

POLICING DISABILITY HATE CRIME

Dr Louise Hewitt, University of Greenwich

Contact Details: Louise.Hewitt@greenwich.ac.uk

Abstract

There is no aggravated offence for disability hate crime (DHC). The current legislation fails to place the disability characteristic on an equal footing with the characteristics of race and religion (for which there are aggravated offences). The effect of this is evident not only in law, which does not adequately punish the perpetrators of DHC, but also in the actions of the police who find it difficult to recognise and record DHC. In its 2021 report on hate crime laws the Law Commission has echoed its previous recommendation made in 2014 to extend aggravated offences that currently exist for race and religion to all other existing characteristics including disability. No changes were made in response to the 2014 report, and it is unlikely immediate changes will be made following the 2021 report. The police, however, are in a position to change how the current law relating to DHC is implemented if they improve their recognition and recording of it. This article examines the Metropolitan Police Service response to DHC, making recommendations that if implemented could have a national effect on how DHC is approached by the police.

Keywords:

Disability, hate crime, police

Introduction

The police service and Crown Prosecution Service (CPS) define hate crime as:

'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; race or perceived race; or religion or perceived religion; or sexual orientation or perceived sexual orientation or transgender identity or perceived transgender identity.'¹

In England and Wales, when the police record a crime, they can flag the report as being motivated against one of five protected characteristics: race, religion, disability, sexual orientation and transgender identity. The Crime and Disorder Act 1998 provides a list of racially and religiously aggravated offences,² including criminal damage, assaults, public order offences and harassment. The Sentencing Act 2020 allows for the CPS to apply for an uplift in sentencing for all the protected characteristics.³ This means that for the remaining protected characteristics (disability, sexual orientation and transgender identity) the only outcome available in the criminal justice process is that the perpetrator receives an enhanced sentence. Even if an increased sentence is imposed however, it will not appear on the offender's criminal record because they have not been prosecuted for an aggravated offence for disability, sexual orientation and transgender identity. A further inequality exists where a range of conduct that is either intended or likely to stir up hatred on the grounds of race or intended to stir up hatred on the grounds of religion is also prohibited.⁴ Currently, the remaining characteristics are not protected by stirring up offences.

¹ Crown Prosecution Service, Hate Crime [Accessed on 4 January 2022] <https://www.cps.gov.uk/crime-info/hate-crime>

² Sections 29-32 Crime and Disorder Act 1998

³ Section 66(3) excludes all racially and religiously aggravated offences. listed in the Crime and Disorder Act 1998.

⁴ There are six forms of conduct for stirring up hatred, including but not limited to using words or behaviour, displaying, publishing or distributing written material and presenting or directing the public performance of a play.

For disability hate crime (DHC) this means, in the absence of a separate aggravated offence, the only remedy available is that the court, when considering the seriousness of an offence treats as an aggravating factor that either:

1. 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) of the victim; or
2. the offence was motivated (wholly or partly) by hostility towards persons who have a disability or a particular disability.⁵

The perpetrator is not convicted of a DHC in the same way they would be convicted of racially or religiously aggravated assault, or racially and religiously aggravated criminal damage, because the latter are stand-alone, distinct offences. They show on criminal records. DHC becomes a consideration when the court considers as an aggravating factor the demonstration of hostility or motivation for the offence was because of the victim's disability. The significant difference is that on an offender's criminal record only the crime for which they have been convicted will show, such as criminal damage, harassment or a public order offence.

The police have historically struggled to implement the law concerning DHC. The Independent Police Complaints Commission (IPCC) in May 2011 highlighted the need for officers to recognise and establish that individuals are being targeted because of their disability, following the tragic deaths of Fiona Pilkington and her daughter Francecca Hardwick [sic] in Leicestershire in October 2007.⁶ The same issues were also recognised by the Equality and Human Rights Commission (EHRC)⁷ a study by Sin, Sheikh and Khanna which examined police policies, procedures and levels of awareness and understanding⁸ and inspections carried out by Her Majesty's Inspectorate of Constabulary Fire and Rescue Service (HMICFRS).⁹ In addition to recognising a potential DHC, another linked issue is gathering evidence to show the offender demonstrates hostility or was motivated by hostility on the basis of the victim's disability. Evidence of motivation is important, because if a Disabled victim is labelled as vulnerable by police, they are likely to receive a response that involves social care and not criminal justice.¹⁰ This means that evidence of hostility may not then be looked for, which in turn means a DHC is not identified and therefore not investigated. Alan Roulstone identified how the law constructs notions of hate in opposition to notions of vulnerability so that they never sit together in the "motivational repertoire of those who commit crimes against Disabled people."¹¹ Ken McDonald QC, Director of Public Prosecutions between 2003 and 2008 highlighted the need for a shift from an "inappropriate focus on vulnerability" when prosecuting DHC, to a focus "on enforcing victim's rights to justice and scrutinising the offender's behaviour, prejudices and hostility so that the case is properly investigated and prosecuted for what it is".¹² The consequence of the police inserting vulnerability in place of hostility had led to Disabled people feeling their stories will not be believed or that they will not be considered credible witnesses, which in turn means they do not report DHC incidents.¹³

DHC along with the other hate crime laws has been reviewed by the Law Commission in order to 'make

⁵ The other four characteristics are race, religion, transgender identity and sexual orientation.

⁶ IPCC Report into the contact between Fiona Pilkington and Leicestershire Constabulary 2004-2007

⁷ Equality and Human Rights Commission, *Hidden in Plain Sight: Inquiry into Disability-Related Harassment*, 2011 'Hidden in Plain Sight' <www.equalityhumanrights.com/dhfi> accessed 15 August 2020.

⁸ C Hoong Sin, S Sheikh and M Khanna, 'Police Readiness for Tackling Hate Crime against People with Learning Disabilities- Areas for Improvement and Examples of Good Practice' (2012) 11 *Safer Communities* 145.

