section 146 of the Criminal Justice Act 2003 (s.146 CJA 2003) and become relevant during the sentencing process when considering any aggravating or mitigating factors. If the court is satisfied:

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

the court must regard the fact that the offence was committed in any of those circumstances as an aggravating factor and must state in open court that the offence was committed in such circumstances (s.146 CJA 2003 (1) to (3)).

2.4 As a consequence of the statutory provision, there are obligations on the police and the CPS to ensure that where the victim of a crime is disabled, consideration is given to the entire circumstances of the case and that evidence is brought to court of the ‘motivation’ or ‘demonstration’, so as to allow the court to make use of s.146 CJA 2003.

### Other definitions/guidance provided by the criminal justice agencies

2.5 In addition to the statutory provisions set out above, there are a number of definitions that those using and working in the CJS may come across. For example,

- In the CPS document *Policy for Prosecuting Cases of Disability Hate Crime* it makes reference to the Association of Chief Police Officers (ACPO)/CPS agreed definition in relation to disability hate crime incident as<sup>5</sup>, ‘any incident, which is perceived to be based upon prejudice towards or hatred of the victim because of their disability or so perceived by the victim or any other person’.
- On a police force web page it makes reference to ‘hatred is a strong term that goes beyond simply causing offence or hostility. Hate crime is any criminal offence committed against a person or property that is motivated by an offender’s hatred of someone because of their.....disability’.

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5 As stated in the version available on the CPS website on 26 June 2012.

- The current definition taken from the CPS Equality Unit Aide Memoire, ‘any incident 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’.
- 2.6 There are different interpretations of the phrase disability hate crime and this lack of consistency causes confusion to the public and practitioners.
- 2.7 It was clear during the review that amongst police, CPS and probation trust staff there was no common understanding as to what disability hate crime should be defined as. Some practitioners took the view that the definition within s.146 CJA 2003 needed to be satisfied, others took a wider interpretation, yet other practitioners took a more restrictive view that ‘hate’ was required.

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## RECOMMENDATION

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.

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### Police - identification of disability hate crime

#### *Identifying disabilities*

- 2.8 An important starting point in deciding if a matter is a disability hate crime is firstly to identify if anyone involved has a disability. The police receive reports regarding crimes and incidents through a variety of means, predominantly through telephone calls but additionally through the internet, letters, face to face contact and third party reporting. It has proved difficult for the police to accurately identify if a person is disabled, although with growing awareness there are indications that the position is improving.
- 2.9 Prescribed sets of questions developed for call handling staff in relation to anti-social behaviour (ASB) reports have encouraged staff to ask victims if they have suffered incidents or crimes previously and also to provide a reason as to why they think it has happened to them. This has helped in identifying victims as being disabled as well as recognising that their disability may be a factor behind the crime or incident occurring.
- 2.10 Police call handling and IT systems also provide a means of identifying victims as being disabled, either through self-notification, or through the use of previous notes made on their systems by call handlers. A large number of police forces’ IT systems automatically identify repeat callers which can help a call handler to ask the appropriate questions and identify if a victim is disabled.
- 2.11 On a face to face basis some disabilities are clearly recognisable whilst others are more difficult to detect. During interviews with police officers and other staff they reported a lack of training or confidence in the ability to recognise the less obvious disabilities. In particular where a victim had a learning disability, staff expressed concerns relating to a lack of their own knowledge.

- 2.12 Officers and police staff are often reluctant to ask victims or witnesses if they are disabled. They feel they may cause offence and due to a lack of contact with disabled victims do not believe they have developed the necessary communication skills. Conversely within the focus groups held with local disabled people, there was a strong majority view that officers and staff should feel free to ask if the victim or anyone else involved is disabled. There was a view that the police service has become too sensitive about causing offence.
- 2.13 It is clear that training and awareness information is required by the vast majority of staff and there are clear advantages in encouraging local disabled groups to assist forces with its delivery. The local groups can assist with understanding whilst the force can use the same sessions to develop relationships and confidence with their local disabled communities.

*Recording the motivation for the offence*

- 2.14 Inspectors were of the view that officers or staff did not adequately consider or record the reason for the crime or incident taking place and did not accurately record cases within systems where disability hate crime was a recordable feature; and more did not record the disability within the Modus Operandi (MO) field within crime records. Force crime systems also varied in relation to differentiation fields between different types of hate crime and the details contained within MO fields. Only one force inspected allowed for disability to be broken down in relation to mental health, learning disability and physical disability.

*Relationship between anti-social behaviour and disability hate crime*

- 2.15 All of the forces inspected had developed clear strategies in relation to how they deal with ASB and there was an awareness that disability hate crime is often treated as ASB and the needs of victims are, as a consequence, overlooked. Inspectors found that the ASB processes embedded within the forces examined ensured that higher levels of scrutiny and oversight were now in place. However, whilst this creates a greater opportunity for victims to be properly identified, this process should only be regarded as one tool to identify disability hate crime, as victims can still be overlooked.
- 2.16 In areas where officers had received additional training in relation to disability hate crime inspectors observed officers being able to make a clearer distinction between anti-social behaviour and disability hate crime.

*Identification to the CPS*

- 2.17 In many of the cases reviewed by inspectors the police had failed to identify to the CPS that in their view the case could have potentially been a disability hate crime. Whilst the CPS has its own responsibilities to identify these cases, the lack of proactive identification by the police indicates a lack of consideration of the disability hate crime legislation/policies, or may show the difficulties encountered by the police to be able to readily identify cases or understand what constitutes a disability hate crime.

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**RECOMMENDATION**

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.

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### **CPS - identification of disability hate crime**

2.18 In the vast majority of cases the first interaction between the police and the CPS in relation to a disability hate crime case is when the police seek a charging decision.

#### *Flagging by CPS staff*

2.19 CPS guidance states that disability hate crime should be identified and flagged on the CPS case management system (CMS). This results in:

- the computer system highlighting the fact that it is a disability hate crime when staff view the case electronically;
- the paper file being labelled as a disability hate crime; and
- the CPS being able to produce data on, and monitor, the number of disability hate crimes that it deals with (and subsequently produce annual reports).

2.20 As all potential disability hate crime cases should receive CPS charging advice, the lawyer who provides the charging decision should activate the disability hate crime flag.

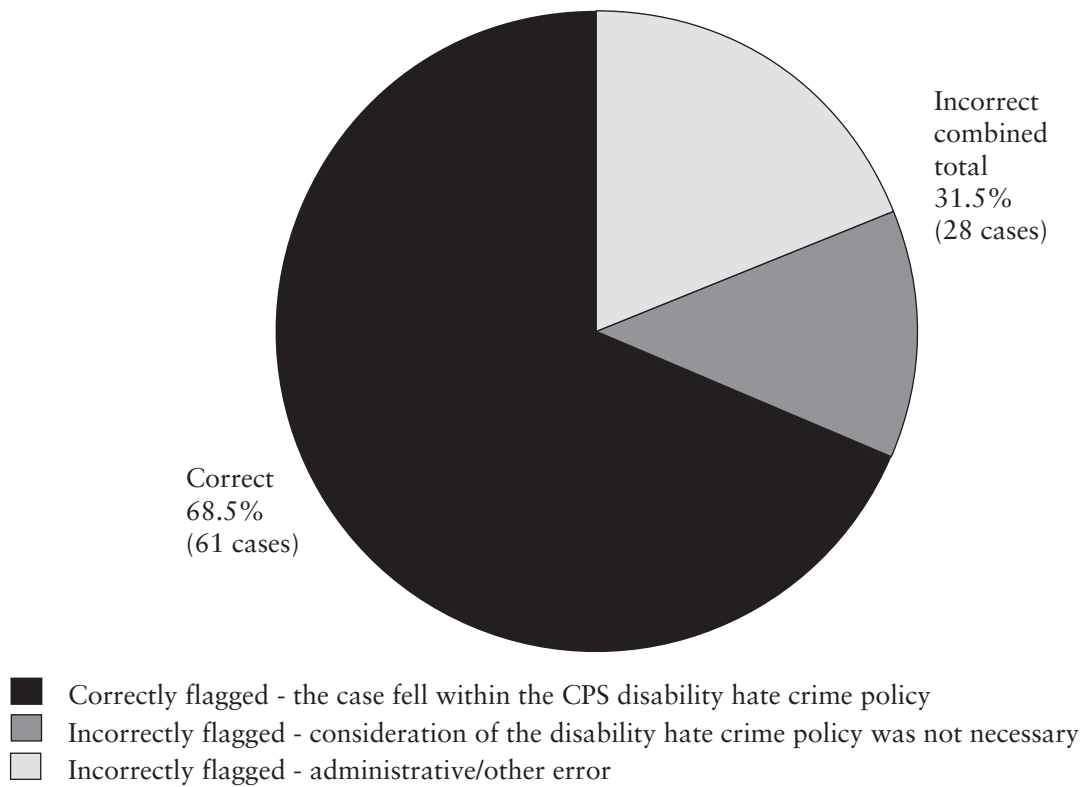
2.21 It was apparent from the case file sample and interviews with CPS staff that there was a lack of clear understanding as to what cases should be flagged and what exactly was required to be included within the written advices and file reviews.

2.22 Of the 89 CPS files examined HMCSI inspectors were of the view that there were in fact three categories of cases flagged on CMS as 'disability hate crime':

- Cases that had been flagged incorrectly due to an administrative or other error - 17 (19.1%) files fell into this category.
- Cases that had been flagged incorrectly as whilst they did involve a disabled victim, inspectors were of the view that they did not require a consideration of the CPS disability hate crime policy/s.146 CJA 2003 - 11 (12.4%) files fell into this category.
- Cases that had been correctly flagged as they involved a disabled victim and inspectors were of the view that at charging they required a consideration of the CPS disability hate crime policy/s.146 CJA 2003 - 61 (68.5%). Of the 61 cases inspectors considered that there was no prospect of the facts satisfying the definition within s.146 CJA 2003 in 29 (47.5%).

2.23 The percentage of files which were flagged as an administrative/other error (19.1%) is a cause for concern. It was accepted in all six CPS offices visited that on occasion administrative staff were flagging cases on CMS as disability hate crimes. This practice brings risks as the decision to flag a file as a disability hate crime should be taken by a lawyer, after considering the evidence presented.

