



Public policy statement on the
prosecution of crimes against
disabled people

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CPS policy

Our policy is to:

- Identify crimes against disabled people, including disability hate crimes, as early as possible.
- Build strong cases with our partners that satisfy the tests within the [Code for Crown Prosecutors](#).
- Apply for a sentence uplift under s.146 Criminal Justice Act 2003 (s.146 CJA 2003) where there is evidence of hostility based on disability or presumed disability, including minor offending.
- Apply for an increased sentence in all other cases where disability is an aggravating factor in the case.
- Work closely with the police, criminal justice agencies and community stakeholders other bodies to continuously refresh our understanding of crimes against disabled people and to improve our response to it.
- Improve awareness of disability hate crime and public confidence to report it.
- Monitor the implementation of this policy.

When presented with cases that involve disabled people, we will be aware that:

- Crimes against disabled people may be underpinned by discrimination, or a prejudice against disabled people.
- The belief that disabled people as a group are somehow inherently vulnerable, weak and easy targets is an attitude that motivates some crimes against disabled people.
- The prejudice, discrimination and social exclusion experienced by many disabled people is not the inevitable result of their impairments or medical conditions, but rather stems from specific barriers they experience on a daily basis: this is known as the social model of disability.

When deciding whether it is in the public interest to prosecute crimes against disabled people, our prosecutors must have regard to whether the offence was motivated by any form of discrimination, including against the victim's disability, or whether the suspect demonstrated hostility towards the victim based on disability.

The presence of any such motivation or hostility will mean that it is more likely that prosecution is required.

Question 1

Does the section on 'CPS policy' address the key issues in prosecuting crimes against disabled people?

Crimes against disabled people

There is no statutory definition of crimes against disabled people. In this policy, we define crimes against disabled people as:

Any crime in which disability is a factor, including the impact on the victim and where the perpetrator's perception that the victim was disabled was a determining factor in his or her decision to offend against the specific victim

We define disability as any physical or mental impairment. This definition fully incorporates the definition of disability for the purposes of the Equality Act 2010.

Disability hate crime

A crime against a disabled person may also be a disability hate crime, in that it engages the provisions of s.146 of the Criminal Justice Act 2003. Although there is no offence of disability hate crime, s.146 imposes a duty on courts to increase a sentence where an offender demonstrates hostility to the victim, based on the victim's disability or presumed disability, or is motivated by hostility towards people with a disability.

In order to identify cases involving disability hate crime, we have agreed, with the Police, a shared definition of monitored disability hate crime. This definition is wider than the statutory definition, to ensure we capture all relevant cases:

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

Hostility can take many forms, ranging from verbal abuse to physical and sexual assault and can include threats, criminal damage, harassment, stalking and anti-social behaviour. For more information about the nature of disability hate crime, see our legal guidance on disability hate crime.

We recognise that hate crime not only impacts on the individual victim but also on the wider community. Individual incidents can send reverberations throughout communities, just as they can reinforce established patterns of prejudice and discrimination. This is why it is so important for hate crime to be effectively prosecuted.

Discrimination against disabled people

We understand that racist crime is linked to racism as a prejudicial set of ideas; similarly, we recognise that crimes against disabled people are often underpinned by a prejudice against disabled people. We acknowledge that discrimination often provides the backdrop, and sometimes the motivation, for crimes against disabled people and we will present evidence of discrimination in cases where it is present.

We recognise that disabled people can be targeted for a combination of reasons, such as race, religion or sexual orientation, as well as because of their impairment. Prosecutors will apply to courts for appropriate sentence uplifts based upon all the relevant aggravating features.

Internet and social media

The internet and social media in particular have provided new platforms for offending behaviour and our revised [guidance on the prosecution of social media cases](#) provides more detail.

In approaching on-line hate crime, we will:

- Recognise that modern communications technology provides opportunities for hate crime.
- Understand internet and social media platforms.
- Be familiar with the relevant law and referral systems.
- Be alert to the need to identify originators as well as amplifiers or disseminators.
- Prosecute complaints of hate crime on line with the same robust and proactive approach used with offline offending.
- Consider the potential impact on a targeted individual or community.
- Treat complaints as seriously as offline complaints and encourage all to be reported to the police.