⁹ HMCPSI, HMIC, HMI Probation *Living in a Different World. Joint Review of Disability Hate Crime*, March 2013, available at <https://www.justiceinspectors.gov.uk/hmicfrs/media/a-joint-review-of-disability-hate-crime-living-in-a-different-world-20130321.pdf>

HMCPSI, HMIC, HMI Probation *Joint Review of Disability Hate Crime Follow-Up*, May 2015, available at https://www.justiceinspectors.gov.uk/cji/wp-content/uploads/sites/2/2015/05/CJI_DHCFU_May15_rpt.pdf

HMICFRS and HMCPI *Joint Inspection of Handling of Cases involving Disability Hate Crime*, October 2018, available at https://www.justiceinspectors.gov.uk/cji/wp-content/uploads/sites/2/2018/10/CJI_DHC_thm_Oct18_rpt.pdf

¹⁰ A Roulstone and H Mason-Bish, (2014) *Disability Hate Crime and Violence*, (Routledge).

¹¹ A. Roulstone, P Thomas, S Balderstone, *Between hate and vulnerability: unpacking the British criminal justice system's construction of disabled hate crime*, *Disability and Society* (2011) Vol.26, No. 3 May 351-364 at 352.

¹² Sir Ken Macdonald: system must get tough on 'disabled hate crime', *The Telegraph* 6 October 2008.

¹³ Roulstone et al above n11 and R Shah and P Giannasi, (2015) *Tackling Disability Discrimination and Disability Hate Crime* (Jessica Kingsley Publishers) chapter 5.

recommendations on the most appropriate models to ensure that the criminal law provides consistent and effective protection from conduct motivated by hatred of protected groups or characteristics.¹⁴ It published its report on 7 December 2021.¹⁵ Its recommendations include extending aggravated offences that currently exist for race and religion to all other existing characteristics including disability.¹⁶ Another recommendation is that the legal test for the application of hate crime laws should be the same for aggravated offences and enhanced sentencing. The change being that the motivation limb of the legal test for aggravated offences and enhanced sentencing should be met when the offence was motivated (wholly or partly) by hostility or prejudice towards members of a group sharing a protected characteristic, based on their membership of that group.¹⁷ The Law Commission recommended extending aggravated offences back in 2014¹⁸ but no action was taken by the Government. Any changes resulting from the recent report could take years to implement, but in the meantime the police could improve how they recognise DHC and change the way they record DHC. This in turn would increase confidence in reporting DHC.

The ineffective policing response¹⁹ is underpinned by two reoccurring and linked issues: first, the police recognition of a DHC, where hostility has been demonstrated or motivated by a victim's disability or presumed disability, which in turn affects confidence in reporting; and second, police effectively recording DHC. This article examines the existing law to show the effect it has on how the police respond to DHC. Using a sample of cases provided by the London Metropolitan Police Service (MPS) dated between 2009 and 2018, this article will examine how the police approached reports of DHC over an extended period looking at decisions of investigating officers. The resulting analysis provides recommendations as to what can be done to increase awareness of DHC amongst police officers so as to improve the implementation of the current law.

Method

This article is the result of a research that led to the publication of a report by the University of Greenwich Disabled Witness Project in August 2019, which was an independent research project based in the School of Law. It was initially commissioned in 2012 (following the publication of the Coalition Government's plan to tackle Hate Crime) by the Greenwich Association of Disabled People's Centre for Independent Living (GAD)²⁰, supported by the MPS, to examine the operation of the law through a study of how far the current legislation, common law, codes of practice, pre-trial procedures do, in fact, provide the necessary access to justice for victims of DHC.

The project operated in two phases: The first phase provided an assessment of current legislation; policy documents and publicly available statistics to determine the effectiveness of the current law in offering access to justice for victims of DHC. The examination of the law used the theory that practical difficulties can reduce the effectiveness of the legislation or the legislation itself fails to provide the most effective mechanism for the promotion of rights. Therefore, how well it operated was considered against the backdrop of its effect on Disabled people.²¹ This phase also examined a set of police reports from the MPS dated between 2009-2012 to understand first-hand the experience of those involved in the investigation process and their response to DHC.²² It was evident from this work, that an effective police response relied on individual police officers awareness of DHC, and that there was no national consistency in terms of training police on DHC.

This became the catalyst for the second phase of the project which started In August 2018, when the Disabled Witness Project was granted funds by the Peter Harris Trust (Greenwich) to continue its work. A second set of

¹⁴ Launched in September 2020.

¹⁵ Hate Crime Laws: The Final Report, (2021) Law Com No 402 accessed on 6 December. 2021 <https://www.lawcom.gov.uk/project/hate-crime/>

¹⁶ Above chapter 13.

¹⁷ Above n15.

¹⁸ Hate Crime: Should the Current Offences be Extended? (2014) Law Com No 348.

¹⁹ T Shakespeare, 'Blaming the Victim: Disability Hate Crime' (2012) 380 *The Lancet* 878 <www.thelancet.com> accessed 15 August 2020.

²⁰ Joined Metro on 1st March 2019 to become 'METRO GAD': a charitable organisation to "provide advice and information, advocacy and volunteering opportunities for disabled people who live, work or study in the Royal Borough of Greenwich".

²¹ A Hellum and J Stewart, (eds.) (1998) *Pursuing Grounded Theory in Law: South-North Experiences in Developing Women's Law* (Harare Mond Books), p18 p25-6 64 Interview with Julie Stewart, author of *Pursuing Grounded Theory*

²² A Laycock and L Hewitt (eds) *Disabled Witness Project: Monitoring Access to Justice for Disabled Witnesses of Hate Crime* (2019) August 2019.

police reports from the MPS were obtained dated between 2016 and 2018. This allowed for a comparative analysis of the police responses to DHC in these reports to be compared with those from phase one. An example of police training was examined through a programme instigated by the MPS called Disability Hate Crime MATTERS. In addition, qualitative semi-structured interviews were used to understand the experiences of individuals who work in the police; Disabled people who had been victims of DHC; staff from non-governmental organisations and charities that support victims of DHC. In line with the ethical approval for both phases of the project, the information provided by victims of DHC has been anonymised as has information from other interviewees who requested not to be named, but some interviewees from the police and some charities wanted their views in relation to DHC to be attributed to them.

