

# Out in the open

## Tackling disability- related harassment

### A manifesto for change

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# Foreword

by **Mike Smith**

**Lead Commissioner for the Inquiry into disability-related harassment,  
Equality and Human Rights Commission**

One year on from the report of our original inquiry – *Hidden in plain sight* – and the circuit of speaking events that followed, it would be easy to imagine that disability-related harassment is finally being understood and tackled.

The responses from government and authorities discussed in this ‘Manifesto for change’ show that many are already taking significant steps and more are planned, as set out in the detailed reports of what they intend to do over the next few years, which are posted on our website alongside this report. Together they show progress, individually and collectively, towards making a real difference.

Yet almost every person I talk to who is not part of the criminal justice or equality sector still doesn’t appear to recognise what is happening to disabled people. If you follow the Disability Hate Crime Network – an online community of disabled people from across Britain sharing their experiences – you will see daily reports of attacks against disabled people. Day after day, people are being targeted because of their disability.

It has just been reported that the number of disability hate crimes recorded by police forces in England and Wales for the year ended December 2011 was 1,877.<sup>1</sup> This is an increase of 24.1 per cent on the previous year, and is the only equality strand to have seen an increase in the police recording of hate crimes. This could be a good thing if it

shows that more people feel able to report it, and we need more reporting to demonstrate the true scale of this issue. But it could also suggest that the underlying incidence of the problem has got worse.

I am also concerned about the apparent ‘postcode lottery’ in recording patterns, with a variation of 255 cases in Leicestershire down to just four in some police force areas, with 12 forces<sup>2</sup> recording less than 10 cases during this period. It is difficult not to conclude from these figures that some police forces are simply not trying hard enough to encourage disabled people to report these incidents or to take them seriously when they do.

Contrast these figures with the Crime Survey for England and Wales; they show the number of people experiencing a disability hate crime in the year to the Spring of 2011 was 65,000. So, just under 3 per cent of hate crimes experienced by disabled people end up being included in the official figures. This means that for around 34 out of every 35 incidents of disability hate crime, the victim was either unable or unwilling to report the hate crimes committed against them. This could be because, as the same crime survey consistently shows, victims have low expectations about what, if anything, reporting the crime might actually achieve, or it could be that these incidents are not recognised as being disability-related even when they do. There is a long way to go.

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**1** See [http://www.report-it.org.uk/files/final\\_acpo\\_hate\\_crime\\_data\\_2011\\_\(revised\\_oct\\_2011\)\\_1.pdf](http://www.report-it.org.uk/files/final_acpo_hate_crime_data_2011_(revised_oct_2011)_1.pdf)

**2** Excluding the small City of London Police Force.

It is important to remember that hate crime is only the tip of the iceberg. So-called hate incidents – the name-calling, bullying, and other treatment that wears people down – are what the majority of disabled people experience on a much more frequent basis and can escalate to more serious crimes. It is refreshing to see that at least some parts of the media are picking up on the contradiction between the positive reporting on disability surrounding the 2012 Paralympics, and the day-to-day reality for many disabled people, often labelled as scroungers or benefit cheats or ‘not trying hard enough’.

This ‘Manifesto for change’ sets out our revised recommendations for action over the next five years. These have been developed following consultation with a large number of government, national and local bodies who have helped refine and nuance the recommendations to make sure that they work, and to ensure that those organisations own them.

The issue of disability-related harassment might be ‘Out in the open’ but it is, most certainly, not yet sorted. It is incumbent upon us all to work to overcome this blight on our society.

# Introduction

Research on the safety and security of disabled people conducted by the Commission in 2009 found that violence and hostility is a daily experience for some disabled people.<sup>3</sup>

These findings led the Commission to launch its largest inquiry to date. It analysed over 500 pieces of evidence and held formal hearings with expert witnesses.

The terms of reference for the inquiry were to investigate the causes of disability-related harassment and the actions of public authorities and public transport operators to prevent and eliminate it.

The scope of the inquiry covered:

- England, Scotland and Wales
- disability-related harassment carried out by individuals or groups of people, including strangers, neighbours, acquaintances, friends, family, relatives and partners
- harassment in public places such as streets, parks, schools, leisure facilities, on public transport and in private places such as in the home.

It did not cover harassment in the workplace, which is covered by a separate legislative framework.

In September 2011, the Commission concluded the formal part of the inquiry when it published the report *Hidden in plain sight*.<sup>4</sup> This report highlighted systemic failures by organisations in preventing disability-related harassment and in tackling it effectively when it happens, and gave draft recommendations for action.