As with all hate crime offences the police will be required to seek a charging decision from us.

Situational risk and ‘vulnerable victims’

We are aware that disabled people are regularly labelled as ‘vulnerable’.

This labelling has been repeatedly criticised by disabled people and others and is not in line with the social model of disability (see below). We understand that applying this label to disabled people can give the message that they are inherently ‘weak’ or ‘dependent’ as individuals and as a group, when in fact it is physical barriers and social attitudes that create inaccessible, unsafe and therefore vulnerable situations for disabled people.

Moreover, the belief that disabled people are vulnerable may be disabling in itself and can lead to decisions and actions that adversely affect disabled people’s independence, safety and security. Crucially, in the context of the criminal justice system, this attitude can undermine their perceived competence, credibility and reliability as a witness, and, therefore, their access to justice.

We recognise that it is therefore preferable to refer to a ‘situational risk’, or an ‘at risk situation’ that a disabled person may find themselves in, due to particular circumstances, as opposed to referring to the disabled person as “vulnerable”. Like many people, those who are disabled experience situational risks, which may be taken advantage of by an offender, or provide the opportunity for the offender to act on his hostility towards disabled people. These risks can be connected to a person’s gender, job, disability or other factors and characteristics.

We will try to avoid the use of the term ‘vulnerable’ where possible and we will always avoid any use of the term which may suggest disabled people are inherently weak or dependent.

However, the term is unfortunately sometimes unavoidable in the context of criminal proceedings, due to the wording of relevant Sentencing Guidelines and the law. For example, if prosecutors did not use the term in court, they may be unable to properly explain

that an offence is aggravated because of a victim's 'vulnerability', and should attract an increased sentence. This would in turn disadvantage the disabled victim, as the perpetrator may receive a more lenient sentence than is appropriate.

Our legal [guidance on Prosecuting cases of Disability Hate Crime](#) also sometimes refers to a "vulnerable" victim or person. But it does so only where necessary. This will be in the context of the person being in an "at risk situation" in relation to a particular criminal offence, in particular circumstances, for the purposes of a Sentencing Guideline, or an application for special measures for a "vulnerable witness".

Question 2

Does the section on '*Situational risk and 'vulnerable victims'*' reflect and address disabled people's concerns about the misuse of the term 'vulnerable' as a label?

The social model of disability

We understand the social model of disability to mean that the prejudice, discrimination and social exclusion experienced by many disabled people is not the inevitable result of their impairments or medical conditions, but rather stems from specific barriers they experience on a daily basis. These barriers can be environmental (inaccessible buildings and services), attitudinal (stereotyping, discrimination and prejudice), and organisational (inflexible policies, practices and procedures).

Using the social model helps us to dismantle or reduce the effects of those barriers that are within our power and improve the safety and security of disabled people.

Reporting a crime, giving a statement and being called to give evidence in court can be very daunting experiences for anyone. We recognise that disabled people experience specific social barriers in this regard. These can range from a failure by criminal justice agencies to identify an incident as a potential disability hate crime to inaccessible courtrooms, witness waiting areas or an absence of sign language interpreters.

We are particularly concerned to avoid incorrect judgments being made about disabled people's reliability or credibility as a witness giving evidence in court. Such judgments may lead to an incorrect charging decision or could undermine the potential success of a prosecution.

The way in which we apply the social model means that we will:

- Not make assumptions about a disabled victim's reliability or credibility, and challenge others who do so.
- Ensure that disabled people are aware of the support that is available to them to give their best evidence.
- Be more likely to prosecute cases where disability is a factor, including disability hate crimes.
- Be mindful that language is important and only use the term 'vulnerable' in relation to disabled people when it is appropriate in the context of the law and facts of the case.

- Recognise that the belief that a disabled person is 'vulnerable' forms the backdrop of crimes against disabled people and can even be a motivating factor in crimes committed against them.

Question 3

Does the section on '*The social model of disability*' explain how the CPS applies the model to its own work?

Working with stakeholders

We work locally and nationally, with the police and other partners in the criminal justice system, as well as with individuals and community groups with experience and expertise in relation to hate crime. This ensures that we are able to continuously refresh our understanding of the nature of disability hate crime and can improve our response to it.