What follows, is an examination of the effect of the current DHC law on Disabled people who are victims of DHC, incorporating the stories of Disabled people, and those told to police officers and charities that support victims of DHC. The two reoccurring and linked issues concerning police recognition of a DHC, and police effectively recording DHC are examined in detail along with the intrinsically linked issue of victims reporting DHC. The findings from the examination of the police reports from the MPS are discussed in the context of police recognition of DHC, with information from the assessment of policy documents and publicly available statistics outlined in both the discussion on reporting and recording DHC. The next section discusses a suggestion as to how to improve awareness of DHC in the police by adopting the training template of Disability Hate Crime MATTERS. Finally, the impact that implementing the current law could have is considered through a recommendation to include a measure of effectiveness in how police forces respond to DHC in Her Majesty's Inspectorate of Constabulary Fire and Rescue Services (HMICFRS) inspection programme.²³

The effect of the current Disability Hate Crime law

The law concerning DHC as it currently stands, has created a division with the protected characteristics of race and religion for which there are specific aggravated offences which provide a higher maximum sentence.²⁴ For DHC if the defendant is found not guilty of the initial offence then enhanced sentencing powers cannot be used. The current law, therefore, is not equipped to protect individuals with a disability, it is more of a deterrent rather than a tool to prosecute perpetrators,²⁵ a point evident in the low recorded numbers of DHC when compared to race and religious hate crime reporting.²⁶ This position has contributed to the perception that the criminal justice system fails to recognise the seriousness of DHC.²⁷

The current law perpetuates an existing perception that Disabled people are vulnerable on the basis that they lack the skills to deal with and manage unfair treatment against them.²⁸ Associating vulnerability with disability implies that Disabled people are somehow responsible for becoming victims of DHC, a perception that the Disabled Witness Project identified because victims felt they would not be believed by the police, or they did not fully understand the behaviour they suffered as being unacceptable.²⁹ One example provided to the project³⁰ concerned a young man who has Down Syndrome who was working as an advocate for a charity. He was in the audience at an event when he stood up and said that if people spat at him at the bus stop, he wouldn't tell the police about it because he would be wasting their time. He then said that if someone put a firework in his pocket and set it off and told him that if he touches it, that were going to beat him up, and if he becomes injured then he would tell the police about that. He himself had made a distinction between behaviour he considered normal and behaviour that was not. However, most of society would not tolerate being spat at at a bus stop so why should he be any different. This behaviour happens too frequently, as one DHC advocate explained, 'When we ask them, 'Did you report it, if not, why not?'' The response is that if they were to report it they would be

²³ PEEL assessments <https://www.justiceinspectrates.gov.uk/hmicfrs/our-work/article/peel-assessments/> accessed July 2020.

²⁴ Crime and Disorder Act 1998 ss.28-32 records the offences that can become aggravated offences such as criminal damage, different types of assaults; public order offences such as causing fear or provocation of violence; and harassment and stalking.

²⁵ L Piggott, Prosecuting disability hate crime: a disabling solution? *People, Place and Policy Online* (2011) 25-34.

²⁶ Home Office: Hate Crime England and Wales.

²⁷ S Ralph, C Capewell and Et Bonnet, Disability hate crime: persecuted for difference *British Journal of Special Education* (2016) 43, 3.

²⁸ Ralph above.

²⁹ A Laycock and L Hewitt (eds) *Disabled Witness Project: Monitoring Access to Justice for Disabled Witnesses of Hate Crime* August 2019.

³⁰ Paul Giannasi OBE, *Disabled Witness Project* September 2018.

doing it most weeks. It goes with the territory.’³¹ Everyone is vulnerable to crime, regardless of whether they have a Disability or not, but it is ‘difference that can attract people to target Disabled people for various reasons’.³²

The position of DHC as a poor relation to the race and religion characteristics is further compounded by the lack of clarity between the types of criminal behaviour that are recognised as being acts of hate.³³ The deaths of Fiona Pilkington and Francessca Hardwick in 2007 illustrate how the criminal behaviour they suffered was not recognised as DHC. Over the course of ten years, they suffered the repeated throwing of eggs, stones and flour at their house, in addition to subjecting Francessca, who had the mental age of a four-year-old to abuse and locking her brother in a shed at knifepoint were all incidents reported to the police, who only visited them eight times.³⁴ At the time, the current definition of DHC adopted by the National Police Chiefs Council (NPCC previously Association of Chief Police Officers) and Crown Prosecution Service (CPS) did not exist, it was adopted in 2013, “Any incident/crime 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.”³⁵

The definition enables the police to record any incidents that fall below the level of a criminal offence where a victim is targeted because of hostility against disabled people. The police should record all DHC incidents, and examples can include hostile staring and name calling.³⁶ Police guidance states that such incidents may breach discrimination law, such as the Equality Act 2010. ³⁷ The emphasis in the definition is on the victim’s belief, which means the police should record an incident involving hostility towards disability as a DHC so it can be investigated with that in mind. This requires Disabled people to recognise that a DHC has taken place, and not consider it normal behaviour, which, as highlighted above is something that happens all too often. Following the NPCC and CPS definition of DHC, incidents such as those reported by Fiona Pilkington and Francessca Hardwick should be recorded by the police even if they do not amount to criminal offences.³⁸ The inadequate police response placed Fiona and Francessca in a vulnerable position,³⁹ and unfortunately such an ineffective response is still not uncommon, as the examination of reports from the MPS has shown (see below).