Accuracy of disability hate crime flagging in the CPS file sample

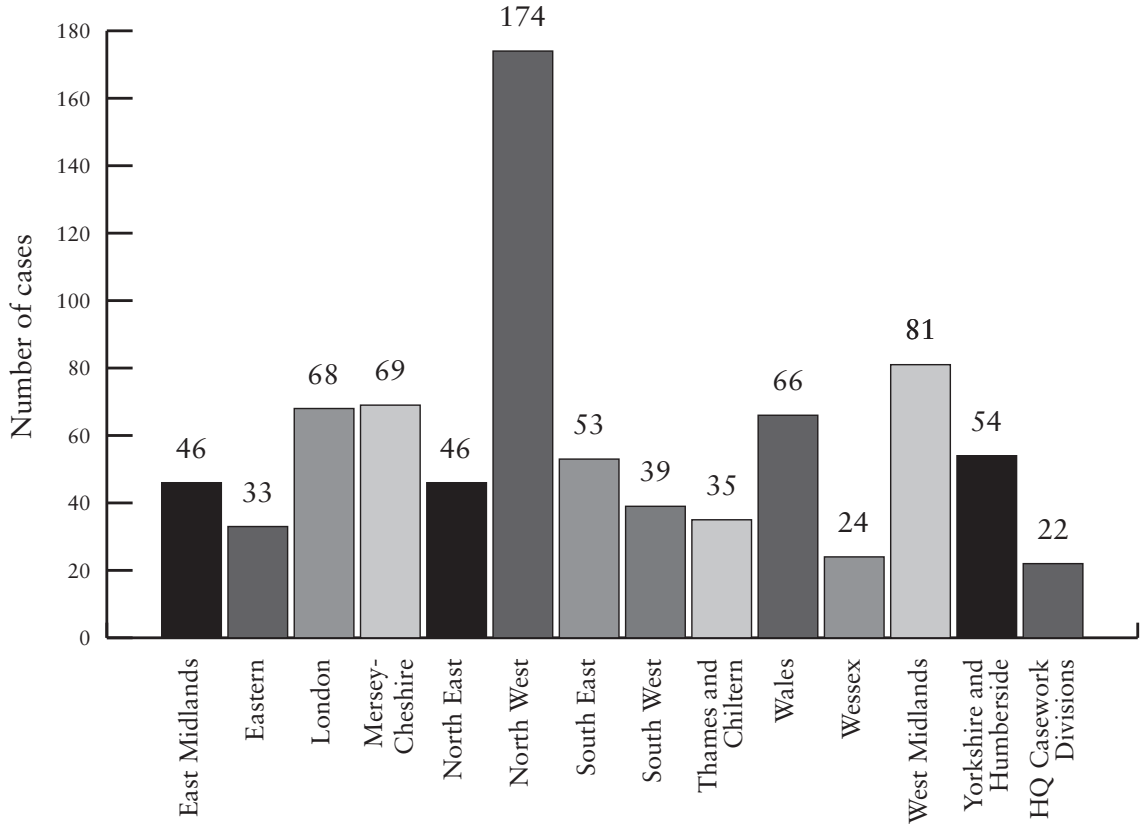


- 2.24 In total, 31.5% of the files examined were flagged as disability hate crimes inappropriately.
- 2.25 It is accepted that it may not always be possible to identify in the early stages of a prosecution if s.146 CJA 2003 could apply or not. As a consequence once a case has been flagged in accordance with the CPS policy definition of a disability hate crime, the CPS needs to be able to identify as part of the legal review process those cases which are going to be presented to the court as satisfying s.146 CJA 2003 and those cases which are not. It also needs to record these decisions and ensure that the data is available to analyse.
- 2.26 It was noticeable that one of the CPS areas when contacted by the review team with a request for files itself identified a number of cases as not being disability hate crimes and excluded them from the review process. If this had not occurred the total number of files flagged inappropriately would have been higher.
- 2.27 The CPS may wish to consider whether there would be any value if CMS could be amended to flag the following groups of cases, (a) those that involved a disabled victim, (b) cases involving a disabled victim which could be described as a disability hate crime, although the s.146 CJA 2003 definition is not satisfied, and (c) cases involving disabled victims which can be described as a disability hate crime and the s.146 CJA 2003 definition is satisfied.

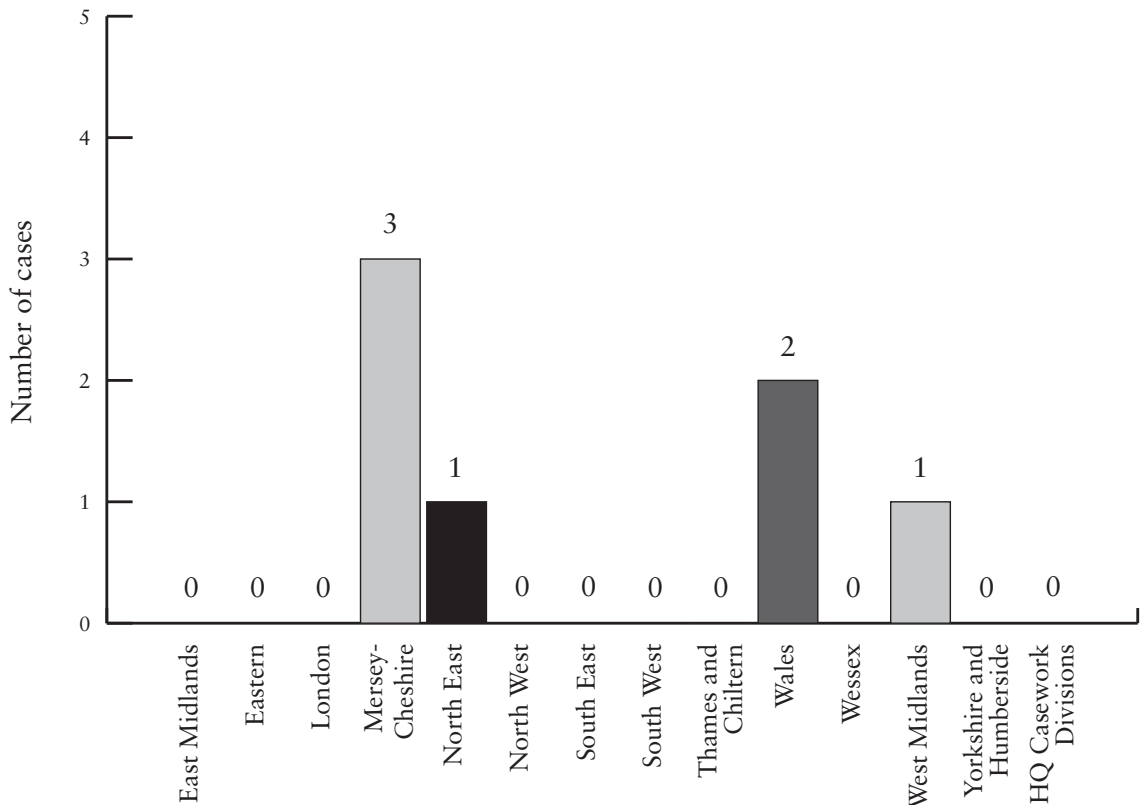
**Recording of the section 146 Criminal Justice Act 2003 uplift**

2.28 CMS has the capacity to record those disability hate crimes where the court uplifted the sentence for the aggravated element (s.146 CJA 2003). The statistics across the country are as follows:

**Number of cases flagged as disability hate crime in CPS areas in the year to January 2013**



**Number of finalised cases recorded as having a sentence uplift under section 146 year to January 2013**





- 2.29 CMS records show that in the year to January 2013 in only seven (of the 810) disability hate crime files recorded by the CPS was a ‘sentence uplift’ granted (0.86%). Inspectors were of the view that the data recorded on CMS might be incomplete as inspectors saw files where reference was made to s.146 CJA 2003 being relevant, but the file failed to record if it was raised at court. Without an endorsement on the paper file the information cannot be transferred to CMS. The lack of accurate recording needs to be addressed immediately. Of the files examined there were only five cases in which endorsements showed that an application had been made and in two the court had applied the uplift and in the other three it had been rejected.

**Probation trusts - identification of disability hate crime**

- 2.30 Probation trusts viewed disability hate crimes as a very small part of their work and therefore not a priority. They were unable to provide details of the number of offenders they had supervised for committing disability hate crimes, as case management systems available did not provide them with a method for collecting this data. One trust, Cheshire Probation, had improved their IT systems to ensure that where hate crimes are identified at court they were able to monitor them. They had developed specific codes to be able to monitor where an offender has been convicted of a hate crime. This monitoring did not already exist within any other case recording system.
- 2.31 NOMS is currently working on a new case management system: National DELIUS, and two trusts, Staffordshire and West Midlands, and Greater Manchester, have requested that the new system include the facility to monitor all hate crimes. Inspectors support this initiative and consider that probation trusts should have a hate crime flag on all of their case management systems, and that NOMS in the roll out of DELIUS includes a hate crime flag. Once accurate data is available this should assist probation trusts to actively monitor disability hate crime.

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**RECOMMENDATION**

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

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**RECOMMENDATION**

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.

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### 3 THE REPORTING OF DISABILITY HATE CRIME - BUILDING CONFIDENCE IN THE CRIMINAL JUSTICE SYSTEM

#### Reporting

- 3.1 Under reporting of disability hate crime has been a concern for a number of years and this was raised by participants in focus group meetings with local disabled groups. The reasons for the reluctance to report appear to be varied and complex. Relevant factors include a lack of self esteem, feelings of being let down in the past, a fear that they will not be believed, not fully understanding the nature of the unacceptable behaviour, and general social attitudes towards disabled people, as well as more practical communication difficulties. Some group members felt that a sizeable number of disabled people will always require support and guidance before they feel confident enough to report what has happened to them.
- 3.2 The use of advocates who can provide that support and validation was recommended by members of the focus groups interviewed with many suggesting that the ability to empathise through being disabled too would be a very useful feature. Local disabled groups often have members who can fulfil this role and this could be a valuable way of helping victims who are reluctant to report disability hate crime to the police.
- 3.3 This approach would also allow local disabled groups to build relationships with the police. However, steps need to be taken to ensure that there is a significant level of engagement, as inspectors were informed that currently, whilst disabled groups were often involved in police reference and advisory groups, they rarely saw local police officers and police community support officers. They felt marginalised because of this and considered the police were missing out on building bridges with the local disabled community. Communication between the police and disabled groups needs to be improved.

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#### GOOD PRACTICE

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.

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#### GOOD PRACTICE

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.

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### **Sharing information and building confidence**

- 3.4 A feature within a number of high profile disability hate crime cases is that the victims made numerous calls to different local agencies when reporting incidents. These agencies typically being the police, local authority, housing associations, ambulance trust and the fire and rescue service.
- 3.5 For each agency the true scale of the problem faced by an individual can be unclear, but when the information from different organisations is overlaid, it can often reveal the true extent of the issue. Acknowledging this difficulty, in a number of areas agencies have worked together to regularly produce lists of addresses of persons who are potentially at risk of harm. They then conduct further work in respect of each to determine what needs to be done.
- 3.6 Within the police forces inspected there was only one local authority area where such a process was in place. In this area it was seen as a key tool within its protective measures and a large number of cases had been identified where interventions were required. In all other forces a considerable amount of effective partnership working was identified where information sharing was routine but only in relation to individual cases. Inspectors were of the view that the opportunity to identify the less obvious cases was being missed.

### **Third party reporting**

- 3.7 In all areas inspected third party reporting centres (locations that are not police stations through which you can report crimes) had been set up. However they worked in a variety of ways, using different means of communication and had varying levels of success. In most areas the centres were not proactive and after being set up most were left to their own devices. Only one force inspected was actively monitoring the levels of reports being made and as a consequence the remaining five were not being proactive in their use of the scheme.

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#### **GOOD PRACTICE**

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.

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#### **RECOMMENDATION**

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.