Criminal investigation

We adopt a proactive approach and will seek further evidence where necessary from the police to assist in the identification of evidence of hostility to support a sentence uplift application.

In some cases, we may advise the police to follow up other possible lines of enquiry. This may include looking at previous reported incidents involving the same victim, or the same suspect. It may also involve seeking information or evidence from other agencies such as Social Services, NHS, specialist support groups and community groups working with disabled people.

Charging decisions

When making charging decisions in cases of crimes against disabled people, as in all cases, prosecutors must apply the [Code for Crown Prosecutors](#).

Bail

The time after an offender is charged with a crime can cause anxiety for the victim. We recognise that disabled victims may be particularly concerned and affected. For instance, some disabled victims may be dependent for their care on the perpetrator of the crime committed against them. In such cases, we will work with partners to identify support mechanisms which may be provided in the community.

If there is a risk of danger or threats or repeat offences, we will seek to protect victims and witnesses by seeking to remand the defendant in custody where appropriate or by asking the court to impose conditions on bail where possible (for example, not to approach any named person or to keep away from a certain area).

Prosecution and sentencing

In cases of disability hate crime, we will build cases that enable us to present evidence of hostility based on disability.

This will enable us to apply for a s.146 uplift when appropriate. We will remind the court of its duty to increase the sentence where the offence is aggravated by hostility towards disability.

Where there is insufficient evidence of disability hostility for the purposes of s.146, but disability was a factor in the case in some other way, we will present evidence of any other aggravating factors that may increase the seriousness of the case and the sentence.

For example, in some cases the victim's disability is not a factor in the offender's decision to target him or her. But the impact of the crime on the victim is very significant because of his or her disability. This evidence of harm caused to the victim will be brought to the court's attention as a factor that increases the seriousness of the offence.

We shall also encourage the court to state in its sentencing remarks the basis for any increase in sentence due to the at-risk or vulnerable situation the victim was in at the time the offence was committed.

We shall draw the court's attention to any Victim Personal Statement (VPS) and evidence of the impact of the offending on the community, including the disabled community. Victims are entitled to choose whether they would like to read their VPS aloud in court, whether they would like someone else to read it aloud or whether it should be played back, if recorded, for them.

We have a responsibility to assist the court in sentencing. Prosecutors will apply for appropriate ancillary orders, including restraining orders and compensation for loss, injury or damage. We will always have regard to the victim's needs, including the question of their future protection.

Question 4

Does the section on 'Prosecution and sentencing' explain clearly that the CPS will apply for an increased sentence in all appropriate cases?

Withdrawal

Sometimes a victim will ask the police not to proceed any further with the case or will ask to withdraw the complaint. This does not necessarily mean that the case will automatically be stopped. Applying the Code test, we will prosecute all cases where there is sufficient evidence and there are no factors that prevent us from doing so.

Victims' Right to Review

For qualifying decisions, if a victim requests a review of a CPS decision not to bring proceedings, or to end all proceedings, we will look again at the decision to establish if it was correct.

Support

We acknowledge that in some cases a key barrier preventing disabled victims from giving their best evidence is a lack of support. To address this, we are publishing a specific support guide on crimes against disabled people, to accompany this Policy Statement. The guide sets out the range of support available to disabled victims of crime, from the CPS, the police and other criminal justice agencies. The aim of the guide is to support victims and witnesses to give their best evidence.

Disabled defendants

Disabled people also go to court as defendants. We are mindful of our responsibilities to ensure that disabled defendants are treated fairly and we expect that those working with them will consider any support and assistance disabled defendants may need.

Equality duty

We are a public authority for the purposes of equality legislation. This policy, our related legal guidance and our new Support Statement, form a key part of our efforts to meet our obligations under the General Public Sector Equality duty to eliminate the harassment of disabled people and to promote equality and good relations.

Ensuring that this policy is implemented

We are committed to ensuring that this policy is implemented. We will monitor our performance within our Hate Crime Assurance Scheme, under the oversight of our hate crime governance structures and with the involvement of disabled people through our Community Accountability Forum.

Our Hate Crime Annual Report provides transparent accountability in respect of our performance.

Question 5

Do you have any further comments on the CPS Policy on Prosecuting Crimes against Disabled People?