The problems with the police response to DHC have undoubtedly contributed to the notion that there is a hierarchy in the protected characteristics which places victims of race and religious hate crime as receiving the most attention and victims of DHC as receiving the least.⁴⁰ The law places a focus on the motivation of a perpetrator for DHC but the examination of police reports below shows that the police struggle to recognise this, and subsequently recognise the need to investigate the offence as a potential DHC. The practical consequences of not having an aggravated offence of DHC is that the police rely on the victim to suggest that the perpetrator was motivated by their disability. If motivation by hostility based on the victim’s disability or presumed disability is not considered by the police during their investigation then it is unlikely to be considered by the Judge at the point of sentencing, leaving the victim without a remedy and the perpetrator of DHC free to carry on their actions.

Dr Mark Walters in 2017⁴¹ suggested reform of the current law in two ways; the first to proscribe ‘any offence

³¹ Disabled Witness Project Interview August 2018.

³² Anne Novis, Snap Shot Report of Targeted Hostility Towards Disabled People in UK. London: United Kingdom Disabled People’s Council (2010).

³³ Garland, J. (2011) Difficulties in defining hate crime victimization, *International Review of Victimology*, 18 (1) 25-37

³⁴ BBC News, Fiona Pilkington officers face misconduct proceedings, 24 May 2011 <https://www.bbc.co.uk/news/uk-england-leicestershire-13504618>.

³⁵ HMFICRS, Joint Inspection of the Handling of Cases Involving Disability Hate Crime, October 2018 [4.1] available at https://www.justiceinspectorates.gov.uk/cji/wp-content/uploads/sites/2/2018/10/CJI_DHC_thm_Oct18_rpt.pdf accessed 5 April 2019.

³⁶ National Police Chiefs Council Disability hate crime: a guide for carers and supporters, September 2020. <https://www.safeguardingworcestershire.org.uk/wp-content/uploads/2020/10/Disability-hate-crime-guide-for-carers-and-supporters-September-2020.pdf> (accessed 20 November 2021).

³⁷ HMFICRS and HMCPSI Joint Inspection of Handling of Cases involving Disability Hate Crime, n34.

³⁸ Above n36.

³⁹ Garland n33.

⁴⁰ Mason-Bish, H. (2010) Future challenges for hate crime policy: lessons from the past in Neil Chakraborti (ed.) Hate crime: Concepts, policy and future directions (Routledge).

⁴¹ Walters, M.A. et al, ‘Hate Crime and the Legal Process: Options for Law Reform’ (2019) SSRN Electronic Journal <<https://papers.ssrn.com/abstract=3427984>> accessed 15 August 2020.

in criminal law as aggravated by one of the five protected characteristics,' the second to replace 'motivated by hostility' to 'by reason of' a personal characteristic. If a victim has been selected 'by reason of' his/her disability, that should be enough to demonstrate a hate crime.'⁴² A person might have been targeted for his/her disability, but this definition recognises that 'hostility' is not always present in DHC. As highlighted above in the definition of DHC used by the NPCC and CPS the phrase 'prejudice based on a person's disability or perceived disability' provides an alternative to the requirement of 'hostility.' The same definition also provides for the recording of incidents that fall below the level of a criminal offence where a victim is targeted because of hostility against disabled people, in addition to DHCs. Where this definition is not used in the current law it adds another layer of policy which the police must consider when trying to recognise DHC.

Recognising, reporting and recording Disability Hate Crime

The difficulty the police have in recognising DHC is one of the key differences between this and other hate crimes. The Disabled Witness Project was told by an Advocacy Coordinator working for a charity supporting people with learning disabilities based in Lewisham, that a lack of recognition of DHC as one of the key challenges to combatting it:⁴³

'I think if you were to stop people in a shopping centre and ask them to name a type of discrimination or type of hate crime, I would expect that certainly anybody that wasn't themselves disabled or didn't personally know someone with a disability or impairment that had been a victim, would probably name disability last, if they named it at all. Now I think part of that is almost the disbelief among people that it actually happens.'

Previous studies have indicated that the police find it difficult to identify the motivation of hostility, and that gathering evidence of hostility is complex.⁴⁴ All the HMICFRS inspection reports since 2013 also suggested that recognising DHC is problematic for the police. Alongside this, exists the issue faced by individuals with a disability in reporting DHC, because of the lack of confidence that a report will be investigated and identified as DHC.

Recognising Disability Hate Crime

Confusing definitions in policy and legislation has contributed to the lack of clarity and understanding as to what constitutes DHC according to the joint HMICFRS and HMCPSI report in 2013.⁴⁵ The definition drawn up by the NPCC and CPS was used in the National Policing Hate Crime Strategy published by the NPCC and College of Policing in 2014.⁴⁶ The Disabled Witness Project found some evidence that it has been applied. Whilst the joint inspection in 2018 by HMICFRS and HMCPSI shows that significant progress has been made by the police in recognising DHC,⁴⁷ it highlighted cases which had been identified as DHC but not referred to the CPS, or where DHC had not been recognised at the beginning of an investigation.⁴⁸

The police reports from the MPS dated 2009-2012 and 2016-2018 respectively, concerned Disabled victims. An examination of these reports showed that recognition of DHC was dependent on the individual responding police officer's knowledge and confidence over DHC. In the 2009-2012 reports multi-agency organisations such as housing officers, carers or mental health support teams often recognised an incident as a potential DHC. This meant that any police investigation into the potential DHC was delayed on the basis the police were often focusing on anti-social behaviour as the offence. The 2016-2018 reports indicate an improved awareness of DHC but still showed an inconsistent response for victims.

The majority of the 2009-2012 reports concerned disputes between a Disabled person and their neighbours.

⁴² House of Commons Petitions Committee (2019), *Online abuse and the experience of disabled people [110] 38* available at <https://publications.parliament.uk/pa/cm201719/cmselect/cmpetitions/759/759.pdf>;

⁴³ Colin Finch 1-2-1 Advocacy Coordinator, Crime and Hate Crime Advocate, for Lewisham Speaking Up, a charity for people with learning disabilities. Disabled Witness Project Interview August 2018.