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**CPS contribution to building confidence**

- 3.8 The CPS accepts that it has a role to play with communities and has included a commitment to do so in its Core Quality Standards. Standard 12 sets out that the CPS will engage with communities, explain its role to them and consult them about what its priorities should be.
- 3.9 The main mechanisms for the CPS to engage with the community in relation to disability hate crime are through (1) Local Scrutiny and Involvement Panels (LSIPs) and (2) ad hoc community engagement projects.
- 3.10 All of the locations inspected had set up LSIPs and in areas where senior managers were engaged with improving performance in the handling of disability hate crime, inspectors found that there was a greater awareness amongst staff of the surrounding issues. The LSIPs were also used to provide feedback to lawyers about issues raised in the meetings.
- 3.11 There needs to be a greater analysis of the effectiveness of the LSIPs specifically in relation to disability hate crime. Whilst the LSIPs are being held, it is less clear nationally how many disability hate crimes are being reviewed and what the impact of the LSIPs is. The CPS needs to ensure that the panels (a) regularly review a number of disability hate crimes, (b) are able to demonstrate that they improve performance in prosecutions and (c) contribute to greater confidence in reporting disability hate crime.

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**GOOD PRACTICE**

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.

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- 3.12 In all areas visited (and those that were surveyed and replied) there was evidence of community engagement. Examples included, (1) the creation of teaching material and a DVD specifically for disability hate crime, (2) partnership working with local disability groups, (3) holding local disability hate crime conferences, (4) contributing to the training of local disability advocates, (5) the establishment of disability hate crime Service Level Agreements between the CPS and police, (6) delivering training to those involved in providing advice to victims of disability hate crime and (7) working with Mencap Cymru to develop colour coded letters to assist victims with learning disabilities or mental health issues.
- 3.13 There needs to be a clearer strategic aim to the CPS community engagement work at national and local level. Joint action plans with other criminal justice agencies need to be drawn up in relation to disability hate crime which focus on increasing reporting and improving both the investigation and prosecution processes.

**Probation trusts contribution to building confidence**

- 3.14 There was no evidence of any direct engagement with the disabled community provided by any of the six probation trusts visited (or in other evidence provided by trusts not inspected), however, all probation trusts reported working through the local safeguarding adults boards (and local criminal justice boards), as a link to community engagement/confidence building.



## 4 POLICE INVESTIGATIONS AND CHARGING

### Knowledge of section 146 Criminal Justice Act 2003

- 4.1 Section 146 of the Criminal Justice Act 2003 does not appear to be very well understood or recognised as a possibility by police officers or staff. Officers were unable to provide any examples of having used it or having considered its use. Within the file sample inspectors were unable to identify any cases where officers had highlighted that s.146 CJA 2003 could be appropriate.
- 4.2 It has been suggested that the way s.146 CJA 2003 can be used is an ‘alien concept’ for police officers and staff. Officers appear to be more comfortable with investigating racially or religiously aggravated offences where the motivation is a ‘point to prove’ and as a consequence they appear to have that point in mind from the start of the investigation. As the potential use of s.146 CJA 2003 is not as clear it is not always considered at the start of any investigation and as such is often overlooked or not considered at all.
- 4.3 Officers did not offer an opinion over the use of s.146 CJA 2003 as none had seen it being applied. Most officers felt that the disability of the victim probably spoke for itself and wondered if the use of s.146 CJA 2003 would actually increase the sentence.

### Investigation quality

- 4.4 This lack of understanding of s.146 CJA 2003 was illustrated during the focus group meetings, where it was also revealed that officers and staff had little real idea of the nature or prevalence of disability hate crime. As such the motivation for an offence is not an aspect that they routinely ask about and is only identified when obvious, e.g. name calling relating to a specific disability. Where further subtle questioning is required it is very unlikely that this will take place and the motivation will remain unknown.
- 4.5 Within the investigative phase, there was little consideration displayed either during the main investigation or during the suspect interview of a need to enquire about the motivation for committing an offence. Officers and staff were primarily focused on obtaining the evidence to prove the offence but rarely asked questions of witnesses or suspects that would reveal either significant behaviour or comments that would demonstrate the motivation behind a crime.
- 4.6 Officers routinely gathered evidence that established that an offence had taken place, e.g. a witness account of someone being punched, or the description of an injury. They also gathered evidence in relation to the offender’s intention, e.g. asking a suspect if they had intended to injure the victim or to damage property. However it was rare within the cases examined to find officers having asked questions of suspects as to whether he or she had assaulted or targeted the disabled person specifically because he or she was disabled. Additionally the victim’s disability was often mentioned at the end of their witness statement as a closing comment (or the only reference to a disability being found on the back of the original statement), as opposed to being outlined at the start, thereby failing to set the scene for what was often a deliberate targeting of a disabled person.

- 4.7 The examination of investigative plans did not reveal any consistent and thorough planning having been put into gathering further evidence that would support proving a disability hate crime, e.g. exploring a person's history to establish if any previous incidents were of a similar nature or reviewing CCTV for earlier behaviour targeted against other disabled people.
- 4.8 Officers did not prompt charging lawyers to consider whether a disability hate crime had occurred and often the detail within the file was insufficient for the charging lawyer to make that judgement.
- 4.9 Arguably this stems from a lack of understanding as opposed to a lack of interest or an unwillingness to investigate properly. Just as officers have been provided with guidance on how to investigate the background to domestic abuse offences, similar guidance could be provided for disability hate crime investigations. The mindset of looking for non-obvious evidence should be encouraged and supervisors should prompt officers to look for additional witnesses or other sources of information.

#### **Terminology**

- 4.10 Officers and staff were often misled by the term 'hate' and many officers within the focus groups expressed a feeling that it was the wrong term. They felt that it caused officers to consider only crimes where a clear hate element was involved and as a result many officers took a narrow interpretation of which incidents could be regarded as disability hate crimes.
- 4.11 Officers need to be provided with guidance to help develop a clearer understanding of the breadth of what hate crime means in relation to disabled victims.

#### **Police interviews**

- 4.12 This is an area where significant improvements can be made by officers or staff taking a different approach when interviewing suspects. A greater understanding of the current legal position is required as well as a more open and enquiring mindset as to why suspects target those with a disability. Officers need to identify the motivation behind the offending.
- 4.13 The use of intermediaries was considered and again it was clear that although most specialist officers within safeguarding positions had a good working knowledge of intermediaries, most non-specialist police and CPS staff required further awareness training. This meant that on occasions intermediaries were not considered when it would have been useful to have done so. Further training is required or specialist roles which oversee such cases and provide directional support should be created.

#### **Investigative continuity**

- 4.14 It is common practice for those police officers who attend and speak to victims, after the initial reporting of an offence, to pass the investigative work on to other police colleagues or staff. Inspectors were of the view that this lack of continuity could have an impact on the investigative quality. If the initial officer does not recognise disability hate crime and then passes the case on to another officer it is unlikely that the second officer will recognise the case as a disability hate crime, unless there is further contact with the victim or information comes from another source.

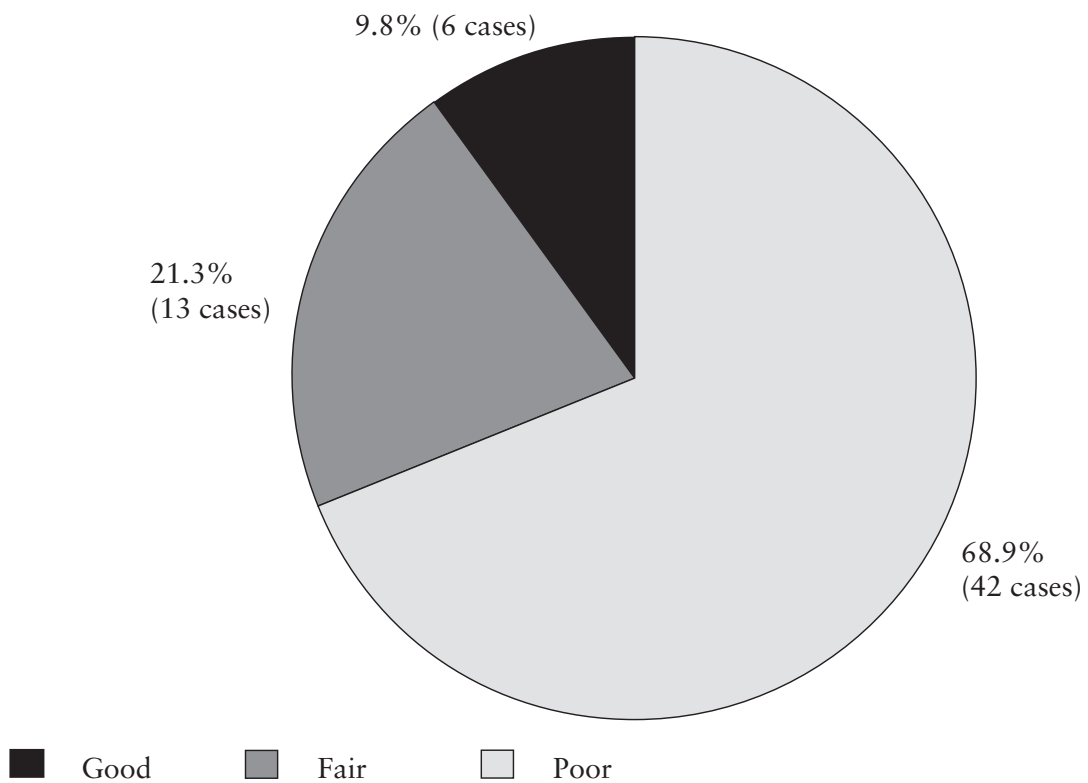


4.15 Lack of continuity can also cause difficulties when there is a requirement for information to be passed on for victim care or with investigative practices as it creates an opportunity for information to be lost or misunderstood. It is therefore essential that officers identify any disability hate crime issues (including ‘hidden’ impairments) at the first contact with the victim and ensure that these details are clearly recorded/highlighted.

**Quality of information supplied to the CPS by the police**

4.16 In those cases where inspectors were of the view that there should have been a consideration of the CPS disability hate crime policy, the quality of the information in relation to the disability hate crime issue provided by the police was assessed as follows:

**Quality of the initial information in cases supplied by the police to the CPS in relation to disability hate crime issues**



4.17 The case file examination revealed, generally, that there was a lack of understanding by the police of the necessary evidence that was required to allow a full consideration of the disability hate crime issue (including the s.146 CJA 2003 statutory requirement).

