

CPS Response to HMICFRS/HMCPSI Joint Thematic Inspection of Disability Hate Crime

09/10/2018



HMICFRS and HMCPSI have today [9 October 2018] published a report into the investigation and prosecution of Disability Hate Crime by the Police and the Crown Prosecution Service (CPS).

We are pleased the Inspectorate's report acknowledges the continuing focus by the CPS on tackling disability hate crime and the significant progress that has been made following earlier inspections. Inspectors found a welcome improvement in casework, with the report describing the quality of CPS decision making for this type of offence as "excellent" and highlighting the way in which the Code for Crown Prosecutors is applied as a particular "strength". The work undertaken by the prosecutors, who are Area Hate Crime Coordinators, in checking the quality of reviews, engaging with communities via scrutiny panels, and ensuring that sentence uplifts have been sought in disability hate crime files is commended, as is the feedback that they provide to other prosecutors.

However, we will continue to work with prosecutors to ensure that case reviews reflect the reasoning for their decisions, including whether or not the advocate should apply for a s146 uplift. We will also continue to work with the police to ensure that they provide sufficient information to support applications for special measures and reasonable adjustments for victims and witnesses. We will remind the police to ensure that victims are given the opportunity to make Victim Personal Statements and to provide these statements as part of the file submission.

The report contains eleven recommendations, seven of which are addressed to the CPS. The recommendations and our responses are set out below:

Inspectorate's Issues to Address for CPS

1. The prosecutor at the charging stage, or initial review in police charged cases, should comply with the CPS guidance and set out clearly on what basis they consider the case should be flagged on the CPS case management system as a Disability Hate Crime.

CPS Response: The CPS accepts this recommendation. We will draft and circulate to prosecutors a reminder on the requirement for a detailed review which sets out both the reasons why an offence is considered to be a disability hate crime and what evidence supports the application for a s146 uplift. We will ensure that Area Hate Crime Coordinators include this in their quality assurance checks. This will be followed up by a dip sample of the quality of reviews on a number of Disability Hate Crime cases from each CPS Area to be led by the Hate Crime Legal Lead in the Prosecution Policy & Inclusion Unit (PPIU) in Quarter 4 2018/2019.

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

CPS Response: The CPS accepts this recommendation. See the response at 1 above.

3. The CPS, in conjunction with the National Police Chief's Council, should revise the police section of the MG3 (record of charging decision) to enable it to be flagged clearly to identify cases where, in accordance with the definition, the police consider it to be a hate crime

CPS Response: This is a matter for the police. However, we will work with the NPCC lead on the Police National File Quality Group to encourage changes to the police MG3 form.

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

CPS Response: The CPS accepts this recommendation; however the changes cannot be made in this financial year. Updates to the Prosecutor App will be considered as part of wider changes to our Case Management System (CMS) during 2019/20.

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

CPS Response: **This recommendation is not accepted as it** is a matter for HMCTS. We have raised the issue with the Ministry of Justice, who have confirmed that refreshed guidance will be issued by September 2018 addressing the requirement to capture the sentence uplift (with instruction as to how do so) on Libra, DMU and Xhibit.

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

CPS Response: This recommendation is not accepted. In light of the improving performance around the application for a sentencing uplift in the magistrates' court, we propose to review the requirement to send s146 letters in all cases and ensure that any changes to the requirement are communicated to Areas. Following the outcome of the review, compliance with any continuing requirement to send a letter will be monitored by Area Hate Crime Coordinators.

7. The CPS and the NPCC lead for out of court disposals should review the current guidance for out of court disposals for hate crime, and should revise this guidance to make it clear when it is appropriate for out of court disposals for hate crime to be used.

CPS Response: This recommendation is accepted. We will work with police colleagues and agree an approach which will be reflected in the forthcoming revised Director's Guidance on charging. As an interim measure we have informed the police that they may make the decision to offer a simple caution in relation to summary or either-way hate crime offences without reference to the CPS.