⁴⁴ Richardson, L. et al. (2016) I felt that I deserved it - experiences and implications of disability hate crime. *Tizard Learning Disability Review*, 21 (2). pp. 80-88 .

⁴⁵ HMICFRS and HMCPSI Joint Inspection of Handling of Cases involving Disability Hate Crime, n34.

⁴⁶ College of Policing, National Policing Hate Crime Strategy May 2014, available at http://library.college.police.uk/docs/college-of_policing/National-Policing-Hate-Crime-strategy.pdf

⁴⁷ HMICFRS and HMCPSI Joint Inspection of Handling of Cases involving Disability Hate Crime, n30.

⁴⁸ HMICFRS and HMCPSI Joint Inspection of Handling of Cases involving Disability Hate Crime n34 [4.22-4.24] 15.

These reports were initially treated as anti-social behaviour. Partner organisations, when consulted at multi-agency meetings subsequently provided information about the individuals disability which then led the police to identify the offence as DHC. For example, one individual who as a victim had, over a period of six months reported anti-social behaviour to the police. The description of the problem notes that the individual had 'mental health problems' and claimed, 'his neighbours are conspiring against him though all allegations are so far unfounded.' The same sentence notes that the victim 'has recently been convicted of criminal damage of his elderly neighbours front door after kicking it in' giving the indication that the police were not treating the individual as the victim. It was not until the local housing team confirmed that the individual was indeed a victim and they had witnessed problems with the neighbours that the police considered DHC.

The consequence of the police not recognising DHC can affect not only the victim but also those around them, especially where the DHC is 'mate crime', described as the process by which someone purports to be a friend and then goes on to steal, or attack their mate.⁴⁹ In this situation the Disabled person may want the hostility to stop but welcomes the company and feeling of being part of the group.⁵⁰ Not recognising this as a DHC means that the victims suffer for longer, often scared of the consequences of telling anyone. For example, in the 2009-2012 reports, a young man living in a block of flats was smoking cannabis and was thought to be holding noisy parties during the day and at night. When he became a victim of burglary, he disclosed to the police that he was bi-polar but said he was on adequate medication. No action was taken by the police in relation to the burglary but the council started paying regular visits to the flats on the basis that the man was potentially committing anti-social behaviour. During one of these visits some 8 months later by the council and a Police Community Support Officer (PCSO), they noticed that a visitor in the flat was known to the police. The young man was asked to come into a police station and speak to the local police officer where he revealed he was scared of his friends who had tried to pressure him into committing a robbery which is why they had burgled his flat. Had the burglary been identified as a DHC earlier the issues faced by the young man could have been tackled sooner.

The 2016-2018 MPS reports showed the benefits of the police recognising DHC early in the investigation. For example, a 45-year-old man with a disability that required use of a wheelchair reported being approached by an older man who took hold of his ankles and then used an object to touch his chest. The victim shouted at the man to let go and the police were called. The suspect was located in a local shop using CCTV and was arrested and taken into police custody. The police officer identified the incident as a DHC, and when he spoke to the suspect, he recognised that he too was vulnerable and discovered he suffered from schizophrenia. The suspect was extremely apologetic, and the officer completed a community resolution, giving the victim and the suspect an opportunity to meet, where the victim had a chance to have his voice heard and the suspect was able to apologise. Another example detailed an individual who had dwarfism that reported an assault occasioning actual bodily harm but was not visited by the officer investigating the offence, instead the police tried to contact them by letter or by a telephone call. Such an approach diminishes the effect of the offence on the individual and the relevant support and help was not provided to the victim until sometime later where the individuals disability was recognised.

The 2016-2018 reports show that the police recognised disabilities that were not immediately obvious. An elderly man had vascular dementia but also suffered from heart disease and type 2 diabetes. Whilst sitting outside his block of flats he was approached by a 47-year-old woman who convinced him that they knew each other. She persuaded him to invite her up to his flat for a cup of tea and, whilst inside, she searched the flat and stole money. The investigating officer immediately recognised that the man was targeted because of his disability and engaged the help of the victim's carers to support him during the investigation. The officer also applied for special measures for the trial and made contact with the victim's doctor, who wrote a letter to the court explaining why the victim would find giving evidence extremely distressing. The suspect was identified after an extensive trawl through CCTV footage and found guilty at court. This report in particular shows the effect in practice of the NPCC/CPS approved definition of DHC. The officer recognised the theft as a DHC using the NPCC/CPS definition: the offender targeting the man with vascular dementia for the purposes of theft could not be said to be motivated by hostility but could arguably be 'motivated by... prejudice based on a person's disability or perceived disability' and thus fall within the NPCC/CPS definition.

⁴⁹ Roulstone, A. and Mason-Bish, H. above n10 at p48.

⁵⁰ Thomas. P. (2011) 'Mate crime': ridicule, hostility and targeted attacks against disabled people, *Disability & Society*, 26:1, 107-111.

The response from the police in the 2009-2012 reports exemplifies the difficulty that the police have had in recognising DHC and the effect that can have on the victims. These reports showed what Alan Roulstone describes as a limited criminal justice response in terms of the victims of DHC receiving justice, and more use of safeguarding and adult protection measures.⁵¹ This is indicative of a police response that perceives Disabled people to be primarily vulnerable requiring a multi-agency response, rather than as potential victims of DHC that warrant a criminal law response. The current law does not help to diminish this approach because it reinforces Disabled people as vulnerable.⁵² It is evident that the police recognise race and religion as aggravating factors to hate crimes much more readily than they do for disability.

Whilst the 2016-2018 reports indicated an improved response to DHC, in particular increased awareness of individuals whose disabilities were not so obvious, they also showed that recognition of DHC remain inconsistent. Victims remain reliant on the awareness of individual police officers.