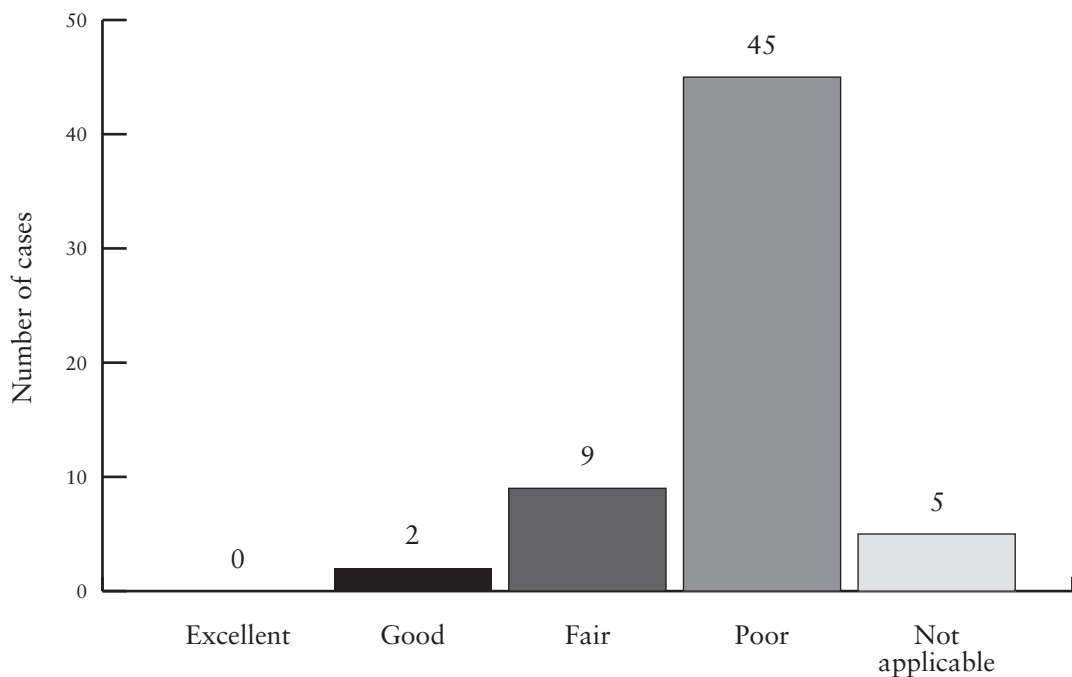
4.18 The information supplied by the police was also reviewed to see if they made reference to any adjustments the disabled person may need to support an effective prosecution - for example, intermediaries or physical adaptations to enable witnesses to give their evidence in the most effective way, and the police supplied this information in only 17.7% of relevant cases.

**CPS charging**

***Quality of legal decision-making***

4.19 The quality of the MG3s (these are documents that are prepared by CPS charging lawyers providing (a) written advice to the police about the charging decision and (b) additional information for CPS staff post-charge) examined was disappointing. There was a lack of analysis of the disability hate crime issue and even in cases where a decision was made that s.146 CJA 2003 was relevant, the reasoning was not always fully stated. A comprehensive analysis of the s.146 CJA 2003 issues was found in only 15 of the relevant 56 cases (26.8%)<sup>6</sup>.

**Quality of the legal analysis (law/facts) with reference to section 146**



4.20 The MG3s reviewed also failed to demonstrate a detailed knowledge by the prosecutor of the need to ensure that the cases had been investigated thoroughly in relation to demonstrating ‘hostility’ or ‘motivation’ under s.146 CJA 2003. Inspectors were looking for evidence that prosecutors appreciated the need to ensure that the full background details of the incident (for example, linking previous disability hate crimes or incidents together or evidence that police had contacted neighbours or established a link to ASB) had been obtained, or requested of the police if necessary, and considered. However, such analysis was only seen in 13 of the 54 relevant cases (24.1%)<sup>7</sup>.

<sup>6</sup> Inspectors were of the view that out of the total sample group of 61 it would not have been reasonable to expect a detailed analysis of s.146 CJA 2003 in five of those cases.

<sup>7</sup> Inspectors were of the view that out of the total sample group of 61 a detailed consideration of the background details was not required in seven cases.

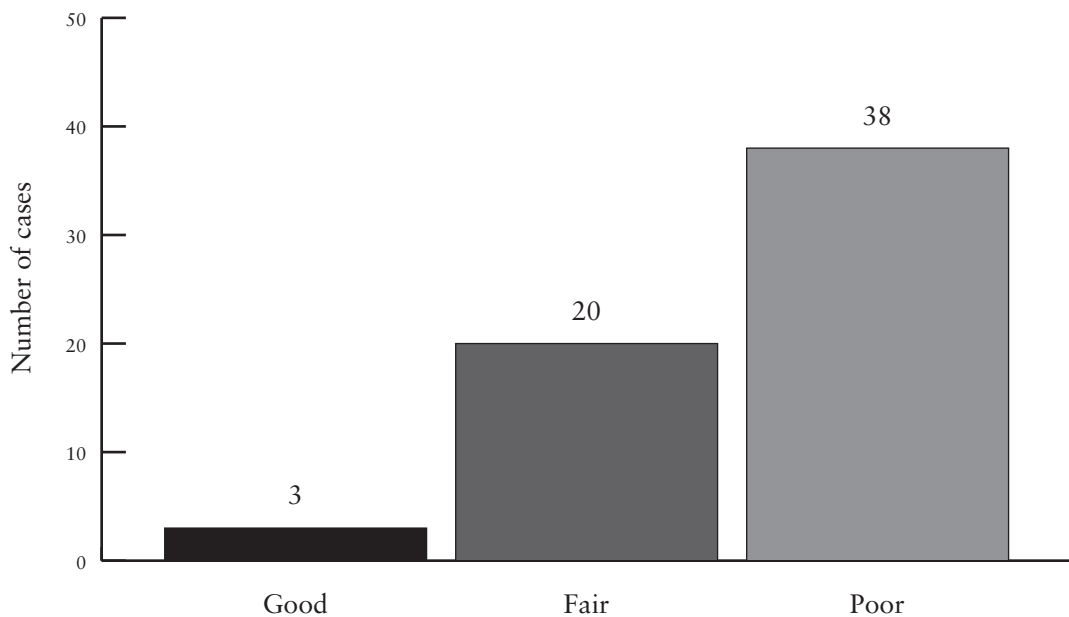
***Charging advice in relation to ancillary applications***

- 4.21 Of the 54 files where it was appropriate to make reference to an application for an ancillary order<sup>8</sup> only 16 (29.6%) had considered the issue appropriately. The MG3 needs to set out all relevant ancillary applications in such a manner that the prosecutor can make an effective application to the court.
- 4.22 It is also important that as much detail as possible is given in the MG3 regarding the terms of any ancillary application that is to be made by the CPS and this should be considered by the police and CPS at charging.

***Overall charging quality decision***

- 4.23 Inspectors were of the view that at the pre-charge stage the decision to authorise charge complied with the test in the *Code for Crown Prosecutors* in 96.7% (58 out of 60) of the case files<sup>9</sup>.
- 4.24 The overall quality of MG3s (including identification and compliance with the disability hate crime policy) was assessed as follows:

**Overall quality of disability hate crime MG3s  
(including the identification and compliance with the disability hate crime policy)**



- 4.25 Approaches varied in the areas inspected as to how they ensured that charging lawyers considered disability hate crime issues. In two areas charging lawyers were provided with an ‘aide memoire’ at the charging desks but it was noticeable that this prompt was not being used in all locations. In another while they did not use an aide memoire, they did use a ‘prompt for lawyers’ within the charging document: this focussed on the s.146 CJA 2003 definition, rather than the CPS policy definition. In other areas neither an aide memoire nor prompt was used.

<sup>8</sup> Orders that the court can make once the case has concluded, e.g. a restraining order under section 5 of the Protection from Harassment Act 1997 and section 12 of the Domestic Violence, Crime and Victims Act 2004.  
<sup>9</sup> One file in the sample 61 cases was police charged in accordance with the guidance issued at the time.



## 5 SAFEGUARDING

- 5.1 Safeguarding is an important issue in the context of disability hate crime but applies only to a small number of cases within the overall volume. Nevertheless these are some of the most difficult, impactful and serious cases that are dealt with. The importance of safeguarding cannot be understated.
- 5.2 Currently, in most local authority areas local safeguarding adult boards, run along similar lines to the local safeguarding children boards, have been established. The local authority, police, health, probation trust and voluntary sector are the key partners involved in the operation of the board, with their objectives being the protection of vulnerable adults from abuse, the reduction of the risk of abuse, and to support people in stopping abuse when it happens.
- 5.3 Although a number of victims of disability hate crime will fall within the criteria set<sup>10</sup>, many more fall outside. However that is not to say that the local authority Adult Social Care Department or local health trust may not be able to provide some form of support for those victims who fall outside.
- 5.4 One of the key functions of safeguarding is the initial exchange of information as a means of understanding the level of risk that is being faced, and to determine the response.
- 5.5 In the areas inspected all police forces had procedures and processes that facilitated the passing of information gained by front-line and specialist officers to Adult Social Care. In addition the processes meant that all referrals were recorded within the force IT systems and were available for future research.
- 5.6 There were also clear examples of officers and staff being fully engaged in multi-agency discussions or meetings where safeguarding planning and implementation is managed. Officers and staff provided relevant information, contributed fully and completed actions allocated during the meetings. The forces examined were committed to the multi-agency safeguarding arrangements and provided a proportionate response.
- 5.7 Apart from a few exceptional projects, no work around disability hate crime had been undertaken within other boards where there appeared to be low levels of knowledge.
- 5.8 This raises an important issue over the governance of disability hate crime and how partnerships work collaboratively to improve the current position. It could be argued that disability hate crime should fall within the remit of Community Safety Partnerships (CSPs) and whilst in some areas CSPs have worked hard to improve the current position there are other areas that have not considered it in any depth.

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<sup>10</sup> *No secrets: Guidance on developing and implementing multi-agency policies and procedures to protect vulnerable adults from abuse* (Department of Health, March 2000) defines a vulnerable adult as: a person aged 18 or over, who is or may be in need of community care services by reason of mental or other disability, age or illness, and who is or may be unable to take care of him or herself or unable to protect him or herself against significant harm or exploitation. Abuse is also defined as: 'a violation of an individual's human or civil rights by any other person or persons'.

5.9 *Challenge it, Report it, Stop it - The Government's Plan to Tackle Hate Crime* (March 2012) suggests that the following actions should be undertaken by multi-agency partners:

- local partners make available information on hate crime and the support services that are available to assist victims;
- the police take reports of all hate crimes seriously, spotting victims who are at risk and working with other local partners to bring offenders to justice;
- the Crown Prosecution Service prosecutes hate crimes wherever possible and draws the court's attention to such aggravating features for the purposes of sentencing;
- the court takes into account the aggravating factor of hate crime and applies an enhanced sentence accordingly; and
- the National Offender Management Service work to rehabilitate offenders, and ensure they do not reoffend.

5.10 It is important that these suggestions are adopted and achieved.

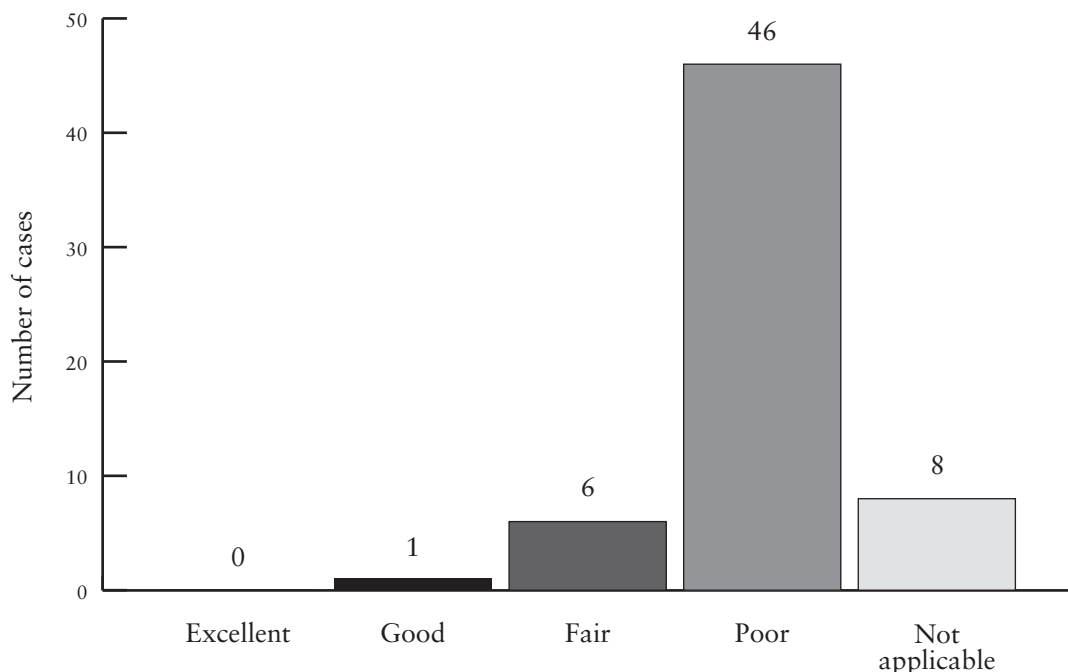
5.11 Police and Crime Commissioners (PCCs) are now in post but how they will impact on disability hate crime issues is unclear. The PCCs work across a number of local authorities and health areas, and may be able to add a degree of consistency across large geographic areas, providing an opportunity to drive improved performance in relation to disability hate crime.

## 6 THE PROSECUTION PROCESS AND SENTENCING

### The first hearing in the magistrates' court

- 6.1 If the prosecution is of the view that the facts of the case make s.146 CJA 2003 relevant there is an obligation to raise the matter with the court. The prosecutors who conduct these first hearings in the magistrates' court rely heavily upon the information contained within the MG3.
- 6.2 The level of detailed instruction to the court prosecutor was generally inadequate and this is significant as it is likely that prosecutors would have had little previous experience of the issue, due to the generally low number of cases involving s.146 CJA 2003.
- 6.3 A clear decision needs to be endorsed on the MG3, not only if it is a s.146 CJA 2003 case but, in addition, what the prosecutor must do if the defence do not accept that it is relevant. Instructions need to be given as to whether the CPS will make representations that a court hearing is required to decide if it is a s.146 CJA 2003 case and, if so, which witnesses will be required to give evidence. The police need to obtain the victim's views on this prior to seeking charging advice and note it clearly on the MG3.
- 6.4 A sample of CPS associate prosecutors were surveyed to gain an insight into their experience in dealing with disability hate crime. Whilst they generally felt confident about their ability to conduct s.146 CJA 2003 cases, it is noticeable that nearly 25% of those who responded had not had any disability hate crime training and 18% of those who had received training reported that it was over two years ago.

Quality of instructions to the prosecutor with reference to section 146



### Preparation for trial

- 6.5 After a not guilty plea is entered the case is prepared for trial, and should be reviewed by a lawyer. The quality of the pre-trial reviews on the files examined was inadequate. There was frequently a failure to analyse the facts and law to provide a clear exposition as to whether the matter was going to be presented as a s.146 CJA 2003 case. This is an important step in the process given the number of cases where there had been no clear reasoning given at charging as to why the case had been flagged as a disability hate crime.
- 6.6 The CPS must ensure that a reasoned decision is recorded at pre-trial review as to whether the matter is to be presented to the court as a s.146 CJA 2003 case.

### Special measures

- 6.7 Special measures can assist victims and witnesses in giving evidence at trial. Examples of special measures include screens in the courtroom to prevent witnesses from seeing the defendant, live links allowing a witness to give evidence away from the courtroom, and the use of visually recorded statements and intermediaries.
- 6.8 It is important to note that special measures need to be applied for by the CPS and it is the court that decides if they will be granted, having reference to the detailed requirements contained within the Youth Justice and Criminal Evidence Act 1999 (although in certain types of cases victims are automatically entitled to specific special measures).
- 6.9 The quality of the written special measures applications in the file sample was mixed. Of the relevant files, one was assessed to be excellent, seven good, eight fair and two poor.
- 6.10 The file examination revealed that the police need to provide more detailed information to the CPS, for example, inspectors found in ten cases the phrase 'learning difficulties' was used by the police with no explanation of what the victim's capabilities were.

### Special measures meetings with vulnerable or intimidated victims and witnesses

- 6.11 CPS policy requires that when an application is made for special measures for a vulnerable or intimidated victim (or witness) they will be asked if they would like to meet with the prosecutor. The purpose of the meeting is to reassure witnesses that their needs will be taken into account and thereby help build trust and confidence. There was no evidence in any of the files examined that offers were being made for meetings.

**Case study:** Inspectors observed a case at court which had been well handled. It was clearly apparent that throughout the life of the case the victim's welfare was a central consideration of both the police officer in the case and the CPS reviewing lawyer. Both had met with the victim well in advance of the trial date and in addition there was a further meeting at court with the victim also involving counsel. An intermediary was instructed to assist with communication and all of the agencies had worked together to support the victim.



### Needs assessment by the Witness Care Units

- 6.12 Witness Care Units (WCUs) manage the care of victims and witnesses from the charging of the defendant through to the conclusion of a case. Their role includes undertaking a ‘full needs assessment for all victims’ where defendants have pleaded not guilty and they should keep victim and witness needs under continuous review throughout the case.
- 6.13 The needs assessment process can provide a safeguard to ensure that the CPS has all of the necessary information about the victim to ensure that an effective prosecution can take place. If for example, the WCU is informed by the victim that they have physical disabilities that might prevent them from entering the court room, this information can be passed to the CPS and solutions identified. The same information would (if the victim agrees) be passed to the Witness Service so that the relevant assistance can be provided on the day of the court hearing.
- 6.14 The needs assessment is in the form of a set of standard questions on the WCU computer system (WMS). Over 60% of the relevant cases in the file sample did not have a fully completed detailed needs assessment.
- 6.15 WCU staff acknowledged that they frequently did not complete the entire needs assessment as set out on WMS and that this was due either to a lack of time or a reluctance to use a checklist formula whilst carrying out a needs assessment.
- 6.16 Inspectors were informed by staff from the Witness Service that there were still instances where individuals’ needs had not been identified in advance of the victims/witnesses attending court. These difficulties should have identified earlier by the police or WCU staff.
- 6.17 The lack of detailed needs assessments was also highlighted in the joint inspection report on the experience of young victims<sup>11</sup> and this review reinforced the importance of WCUs conducting an effective needs assessment. WCUs should work collaboratively to review the effectiveness of the current needs assessment and ensure that all agencies have the necessary information.

### Direct communication with victims scheme

- 6.18 The CPS operates a direct communication with victims scheme (DCV) where it will write to victims of crimes in certain circumstances. The most frequent reason for writing to the victim under the scheme is after a decision has been made to discontinue a charge or where a substantial alteration to the charge has been made.
- 6.19 The file examination revealed that of the relevant letters inspected, one was assessed as good, five as fair and six as poor. It was disappointing that the quality of the letters being sent to disabled victims was not higher. There was frequently an over reliance on standard text, a lack of real explanation for the decision and a lack of evidence that the needs of the individual recipient had been considered.
- 6.20 Inspectors were informed that attempts are being made in two CPS areas to produce ‘Easy Read’ style letters. However, the general standard of letters to disabled victims needs to be improved and monitored.

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11 See *The Joint Inspection Report on the Experience of Young Victims and Witnesses in the Criminal Justice System* (February 2012), undertaken by HMCPSI and HMIC.

- 6.21 The CPS guidance provides that a letter should be sent to the victim if a decision is taken about the case which has the result that the s.146 CJA 2003 element of the case will not be put before the court, even though there is no alteration to the charge. This reinforces the importance of the CPS making clear decisions at the earliest possible stage about whether s.146 CJA 2003 applies or not and recording the decision. Only if a clear process is in place to identify such cases can the CPS comply with its own guidance.
- 6.22 One of the key ways of improving confidence in the criminal justice system is to ensure that disabled victims are aware of the steps taken by the criminal justice agencies in relation to the disability aspect of the case.
- 6.23 In every case where the CPS flags the matter as a disability hate crime the victim should be informed that (a) it has been designated as such (the Witness Care Units can do this as part of their initial communication with the victim) and (b) within seven days of the sentencing hearing the victim should be informed if the court has or has not uplifted the sentence under s.146 CJA 2003.

#### Sentencing

- 6.24 Our interviews with the judiciary revealed that very few cases had been presented to them where the prosecutor had made reference to s.146 CJA 2003 and that they were not being invited to consider s.146 CJA 2003 on anything but a very exceptional basis. It appears that whilst cases involving disabled victims are being prosecuted, the impact of s.146 CJA 2003 is not being felt.

**Case study:** A male, who has learning difficulties, is abused and assaulted. The lawyer who provides the initial advice to the police does not raise the issue of disability hate crime but does authorise charge. The case is subsequently reviewed in the CPS office and the lawyer endorses on CMS ‘s.146 CJA 2003 Hate Crime based on the victim’s vulnerability. Sentence enhancement’. However, despite this text being part of the lawyer’s review they fail to ‘flag’ the case as a disability hate crime on CMS. The defendants plead guilty at court. However, the lawyer presenting the case on that day takes the view that it is not a case where s.146 CJA 2003 applies and decides not to raise the matter with the court.

- 6.25 As the case study above illustrates, the CPS also needs to ensure that guidance is given to lawyers as to what process should be adopted if they hold a different view to the charging lawyer as to whether s.146 CJA 2003 is applicable.
- 6.26 Only if the court is of the view that the statutory test under s.146 CJA 2003 is satisfied and announced in court and a pre-sentence report (PSR) is requested by the sentencer, will probation trusts normally become aware if a matter has been regarded as a s.146 CJA 2003 case. There is no mechanism for probation trusts to be informed of those other cases where the CPS has flagged the case as a disability hate crime. If offender managers are to address the issue of disability hate crimes that do not meet the s.146 CJA 2003 definition, there needs to be a clear procedure for this information to be recorded and passed to other agencies.

- 6.27 For offender managers preparing PSRs the quality of information they receive is vital to both the accuracy of the report and appropriateness of their recommendations. The majority of the PSRs examined by inspectors relied on information contained in MG3 or MG5 (police report) documents or only information provided by the offender or their solicitor. Although guidelines exist as to what documents should be supplied to the PSR writer, offender managers and probation court staff were often unaware of this and described difficulties they have had in obtaining prosecution documents. All CPS areas should ensure that the systems put in place to share information operate effectively.
- 6.28 As a result of obtaining limited details about the offence, the vast majority of reports were based mainly on information provided by the offender. Not surprisingly offenders minimised the seriousness of their conduct and the vulnerability of the victim. In less than a third of reports was there detailed information about the victim or recognition that the victim was disabled or even vulnerable, let alone that it was a disability hate crime.
- 6.29 The reliance by probation staff on inadequate information also raises concerns relating to the inability of offender managers to identify any pattern of offending. For example, an offender convicted of a public order offence may have been generally swearing or abusive in the street, or may have been targeting a vulnerable disabled person. Without detailed information about these offences, an offender manager may not be able to assess the case fully.
- 6.30 Offender managers working in courts reported having to prepare either oral reports or Fast Delivery Reports (FDRs) at short notice, with little or no information. One offender manager recalled delivering an oral report that recommended a community sentence, unaware that the court had agreed that there was an aggravating feature under s.146 CJA 2003. This meant that the serious nature of the offence was not taken into account by the offender manager when putting forward proposals to address the individual's offending.
- 6.31 Six of the 22 PSRs examined were assessed as being the wrong type for the offence. These reports were either oral or fast delivery, produced on the day of the court hearing and did not sufficiently address issues of hate crime, or gather all appropriate information. If offender managers consider that they cannot prepare an adequate PSR in these circumstances, they should request an adjournment to prepare a full written report.
- 6.32 Although most probation trusts have not, as yet, considered disability hate crimes a priority, Merseyside Probation Trust reported that there had been a 300% increase in the number of convictions for disability hate crimes, following an increased awareness and police training around disability hate crime. Cheshire Probation reported 'This had a knock on effect on the other agencies within the criminal justice system including probation being able to assist with sentencing. Police awareness that a hate crime has taken place had an effect on what happens in the remainder of the criminal justice system'. Given this experience, it is important that all probation trusts have the ability to deal with disability hate crime offenders appropriately.