Reporting Disability Hate Crime

An inconsistent response from the police to DHC is a significant reason why Disabled people do not report incidents.⁵³ In 2013, the HMICFRS identified that victims of DHC needed to have more confidence in reporting incidents to the police, but a poor police response can deter a victim of DHC from reporting.⁵⁴ One interviewee told the Disabled Witness Project about her negative experience when she telephoned the police to report being knocked out of her wheelchair, she was told that they were too busy to attend the scene. On her way home, she called in to Brixton police station to give them a statement about what had happened, at which point the police became embarrassed and apologised. Her belief was that this was symptomatic of a bigger issue: the criminal justice system perceived her not to have credibility as a witness because of her disability.⁵⁵ This issue was raised in evidence given to the House of Commons Petitions Committee enquiry into online abuse and the experience of Disabled people, 'Believing people is really important and not seeing the disability but seeing the person'⁵⁶; The biggest barrier we face is disbelief by professionals and the belittling of what we experience and the impact of it.⁵⁷ The police reports from the MPS dated 2009-2012 showed an inadequate response by police is in the form of a report of DHC being treated as anti-social behaviour. One report showed how, when an individual disclosed his mental health conditions this prompted the police to work closely with the housing officer at the local council to try to resolve the issues and not pursue the offence of anti-social behaviour. Yet, whilst the police recognised how the individuals condition affected his behaviour, they did not consider DHC as a possible offence committed against the individual by his neighbours. This is an example as to how the actions of perpetrators of DHC are decriminalised.

The issue of Disabled people recognising DHC is another reason for the lack of reporting. As discussed above under 'The effect of the current law' Disabled people feel the incidents happen too frequently to report. Reiterating the point made by one DHC advocate when interviewed for the Disabled Witness Project, when they ask their clients why they did not report incidents of DHC, the response is, 'If I were to report it, I'd be doing it most weeks, if not every day, that might be an exaggeration but most weeks. It goes with the territory.'⁵⁸ Another factor for not reporting is the difficulty in achieving legal redress due to the inequality of the existing DHC law also discussed above. Andie Gbedemah, Public Affairs, Officer for Dimensions, summarised both these factors:

'I think there is very low confidence and trust around the system of reporting because people feel they won't be believed. They perhaps think what's happened to them is not serious enough to bother the police with and that's exacerbated when someone comes forward, they report and

⁵¹ Roulstone. A. et al n11.

⁵² Ralph n22.

⁵³ Laycock, A. and Hewitt, L. (eds) *Disabled Witness Project: Monitoring Access to Justice for Disabled Witnesses of Hate Crime*, August 2019.

⁵⁴ HMCPSI, HMIC, HMI Probation *Living in a Different World. Joint Review of Disability Hate Crime*, March 2013, available at <https://www.justiceinspectorates.gov.uk/hmicfrs/media/a-joint-review-of-disability-hate-crime-living-in-a-different-world-20130321.pdf>

⁵⁵ Disabled Witness Project Interview September 2016.

⁵⁶ Amy Clarke, Digital Assistant, Mencap, House of Commons Petitions Committee, *Online abuse and the experience of disabled people* n42 at 15.11.00 accessed 7 May 2019.

⁵⁷ Anne Novis MBE, disability campaigner, Inclusion London n42.

⁵⁸ Disabled Witness Project Interview August 2018.

there isn't anything that the perpetrator can be charged with; so a lot of it comes back to the law and issues around the law and the fact that, with the best will in the world, police and the prosecutors aren't then going to be able to give people the outcome they are looking for when they report if they don't have the mechanism to do that in legislation.'⁵⁹

Recording Disability Hate Crime

Where a police officer does not recognise DHC, consequently, they fail to record it correctly. Sometimes this takes place even when advised by a DHC professional that the report should be identified as such. One example provided to the Disabled Witness Project was the painting of the words 'child molesters' in white paint on the blue front door of the home of several adults with learning impairments. Not only was the crime recorded as criminal damage but only one victim was recorded, the registered owner. This did not reflect the true victims of the hate crime in a multi-occupancy property. The assistance of the local Crime and Hate Crime Advocacy Service meant that the incident was eventually recognised as a DHC. This meant that the investigating officer was able to speak to the local hate crime advocate who was then able to represent the victims and demonstrate how the crime had affected them. Not only could this have led to an enhanced sentence, but, in turn, it would mean that the crime figures would represent the accurate number of victims of this DHC.⁶⁰

Errors have been found in the recording of DHC by the police and the Crown Prosecution Service (CPS) as noted in the 2015 HMICFRS report.⁶¹ A number of records lacked information in line with the agreed NPCC and CPS definition, because it was not made explicit who had perceived the crime to be motivated by hostility or prejudice against the victim's disability or perceived disability. Since April 2019, the Home Office requires the police to flag hate crime in accordance with the counting rules for recorded crime.⁶² The police flag an incident as DHC because then the investigating police officer consider the victims disability as the motivation or prejudice for the offence. A joint inspection in October 2018 into the handling of cases involving DHC found that the DHC flag had only been used in 63 of the 90 cases that were examined.⁶³ The HMICFRS inspection in July 2018 into how police forces deal with hate incidents and crimes also identified similar findings.⁶⁴ The conclusion drawn in both reports was that the recording of DHC was not accurate and potentially the figures are higher.

The recorded figures for DHC have increased over the past four years as table one below shows. The 2016/17 figure for DHC recorded by the police was 5,254⁶⁵ compared with 3,393 in 2015/16. ⁶⁶ This shows an increase of 65% but this has not been maintained, in fact although the reported numbers have increased year on year, the percentage increase has dropped year on year illustrated in Table 1 below. The recorded figures for DHC in 2017/18 is 6,787 which is an increase of 23% from 2016/17. The report for 2018/19⁶⁷ shows that 7,786 DHCs were recorded, an increase of 13% from 2017/18. The recorded DHC for 2019/20 is 8,469, an increase of 9% from 2018/19.

Table 1: Disability Hate Crime Recorded for 2015/6 to 2019/20.

	2015/16	2016/17	2017/18	2018/19	2019/20
Disability hate crime recorded figures	3393	5,254	6,787	7,786	8,469
% increase year on year	NA	65%	13%	23%	9%

⁵⁹ Andie Gbedemah, Public Affairs Officer, Dimensions n42.

⁶⁰ Disabled Witness Project Interview August 2018.

⁶¹ HMCPSI, HMIC, HMI Probation [Joint Review of Disability Hate Crime Follow-Up](https://www.justiceinspectorates.gov.uk/cji/wp-content/uploads/sites/2/2015/05/CJI_DHCFU_May15_rpt.pdf), May 2015, available at https://www.justiceinspectorates.gov.uk/cji/wp-content/uploads/sites/2/2015/05/CJI_DHCFU_May15_rpt.pdf

⁶² The Home Office counting rules for recorded crime help to ensure that crimes are recorded consistently and accurately by all police forces in England and Wales. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/791106/count-flags-apr-2019.pdf accessed 24 May 2019.

⁶³ HMICFRS and HMCPSI Joint Inspection of the Handling of cases involving Disability Hate Crime, above n34 [2.6] 6

⁶⁴ HMICFRS Understanding the difference. The initial police response to hate crime [4.5] 9.

⁶⁵ Home Office: Hate Crime England and Wales 2016-2017.

⁶⁶ Home Office: Hate Crime England and Wales, 2015-2016.

⁶⁷ Home Office: Hate Crime England and Wales 2018-2019.

Current research being carried out by the author with the MPS supports the previous findings from the HMICFRS that the DHC flag is not being applied consistently or accurately. The consequence of this is that the recorded figures in table one, are highly likely to be inaccurate, and, without accurate figures, it is impossible to identify the scale of DHC.

Improving implementation of the current law

The obvious remedy to the problem of the police recognising DHC and being able to implement the current law is to generate more awareness.⁶⁸ Disabled people need to be certain that they will receive a consistent response when reporting a DHC⁶⁹ and one way to achieve this is to develop national training for police officers.⁷⁰ The importance of this would be to educate the police to understand the reasons that DHC occurs, reinforcing that it is a “real” hate crime and not bullying, harassment or anti-social behaviour.⁷¹ Improved recognition of DHC would, in turn, improve recording, which would subsequently increase confidence in reporting.

There is no mandatory national training for police officers in the recognition and recording of DHC. Currently police forces can engage in as much or as little DHC training which reflects the Authorised Professional Practice from the College of Policing.⁷² Where training has been an investment of time and engagement with partner organisations it has led to an increase in the recording of DHC, alongside local police officers feeling confident in engaging with individuals with a disability. For example, Surrey Police worked with Dimensions, an organisation that supports people with learning disabilities and autism to develop a seven-month face to face training programme led by a person with lived experience of a disability.⁷³ The MPS developed a training initiative with Inclusion London called Disability Hate Crime MATTERS which spelt out exactly how DHC should be flagged and recorded by police officers in the MPS:

M= must use vulnerability framework; **A**= ask the victim the right questions;

T= take immediate safeguarding action; **T**= think DHC and flag VH;

E= ensure corroborative evidence is captured; **R**=record all DHC as CRIS not Airspace; **S**= supervisor MUST be informed

The M refers to the vulnerability framework, which implies that the police adopt a safeguarding and adult protection response rather than a criminal justice response (Roulstone, 2011).⁷⁴ The Vulnerability Assessment Framework (VAF) is a toolkit the MPS use to identify vulnerable individuals who have come into contact with the police so they can then provide the most appropriate response, which could include involving other agencies (this is a national requirement according to the NPCC, however, there is no national agreed definition of vulnerability, so each police force can define this individually). Whilst applying the term vulnerable to individuals with a disability has been criticised (Ralph, 2016),⁷⁵ in this context the VAF is used to emphasise providing the best response possible and in the day-to-day work of a police officer, provides a prompt for them to engage in a conversation to identify whether that person has been the victim of DHC. Part of that response is to ask the right questions in the right way hence the A, which highlights the importance of talking to the individuals reporting DHC directly, asking them whether they have a disability if it is not obvious and also asking them if they feel they have been targeted because of their disability. This approach uses the NPCC/CPS definition, the response to which would be recorded on the crime report. Emphasis is placed on building a dialogue, by asking

⁶⁸ Shamash, M. and Hodgkins, S. L. (2007) Disability Hate Crime Report (London: DIOT Disability Information Training Opportunity).

⁶⁹ Piggott, L. above n25.

⁷⁰ Home Office (2016) Action Against Hate: The UK Government’s plan for tackling Hate Crime available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/748175/Hate_crime_refresh_2018_FINAL_WEB.PDF

⁷¹ Roulstone n10.

⁷² College of Policing, Hate Crime Operational Guidance 2014, available at <https://www.college.police.uk/What-we-do/Support/Equality/Documents/Hate-Crime-Operational-Guidance.pdf>

⁷³ Dimensions, I’m with Sam Police Training Report 2016, [Accessed 24 June 2020] <https://www.dimensions-uk.org/wp.../Im With Sam Final Dossier REDUCED.pdf>

⁷⁴ Roulstone n10.

⁷⁵ Ralph n27 and House of Commons Petitions Committee n42.

open questions, especially if the individual has access needs or if they require any support in the police station.