## 7 POST-CONVICTION

- 7.1 The problems encountered by offender managers when preparing a pre-sentence report (PSR) continued after sentence. Offender managers told inspectors that if they did not receive full CPS documents initially, it was unlikely they would be able to get the information later. As a result, inspectors only found evidence in three cases that the disability hate crime had been assessed using the NOMS offender assessment system (OASys).
- 7.2 In only three cases examined was there an objective in the offender's initial sentence plan to address the disability hate crime conviction. In only one of these cases was there evidence that the intervention linked to the objective had been delivered in line with the plan.
- 7.3 In the majority of cases examined inspectors found a lack of an investigative approach by offender managers, with probation staff resigned to not receiving sufficient information and being too ready to accept the offender's account of the offence. For offender engagement and professional judgements to work, offender managers need both sufficient information and a rigorous investigative approach to their work with offenders.
- 7.4 The majority of cases in the file sample contained no information about the victim, either in the report or the OASys assessment. Although this may be a reflection of the lack of information available to offender managers, it also indicates that there is a need for them to place the victim at the centre of their work with offenders. Inspectors were concerned that there was little evidence of this.
- 7.5 In none of the cases inspected, either those which were a disability hate crime or where the victim had been targeted due to their vulnerability, was there evidence that a specific intervention to address these aspects of the offending had been delivered. The EHRC report recognises that a number of probation trusts had developed programmes to address hate crimes, however, we found no evidence that offenders who had committed disability hate crimes had undertaken these programmes.
- 7.6 Although the EHRC report highlighted a number of hate crime interventions available within probation trusts, these programmes are fundamentally designed to address racially aggravated offending, with recommendations for adaptation to suit other types of hate crime. Whilst there is some material that can valuably be adapted to suit offenders who have committed a disability related offence, this does not represent offender related work that is specifically designed to address the motivation and circumstances of perpetrators of disability related offending. Probation trusts currently do not have such material available.

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### RECOMMENDATION

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.

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## 8 TRAINING AND LEADERSHIP (INCLUDING QUALITY ASSURANCE)

### Police training

- 8.1 In all forces there was a mixed picture regarding training. Most forces had a variety of training regarding equality, diversity, mental health, vulnerable adults and hate crime but in the main this had failed to provide any real guidance regarding disability hate crime. Many officers and staff had no real grasp of the volume of potential crimes and incidents, lacked understanding over the range of crimes that are committed and had little idea as to why victims were reluctant to come forward and report what had happened to the police.
- 8.2 Many of the forces visited relied heavily on electronic learning (e-learning) as a training tool which was universally treated with mistrust by officers. It was often seen as a task to be completed and officers reported just ticking boxes without gaining any real learning from the experience. Most felt that trainer led sessions would be preferable as it would allow them to get involved in debates and develop their understanding.
- 8.3 Whilst e-learning can be the preferred means of training for reasons of efficiency and resources, on many occasions it has been implemented without any broader thought. E-learning is only one part of a staff development strategy and needs to be accompanied with other developmental tools. In the forces examined no additional guidance or support mechanisms had been provided and as such the training has been one dimensional.

### CPS training

- 8.4 It is noticeable that over 33.3% of lawyers who completed the survey questionnaire confirmed that they had not received any training in relation to disability hate crime and a further 14.9% stated that the training had been more than 24 months ago. Amongst associate prosecutors the percentages were 24.2% and 18.2% respectively. The results of the interviews also reveal a number of staff who state that they have never received any specific disability hate crime training.
- 8.5 The CPS must acknowledge that there is a need for effective comprehensive training which involves not only legal matters but also includes other issues relating to disability hate crime. Training needs to raise awareness and give guidance to prosecutors as to how to best maintain the confidence of disabled victims (and to how to obtain the best evidence from them). This requires a basic understanding of the different types of disabilities and the most likely problems encountered when giving evidence.
- 8.6 Appropriate training will contribute to identifying correctly and prosecuting effectively disability hate crime cases. Whilst the CPS has delivered disability hate crime training in recent years there is a need for continued 'refreshment' in relation to legal topics that are dealt with infrequently to ensure that knowledge is current. The effectiveness of any training needs to be monitored.
- 8.7 The need for comprehensive training was further highlighted as 40% of lawyer respondents identified their knowledge of special measures (and other relevant support mechanisms) as 'reasonably detailed', with less than 20% describing their knowledge levels as 'very thorough'. Two thirds of those surveyed were of the view that further training would improve confidence in dealing with disability hate crimes.

### **Probation trust training**

- 8.8 All probation trusts, either inspected or who responded to our questionnaire, reported having undertaken specific hate crime related training as part of their diversity training programme. However, the main focus of this training was racially motivated hate crime and little or no focus was given to disability hate crimes. Greater Manchester Probation Trust had for a number of years delivered disability awareness training. However, we found limited knowledge of disability hate crimes among those offender managers interviewed during the inspection.

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### **RECOMMENDATION**

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.

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### **Police, CPS and probation trusts leadership**

- 8.9 Whilst improvements still need to be made, many commentators would acknowledge that general attitudes and behaviours regarding race/religion and sexuality have improved over a period of years. However, disability is an area where social attitudes are still ill informed. If the police, CPS and probation trusts are to move forward in the handling of disability hate crime, senior managers at a national and local level must understand its unique features and that it requires additional focus and attention. Given the demands on staff, without determination on the part of senior managers to achieve real change, there is unlikely to be any significant progress.
- 8.10 Inspectors were of the opinion that other hate crimes were regarded as a higher priority and the relatively low numbers of disability hate crimes provide a ‘get out’ by allowing a view to be taken ‘it is not a problem here’, rather than an understanding of the significant under reporting by victims and the lack of clear internal procedures to effectively deal with disability hate crime.
- 8.11 Whilst the profile of disability hate crime has improved and progress has been made, there is a need for a new impetus from police, CPS, NOMS and probation trust leaders on disability hate crime. Whilst policies exist, the profile of disability hate crime needs to be in line with racially and religiously aggravated crimes, so that it is routinely considered by front-line staff. Attitudes need to change.

### **Police - quality assurance**

- 8.12 In the forces inspected there was a limited approach to quality assurance. Whilst most forces had processes in place to review incidents that had been identified as disability hate crimes, no other quality assurance measures were revealed. Inspectors did not identify any forces testing their call handling, victim interviewing or crime recording in an attempt to understand where relevant information had been missed. As a consequence, opportunities to identify service delivery gaps and develop improved practice had not been realised.



- 8.13 Whilst there was ample evidence of supervisors overseeing crime investigations, there were very few cases where this process had identified disability hate crimes which had previously been unrecognised by officers. Inspectors were of the view that opportunities to identify disability hate crimes were being missed both at initial and supervisory stages. This indicates that supervisors require effective training in relation to disability hate crime to ensure that the supervisory process adds value.
- 8.14 In many forces, subject experts were able to provide advice and guidance to investigating officers as well as referring suitable cases to partners and signposting the victims to agencies who are able to provide support. These officers, called hate crime co-ordinators in some instances, offered a valuable service and improved the quality of service being delivered. Unfortunately they were reliant on the cases being identified by other officers and staff.

**CPS - quality assurance**

- 8.15 Each of the 13 CPS areas and CPS Direct has appointed a hate crime co-ordinator (and there is also a national hate crime champion). Each co-ordinator, often along side other duties, is responsible for the leadership of hate crime prosecutions within their area and for providing information to the local senior management team. This is an important role in determining the overall effectiveness of performance of the area in dealing with disability hate crime issues.
- 8.16 Whilst examples of good practice were identified (see below), inspectors found in two of the areas visited there was a clear lack of effectiveness in the hate crime co-ordinator role, due to the structural changes introduced in April 2011. It is not necessary to prescribe a particular grade to the role, however, there does need to be a very clear (and effective) route for the area hate crime co-ordinator to report to and influence the local strategy adopted by the management team. Whilst the CPS has set national minimum standards and published related guidance for the role of hate crime co-ordinators, a proactive approach needs to be adopted and it is important that there is not an over reliance on the work of the LSIPs.

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**GOOD PRACTICE**

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.

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- 8.17 All area hate crime co-ordinators need to have clear priorities specifically relating to disability hate crime. Key areas to include are - the accuracy of data on CMS, monitoring of live prosecution files and strategies to increase the reporting of disability hate crime to the police. Support needs to be provided by senior management teams to ensure that these priorities are achieved and area hate crime co-ordinators need to ensure that projects that they are responsible for are evaluated to ensure that they are effective.

- 8.18 A national CPS hate crime co-ordinators network exists to share good practice and resources. This is a worthwhile initiative and the group should meet quarterly. These meetings need to link to the national equality and diversity communication managers meetings so that an overview of all activities is obtained and national priorities established.
- 8.19 In all areas visited the MG3 documents were subject to a quality assurance process by the CPS charging manager. However, inspectors were not confident that there was an agreed view across all locations as to what should be contained within a good disability hate crime MG3. This lack of clarity of expectations needs to be addressed.

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#### **GOOD PRACTICE**

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.

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#### **Probation trusts - quality assurance**

- 8.20 In all trusts inspected, although PSR quality assurance processes were in place, these proved to be insufficient to ensure that the disability hate crime issues were both recognised and addressed in the reports.
- 8.21 Despite the lack of CPS case papers being seen as a clear problem in all trusts, inspectors found no evidence of quality assurance procedures being in place to ensure that offender managers preparing PSRs automatically received those documents. It is hoped that this is improved with the introduction of the CPS digital working project.
- 8.22 In those cases recognised as being hate crime management oversight was good. All trusts have policies and procedures which mean that all identified hate crime cases were allocated to qualified offender managers with a high level of management support. Problems arose not in these cases but in those where there was a failure to identify the hate crime nature of the case at the PSR or start of the order stage.

#### **Partnership working**

- 8.23 No one CJS agency will be able to achieve significant change in relation to disability hate crime in isolation. It is important that all of the agencies work together to improve performance.
- 8.24 Inspectors found in each of the areas visited that links existed between the CPS and the local police forces/probation trusts. The nature of the joint working varied from location to location. It is important that the agencies acknowledge that whilst work is ongoing, there needs to be a commitment to move forward and resources allocated to ensure that progress is achieved.

## **ANNEX A - METHODOLOGY**

### **On-site inspections**

The team visited six police forces and the CPS/probation trust offices that were based at those areas - Cleveland, Cumbria, Derbyshire, Hertfordshire, Greater Manchester and West Midlands. The locations represented a mixture of metropolitan and more rural populations. Within each area interviews took place with staff of various grades from each agency. Where appropriate CPS staff who were responsible for disability hate crime matters in that area (but not located at the relevant office) were also interviewed.

The inspection team also interviewed representatives from the Witness Care Units, Victim Support/ Witness Service and a number of independent disability advocates. Three focus groups were held involving disabled people.

Representatives from the judiciary in each of the locations were also spoken to.

### **Court observations**

Inspectors observed seven court hearings across the country. These cases had been identified on the CPS computer system as being disability hate crimes. Where appropriate the victims and lawyers involved were interviewed.

### **Case examination**

The CPS computer system was used to identify disability hate crime files in each of the six areas. The CPS supplied 89 files to be inspected. On review, inspectors were of the view that 61 could be regarded as cases where (at charging) there should have been a consideration of the disability hate crime issue. The sample group was therefore 61 files. The majority were finalised, although a number were examined on-site as they were cases currently being prosecuted.

The details of the 61 files were passed to HMIC and HMI Probation. Those same files (where possible) were reviewed by the relevant inspectors against a set criteria.

### **National interviews**

Interviews were held with national representatives from ACPO, CPS and NOMS who were responsible for disability hate crime.

### **Reference Group**

Interviews were also carried out with representatives from Mencap, Voice UK, Scope, the UK Disabled People's Council, two Directors of Adult Social Care, a Director of Community Nursing Services and the lead commissioner for the Equality and Human Rights Commission inquiry into disability related harassment.

### **Literature review**

A review of literature produced by criminal justice agencies was undertaken as part of the inspection process.

### **Survey**

All of the police, CPS and probation trusts areas not visited as part of the review were invited to participate in a survey of good practice initiatives/asked to contribute to the review.

### **Equality analysis**

As part of the evaluation of this review we undertook an analysis of the available data in relation to gender, ethnicity and age. However, due to the small sample size and limited numbers of non-white British defendants, it was not possible to draw any conclusions in respect of the impact of gender/ ethnicity or race.

Attempts were made to distinguish between physical and mental disabilities when analysing the case file sample, however, as there was limited information in the case files inspectors were of the view that the information available to them was unreliable.

### **Non-identification of disability hate crime files**

Inspectors analysed a sample of cases that were not flagged on the CPS case management system as disability hate crimes, in an attempt to identify any failures to flag them as disability hate crime files.

Inspectors reviewed certain categories of flagged files, including crimes against older people and carer neglect cases, but were of the view that they were unable to obtain sufficient information from CMS to determine if any flagging errors had been made.

## ANNEX B - FILE INSPECTION DATA AND SURVEY RESULTS

### HMIC file inspection data

HMIC file examination results of a sample of cases involving disabled victims that HMCPSI inspectors were of the view that, at the charging stage, consideration was required of the CPS disability hate crime policy/s.146 CJA 2003

No	Question	Yes	No	NK	NA
1	Has the initial contact/call handler identified the caller as having a disability?	31	10	7	5
2	Had the initial contact/call handler identified that the incident is hate related?	13	30	7	3
3	Was the means of contact employed with the victim or person representing the victim appropriate?	49	1	2	1
4	Did the officer/staff member assess the communication needs of the victim?	42	0	4	7
5	Did the officer/staff member consequently respond effectively to the communication needs of the victim?	41	1	3	8
6	Has the safety of the victim been considered?	37	3	8	5
7	Where required, has effective and proportionate protective action taken place?	35	2	9	7
8	Where the disability hate crime was not identified by the call handler/contact, has it been identified by officers/staff members subsequently involved?	9	33	2	8
9	Has the disability hate crime aspect of the crime been properly recorded within police administrative records?	16	33	3	1
10	Is there any evidence that the provision of special measures has been explained to the victim or witness in any way that appreciates any disability?	24	7	10	12
11	Have the views of the victim or witness about an application for special measures been recorded?	20	12	9	12
12	Has the investigator noted down any special measures requirements on the MG3A?	16	17	4	16
13	Is there evidence of referral to an independent disability advocate?	0	44	5	4
14	Has the victim been appropriately supported up to, through and after the court process?	7	0	40	6
15	Was a victim personal statement made?	17	14	18	4
16	Where a crime has been committed, has witness testimony been gathered using the most effective and respectful means?	41	2	3	5
17	Was the crime allocated to an investigator with the requisite level of knowledge and ability?	51	0	2	0
18	In the course of the investigation, have actions been undertaken in a timely and thorough manner?	47	2	4	0
19	Where relevant, has specialist advice been sought and utilised?	9	1	33	10

NK = Not known NA = Not applicable

Whilst HMIC inspectors reviewed 53 of the 61 files considered by the HMCPSI inspectors, detailed evaluations were conducted in relation to those files where HMIC inspectors had the view that there was a prospect of s.146 CJA 2003 being raised at court and considered the facts available to them were sufficient/appropriate for review. For a number of questions, only limited facts were available to the HMIC inspectors and/or sufficient information was not available that specifically related to the question (for example, in Question 1 not all reports were made via call handlers and in Question 6 safety was not considered to be a relevant factor having regard to the particular facts of certain cases). Where questions could not be answered fully either NA/NK was answered, or excluded from the data, as considered appropriate by the inspector.

**HMCPSI file inspection data**

HMCPSI file examination results for 61 cases that involved a disabled victim and inspectors were of the view that consideration was required of the CPS disability hate crime policy/s.146 CJA 2003							
No Question		Yes	No	NK	NA		
1	Does the inspector agree that this is a disability hate crime case under s.146 CJA 2003?	32	29	0	0		
		Pre-charge	On charge	1st court hearing	Mid proceedings		
2	At what stage was the case identified as a disability hate crime case?	42	9	1	9		
		Yes	No	NK	NA		
3	Was the file physically identified as disability hate crime as well as being flagged on CMS?	42	18	1	0		
<b>Charging decision</b>							
4	Had the case been highlighted by the police on the MG3/5 or other charging documents as disability hate crime?	4	55	1	1		
5	Was the decision to charge authorised by the CPS as required by the 4th edition of the Director's Guidance?	60	1	0	0		
		Excellent	Good	Fair	Poor	NK	NA
6	What was the quality of the initial information supplied by the police in relation to the disability hate crime issue?	0	6	13	42	0	0
		Yes	No	NK	NA		
7	Did the police (where appropriate) make reference in the MG3/5 to any adjustments the disabled person may need to support an effective prosecution?	8	37	0	16		
8	Did the prosecutor (where appropriate) seek further information from the police in relation to the disability hate crime issue?	15	38	0	8		
9	If answered No to Question 8, should the prosecutor have requested further details of the disability hate crime issue?	26	11	1	23		
10	Does the MG3 (where appropriate) demonstrate the prosecutor's knowledge of the need to consider the background details to the offence so as to inform the case strategy to deal with the disability hate crime issue?	13	41	0	7		
11	Did the charging lawyer demonstrate on the MG3 a legal analysis on the law/facts as it relates to the disability hate crime issue under s.146 CJA 2003?	15	41	0	5		
		Excellent	Good	Fair	Poor	NK	NA
12	What was the quality of the legal analysis on the law/facts as it relates to the disability hate issue under s.146 CJA 2003?	0	2	9	45	1	4
13	What was the quality of the instructions to the prosecutor in relation to s.146 CJA 2003?	0	1	6	46	1	7
		Yes	No	NK	NA		
14	Does the MG3 refer to ancillary applications as appropriate, for e.g. restraining order, CRASBO?	16	38	0	7		
15	Was the full Code test applied correctly at the PCD stage, including the initial review stage in non-PCD cases?	58	2	0	1		

	Excellent	Good	Fair	Poor	NK	NA
16 What was the overall quality of the disability hate crime MG3 (including the identification and compliance with the disability hate crime policy)?	0	3	20	38	0	0
<b>Prosecution process</b>						
			Yes	No	NK	NA
17 Was the full Code test applied correctly at any post-charge review?			55	1	0	5
18 Was there a full file review either in writing or on CMS?			51	5	0	5
	Excellent	Good	Fair	Poor	NK	NA
19 What was the quality of the written full file review in relation to the disability hate crime issue (where inspectors considered appropriate)?	0	9	3	36	0	13
			Yes	No	NK	NA
20 Was any breach of the Criminal Procedure and Investigations Act 1996 due to inappropriate disclosure or non-disclosure of disability related material?			2	1	1	57
21 Was a detailed MG2 requesting special measures supplied to the CPS?			17	19	1	24
22 Were special measures granted?			18	0	0	43
	Excellent	Good	Fair	Poor	NK	NA
23 What was the quality of the written special measures application?	1	7	8	2	1	42
			Yes	No	NK	NA
24 Where an application for special measures was made, was an offer to meet the prosecutor made to the victim?			0	16	1	44
<b>Witness Care Units</b>						
25 Were the Witness Care Unit updates to the victim in an appropriate format?			36	4	6	15
26 Was a full needs assessment carried out appropriately having regard to the victim's disability?			12	21	2	26
<b>Court</b>						
27 Does the file contain an endorsement of the result of the s.146 CJA 2003 application?			5	16	0	40
28 Where an application for an uplift was made (and the result recorded) did the court grant an uplift?			2	3	7	49
<b>Application of policy</b>						
29 Was the file discontinued in accordance with the Code?			11	1	0	49
30 Was the direct communication with victims letter sent out within the appropriate timescale?			10	8 <sup>12</sup>	0	43
31 Was there an offer to meet the victim to explain the decision to drop or alter the charges?			0	12	0	49
32 Was the form of communication appropriate for the victim?			6	3	3	49
	Excellent	Good	Fair	Poor	NK	NA
33 What was the quality of the letter?	0	1	5	6	0	49

Code = Code for Crown Prosecutors CRASBO = Anti-Social Behaviour Order on conviction in criminal proceedings  
 NK = Not known NA = Not applicable PCD = Pre-charge decision

12 Of these eight only two letters were sent to victims at any time. Inspectors were of the view that in another six cases letters should have been sent.

### HMI Probation file inspection data

HMI Probation file examination results of a sample of cases involving disabled victims that HMCPSI inspectors were of the view that, at the charging stage, consideration was required of the CPS disability hate crime policy/s.146 CJA 2003

No	Question	Yes	No	NK	NA		
1	Was the pre-sentence report ordered by the court?	25	6	4	0		
2	Had a report been produced?	22	2	5	6		
		SDR	FDR	Oral	Other	NK	NA
3	What type of report was produced?	13	6	1	2 <sup>13</sup>	0	13
		Yes	No	NK	NA		
4	Was the report of the correct type?	16	6	0	13		
5	Did the report recognise that this was a disability hate crime?	5	12	0	18 <sup>14</sup>		
6	Did the report contain an analysis of the offence?	12	10	0	13		
7	Did the report contain a detailed analysis of the RoH?	6	13	0	16 <sup>15</sup>		
8	Did the report propose a community sentence option?	14	8	0	13		
9	What order was made by the court?						
							Custody released 1
							Custody not released 3
							CRO supervision 1
							CRO unpaid work 3
							CRO several requirements 5
							Suspended sentence order 3
							YRO-ISSP 1
							Custodial sentence 1
							Not applicable 17
		Yes	No	NK	NA		
10	Did the report contain a detailed sentence plan?	11	11	0	13		
11	Did the plan contain an intervention to address hate crime?	3	14	0	18 <sup>14</sup>		
12	Was the recommendation contained in the report followed by the court?	14	8	0	13		
13	If not, was a reason given by the court for not following the recommendation?	4	3	1	27		
14	Did the initial LoR assessment on OASys reflect the hate crime element of the offence?	3	14	0	18		
15	Did the full RoSH assessment sufficiently reflect the hate crime RoH factors of the offence?	3	14	0	18		
16	Does the RMP include details of how to sufficiently manage the hate crime RoH factors?	3	14	0	18		

13 Probation prepared limited reports but the offender failed to keep the interview appointments.

14 Of the 22 reports identified in the sample, inspectors were of the view that five had been incorrectly classified as disability hate crime.