The first T refers to take immediate safeguarding action, which again implies a different response to that of criminal justice. In this context it is for the police to consider if the victim is at risk of further attacks and whether they can be removed from that risk, and to offer further support to the individual. The second T encourages police officers to 'Think DHC' by flagging the incident so that the investigating officer will consider the motivation of the perpetrator when investigating the incident. This links directly to the issue of recording DHC, represented by the R. DHC should be recorded on the crime reporting system (CHRIS) and not Airspace, which a system for recording anti-social behaviour. Correct recording on CHRIS means that incidents can be identified and investigated as potential DHC. The E remind officers to Ensure corroborating evidence is obtained such as CCTV, and statements from the individual that made the report and other witnesses if relevant. Police officers are also directed to research other computer systems to which they have access in order to build a better picture of the situation. Finally, the S states that a Supervisor must be informed so that the Supervisor can ensure that the MATTERS acronym has been completed properly and that s.146 of the CJA is considered during the investigation.

When it was launched in March 2016, the impact of Disability Hate Crime MATTERS was evident in the increase of recorded DHC, from 357 in 2015/16 to 666 in 2016/17.⁷⁷ In 2017/18, however, the figure dropped to 462 DHCs.⁷⁸ Two reasons have been suggested for this: the first described by the Disabled Witness Project (2019) as 'initiative fatigue' is a result of the police consistently being asked to change their priorities without having nearly enough time to put into practice what they have been asked to learn.⁷⁹ The second reason is that the officers responsible for delivering the initiative left or changed roles with the result that the training was either not delivered or not delivered properly. Prior to Disability Hate Crime MATTERS, the MPS used online training, which attracted criticism because rather than actually listening to the training and retaining information, people could skip to the end in order simply to pass the assessment.⁸⁰ An initiative like Disability Hate Crime MATTERS can have an impact in raising awareness of DHC amongst the police and could be used as a template for national training.

The potential impact of improved implementation of the current law

Whilst localised training has been shown to be effective for both Surry Police and the MPS, it is evident that there is a severe lack of national consistency in how the police are trained to recognise and record DHC. Police Hate Crime Policy Lead Paul Giannasi when interviewed by the Disabled Witness Project spoke about new online training for hate crime⁸¹ called Facing Facts which would be delivered via a virtual learning environment through three modules.⁸² HMICFRS has been critical of online training because of its perfunctory nature, which does not lead to any real learning or retention of information.⁸³ Giannasi accepted that computer-based training was not always the best approach, but that this thought to be a middle ground that would be accessible to everyone who works in the police from call handlers to police officers.

One way of encouraging police forces to invest in training police officers to recognise and record DHC is by incorporating a measure of how effectively police respond to and support people in relation to DHC in Her Majesty's Inspectorate of Constabulary Fire and Rescue Services (HMICFRS) inspection programme.⁸⁴ The HMICFRS independently assesses the police effectiveness, efficiency and legitimacy (PEEL) of each police force in England and Wales. Police forces are mandated to respond to a set of criteria demonstrating evidence of their performance. The HMICFRS are able to require a police force to improve their work in specific areas if the PEEL assessment identifies the need.

The PEEL assessment programme can be adapted to include new measures that police forces are graded against. For example, in 2017 the PEEL inspection adopted an assessment as to how well individual police forces: identify

⁷⁶ Home Office: Hate Crime in England and Wales, 2015 -2016.

⁷⁷ Home Office: Hate Crime in England and Wales, 2016 -2017.

⁷⁸ Home Office: Hate Crime in England and Wales, 2017 -2018.

⁷⁹ Colin Finch, Disabled Witness Project Interview August 2018.

⁸⁰ HMCPSI, HMIC, HMI Probation Joint Review of Disability Hate Crime Follow-Up, May 2015, 29.

⁸¹ Paul Giannasi, Disabled Witness Project Interview 2018.

⁸² Hate Crime Training for Police, Facing Facts Online <https://www.facingfactsonline.eu>

⁸³ HMCPSI, HMICFRS, HMI Probation, Joint Review of Disability Hate Crime Follow-Up, May 2015 p29 onwards.

⁸⁴ PEEL assessments <https://www.justiceinspectorates.gov.uk/hmicfrs/our-work/article/peel-assessments/> accessed July 2020.

people with mental health problems when they first contact the force; identify and record the number of cases involving people with mental health problems to provide the right support and make sure expert help is available from other organisations, in particular health professionals.⁸⁵ Therefore, it could be possible to include a new measure specifically aimed at DHC which could assess the police on how well they: identify individuals with disabilities when they first contact the force; identify and record the number of cases concerning DHC and make sure expert help and support is available from other organisations, in particular from local disability groups or networks. This would encourage the development of effective training in the recognition and recording of DHC, but it would also generate awareness of the law on the basis police officers would have to know about it in order to recognise and record DHC incidents. Subsequently, recording of DHC could improve if victims of DHC have increased confidence in the police.

Conclusion

The issues concerning the recognition and recording of DHC by the police has been ongoing for a number of years. Whilst the reports from the HMICFRS and the study carried out by the Disabled Witness Project indicate there has been some improvement, it is evident that more needs to be done by the police so they recognise and record DHC effectively.

The current law does not achieve justice for victims of DHC. The police struggle to implement it because the aspect of motivated by hostility is hard to identify, unlike race and religious hate crime offences which are easier to identify as having aggravating factors. Enhanced sentencing only works if the initial crime is recognised as a DHC, and as the examination of reports from the MPS shows, this is reliant on the police officer carrying out the investigation as to whether they recognise the offence as a potential DHC. This generates an inconsistent response between police forces and makes Disabled people reluctant to report DHC. Whilst the NPCC/CPS definition of DHC is useful, police officers have to know about it and use it. This article has demonstrated that there are no accurate statistics relating to DHC because the police recording of it is not reliable.

Generating more awareness of DHC amongst the police service is one way of helping individual police officers to implement the current law. The template of Disability Hate Crime MATTERS examined above could be replicated in every police force providing consistent, national training that would help the police recognise incidents of DHC at both the initial report stage and during the investigative process. Improved recording of DHC can only be achieved when the police are confident in recognising it, and when this happens it will give Disabled people more confidence that their stories will be believed, which would, in turn lead to increased reporting. DHC is a serious hate crime and in the absence of any new legislation, the police can implement practical changes to improve the application of the current law.

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