15 Three of the reports did not relate to violence or any risk of harm, and have been included in the Not applicable column.



	Yes	No	NK	NA
17 Does the ISP include an objective to address the offender's hate crime conviction?	3	14	0	18
18 Does the ISP objective include a hate crime related intervention?	1	14	0	20
	Programme	One to one	NK	NA
19 Was the planned intervention delivered as:	1	0	0	34
20 Was the intervention delivered?	1	0	0	34
	Yes	No	NK	NA
21 In the inspector's opinion, was the delivered intervention suitable to address the hate crime related factors in this case?	0	1	0	34

CRO = Community rehabilitation order FDR = Fast delivery report ISP = Initial sentence plan  
 ISSP = Intensive Surveillance and Supervision Programme LoR = Likelihood of reoffending  
 NK = Not known NA = Not applicable Programme = Work done with the offender; mainly group work programmes to address specific offending needs e.g. sex offender treatment, domestic violence etc  
 RMP = Risk management plan RoH = Risk of harm RoSH = Risk of self harm  
 SDR = Standard delivery report YRO = Youth rehabilitation order

HMI Probation inspectors were passed details of the same 61 files considered by HMCPSI inspectors. These details were then passed to probation trusts. HMI Probation inspectors reviewed only those files where the probation trust had any involvement in the case and sufficient information was made available for an evaluation to take place. HMI Probation inspectors focused on cases defined by s.146 CJA 2003 definition as this reflects those cases identified by the court to probation trusts.

### HMCPSP survey results of associate prosecutors and lawyers

Survey of CPS associate prosecutors by questionnaire									
Question	Not had any	0 - 3 months	3 - 6 months	6 - 12 months	12 - 18 months	18 - 24 months	More than 24 months	Total	
When did you have disability hate crime training?	8	1	0	8	2	8	6	33	
	Excellent	Good	Fair	Poor	Aware but have not read it	Unaware of it	Did not answer	Total	
How do you rate the usefulness and quality of the guidance that is available for dealing with victims and witnesses who have mental health issues and/or learning disabilities?	1	13	6	2	7	4	0	33	
					Yes	No	Did not answer	Total	
Do you feel confident enough to make an application under s.146 CJA 2003 to the court at sentencing?					27	6	0	33	
Did the police identify the disability and the needs of the victim or witness from the outset of the case?					10	5	18	33	
	Excellent	Good	Fair	Poor	NA	Did not answer	Total		
How well did the information in the MG3 enable you as the advocate to deal effectively with the disability hate crime issue?	1	6	3	4	3	16	33		
					Yes	No	NA	Did not answer	Total
Had the most appropriate special measures been applied for?					5	2	10	16	33
If appropriate, did you raise s.146 CJA 2003 with the court at sentencing?					10	1	6	16	33
Did the court apply s.146 CJA 2003 and impose an uplift on the sentence?					9	2	6	16	33

Survey of CPS prosecutors by questionnaire								
Question								
	Not had any	0 - 3 months	3 - 6 months	6 - 12 months	12 - 18 months	18 - 24 months	More than 24 months	Total
When did you have disability hate crime training?	38	12	7	15	13	12	17	114
	Excellent	Good	Fair	Poor	NA	Did not answer	Total	
How effective and helpful did you find the training?	15	41	18	3	37	0	114	
	Very thorough	More than reasonably detailed	Reasonably detailed	Limited	Did not answer	Total		
How detailed is your knowledge of the special measures and support available to assist disabled victims and witnesses?	21	36	46	11	0	114		
	Yes	No	Did not answer	Total				
Would further training improve your confidence to build and prosecute cases of disability hate crime more effectively?	76	38	0	114				
	Excellent	Good	Fair	Poor	Aware but have not read it	Unaware of it	Did not answer	Total
How do you rate the quality of the aide memoire for making charging decisions in cases of disability hate crime?	9	39	21	1	15	29	0	114
	Excellent	Good	Fair	Poor	Yes	No	Did not answer	Total
How do you rate the usefulness and quality of the guidance that is available for dealing with victims and witnesses who have mental health issues and/or learning disabilities?	7	51	26	1	17	12	0	114
	Yes	No	NA	Did not answer	Total			
Do you always offer a special measures meeting in every case involving a victim or witness who has a disability?	26	59	29	0	114			
	Yes	No	Did not answer	Total				
Have you ever dealt with a case involving a victim or witness who has a disability either in court or in the office?	87	27	0	114				
	Yes	No	NA	Did not answer	Total			
Did the police identify the disability and the needs of the victim or witness from the outset of the case?	61	26	27	114				
	Yes	No	NA	Did not answer	Total			
Had the most appropriate special measures been applied for?	60	12	21	21	114			
	Yes	No	NA	Did not answer	Total			
If appropriate, did you raise s.146 CJA 2003 with the court at sentencing?	33	1	60	20	114			
	Yes	No	NA	Did not answer	Total			
Did the court apply s.146 CJA 2003 and impose an uplift on the sentence?	25	9	59	21	114			



## ANNEX C - GLOSSARY

### **ACPO**

Association of Chief Police Officers.

### **Aggravating or mitigating factors**

An aggravating factor is something that makes a crime more serious. A mitigating factor is something that makes a crime less serious.

### **Ancillary orders**

Orders made by the court that relate to the defendant once the case has been concluded.

### **Article 3**

Article 3 of the Human Rights Convention provides: 'No one shall be subjected to torture or to inhuman or degrading treatment or punishment'.

### **Charging**

The formal commencement of a prosecution.

### **Code for Crown Prosecutors**

The *Code for Crown Prosecutors* is a public document, issued by the Director of Public Prosecutions that sets out the general principles crown prosecutors should follow when they make decisions on cases.

### **Community engagement**

Ranges from basic information giving through to more active consultation on existing policies or practices. Engagement in its most developed form involves communities working as partners with the agencies to improve the way they work, e.g. community groups being invited to contribute to staff training.

### **Control Room Staff**

Each police force has a facility from where operational staff are directed and supported. Staff may take telephone calls from members of the public, especially 999 calls.

### **CPS associate prosecutors**

Formerly known as designated caseworkers. In-house associate prosecutors are not qualified solicitors or barristers but they have received training to enable them to present cases within their rights of audience in the magistrates' court.

### **CPS charging manager**

A lawyer who is also a manager in charge of a team of lawyers who provide charging advice to the police.

### **CPS Core Quality Standards**

The standards that the CPS identifies as the quality of service that the public are entitled to expect from those who prosecute on their behalf.

### **CPS equality and diversity managers**

Equality and diversity officers provide their area with equality, diversity and community engagement advice. They also undertake specific pieces of work and projects to ensure alignment between the area and national agendas on equality, diversity and community engagement.

### **CPS hate crime co-ordinators**

CPS lawyers who are responsible for the leadership of hate crime prosecutions within their area and provide information to the local senior management team.

### **CPS lawyer**

A solicitor or barrister employed by the CPS.

### **Disability advocates**

Individuals who are independent and provide support, information and representation for those with disabilities.

### **Disability Hate Crime Reference Groups**

The aim of these groups, which are normally set up by police forces, is to reach out to communities; improve trust and confidence; improve service; and inform the police about current disability hate crime issues. Senior police staff and representatives from various community groups attend.

### **Full needs assessment**

A process that is undertaken by Witness Care Unit officers who obtain full details of the victims/witnesses' potential needs that may impact on them attending court and giving evidence (such as difficulties over childcare or transport provision, medical problems or disabilities, language difficulties, or concerns over intimidation).

### **Hate crime**

Hate crime is any criminal offence committed against a person or property that is motivated by hostility towards someone based on their disability, race, religion, gender identity or sexual orientation.

### **Initial Police Learning and Development Programme**

New recruits to the police are known as 'student officers', and are required to successfully complete a two year programme of learning and development.

### **Intermediaries**

Registered Intermediaries assist witnesses with a variety of disabilities communicate during an investigation and at any subsequent trial.

### **Local Scrutiny and Involvement Panels**

These are meetings with senior CPS staff and representatives from community groups which have the overarching aim to ensure that the CPS engages with the community and undertake scrutiny of hate crimes, violence against women and other cases of local interest to improve local performance.

### **MG3**

A charging report form initially completed by the police to request a charging decision, then completed by the CPS prosecutor to record the decision or other investigate advice.

### **MG5**

This is a document completed by the police which sets out (a) a summary of the key evidence in a case, (b) details of the defendant's interview, and other information relevant to the case.

### **NOMS**

Is the abbreviated term for the National Offender Management Service. NOMS is an executive agency of the Ministry of Justice, bringing together the headquarters of the Probation Service and HM Prison Service. Prison and probation services ensure the sentences of the courts are properly carried out and work with offenders to tackle the causes of their offending behaviour.

### **Offender managers**

Probation trust offender managers take responsibility for managing an offender through the period of time they are serving their sentence, whether in custody or the community. Offenders are managed differently depending on their risk of harm and what constructive and restrictive interventions are required. Individual intervention programmes are designed and supported by the wider 'offender management team or network', which can be made up of the offender manager, offender supervisor, key workers and case administrators.

### **OASys**

Is the abbreviated term for the Offender Assessment System, used in England and Wales by HM Prison Service and probation trusts to measure the risks and needs of criminal offenders under their supervision.

### **Pre-sentence report**

A pre-sentence report is prepared by probation trusts with a view to assisting the court in determining the most suitable method of dealing with an offender. The report should include an assessment of the nature and seriousness of the offence, and its impact on the victim.

### **Racially/religiously aggravated offences**

Parliament has passed legislation (Crime and Disorder Act 1998) aimed at outlawing crime where the offender is motivated by hostility towards the victim's race or religious beliefs (actual or perceived).

### **Sentencing**

Once a defendant is convicted of a criminal offence, the event that follows is called sentencing. A sentence is the penalty ordered by the court. Sentencing is performed by a judge or magistrate.

### **Special measurers**

These are measures that assist victims and witnesses in giving evidence at trial.

### **Third party reporting centres**

These are locations, not police stations, through which crimes can be reported.

### **Vulnerable or intimidated victim**

Definitions of witnesses who may be vulnerable or intimidated for the purposes of special measures assistance are contained in the Youth Justice and Criminal Evidence Act 1999 and include, all child witnesses (under 18) and any witness whose quality of evidence is likely to be diminished because they are suffering from a mental disorder (as defined by the Mental Health Act 1983) or have a significant impairment of intelligence and social functioning, or have a physical disability or are suffering from a physical disorder.

### **Witness Service**

The Witness Service is part of Victim Support and it helps victims, witnesses, their families and friends when attending any criminal courts in England and Wales. This includes facilitating pre-trial visits and support on the day of the court hearing.







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