In this follow-up to *Hidden in plain sight*, we summarise a wide range of formal responses from relevant organisations and set out our final recommendations.

The responses are, overall, positive and encouraging. There are some very promising signs of action and commitment from those with the power and responsibility to create change. There is less progress so far in terms of measureable practical actions. However, we expect significant progress over the next few years towards achieving better outcomes for all disabled people.

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<sup>3</sup> Sin *et al.* (2009) *Disabled people's experiences of targeted violence and hostility*, Equality and Human Rights Commission research report 21.

<sup>4</sup> *Hidden in plain sight: Inquiry into disability-related harassment*, Equality and Human Rights Commission (2011). Available at: [www.equalityhumanrights.com](http://www.equalityhumanrights.com)

# Following up the Commission's inquiry

*Hidden in plain sight* proposed seven core recommendations and a further 79 more detailed recommendations. The Commission put these recommendations out for a six-month consultation period so that government, organisations and individuals could comment on how effective they felt they would be in reducing disability-related harassment.

We wrote to relevant organisations to ask:

- for formal responses to the inquiry's recommendations
- what they were planning to do differently as a result of the inquiry.

The approach varied across England, Scotland and Wales to fit with the legal, policy and cultural context in each country.

We received 81 formal responses and the three national governments published their commitments. These responses, taken together, show how our recommendations are likely to be met in coming years. The responses are published on the Commission's website: [www.equalityhumanrights.com](http://www.equalityhumanrights.com). Each response is a public statement by that organisation of what they have already done to make progress and their commitments on what they will do in the future. We encourage individuals, disabled people's organisations and others to use these to hold each organisation to account.

Based on the responses, and our own review, we have produced a final list of 43 strategic recommendations grouped under seven sections in this report.

The Commission will ensure that consideration of the findings, and the recommendations from the inquiry, inform our own work and, where appropriate, we will monitor the performance of organisations that have a specific responsibility to tackle disability-related harassment.

During the inquiry we heard evidence from public authorities about serious incidents which had happened in their area. Part 2 of *Hidden in plain sight* included reports on 10 of those cases. Those authorities also provided evidence on the steps they have taken to improve practice in preventing and dealing with disability-related harassment. We reported on that in Appendix 17 of *Hidden in plain sight*. Alongside issuing this report we have asked a number of those authorities to tell us more about the progress they are making in improving practice in their area and to explain how they have taken the public sector equality duty into account in doing so. If the evidence shows that inadequate action has been taken to improve, we will consider invoking our formal enforcement powers under the Equality Act 2006 to make authorities take the issues and their obligations seriously.

We have already committed to conduct a review in 2015 in our three-year strategic plan, and we expect organisations to have made significant progress in implementing our recommendations. We also expect that other inspection and regulatory bodies, and disabled people's organisations, will continue to work in their sector or local area to support relevant organisations to take action and to hold them to account.

# Government responses

The UK Government and the devolved administrations in Scotland and Wales have responded formally and positively to the Commission's inquiry. Across the three countries of Great Britain, there are different starting points in terms of legislation and policy and consequently different areas of focus.

## The UK Government

The UK Government's formal response<sup>5</sup> to *Hidden in plain sight* was published on 17 July 2012. It refers to a number of significant new policy or legislative approaches that have been or will be influenced by the inquiry's recommendations.

The Commission considers the UK Government's response to be comprehensive and robust in relation to:

- the Government's clear commitment to tackling this issue
- commitments to improving data collection on the application of section 146 of the Criminal Justice Act and data sharing
- safeguarding measures in health services
- tackling antisocial behaviour in social housing
- a commitment to developing reciprocal reporting arrangements in transport.

The Commission will be continuing discussions with government departments on other areas including:

- better understanding of the motivations of perpetrators and societal causes of disability-related harassment
- the collection of comprehensive data on disability-related harassment, to improve decision-making and accountability
- empowering local leadership and other local agents of change to have access to the right information and support to hold authorities to account and make change happen
- addressing cyber-bullying
- the impact of terminology and language in bringing about cultural change.

## Scottish Government

### The policy drivers in Scotland

There is a unique range of distinctive policy drivers in Scotland directly relevant to the inquiry:

- The Scottish specific equality duties<sup>6</sup> require public authorities to set equality outcomes for all protected characteristics by April 2013, gather and act on evidence, involve equality groups and assess the impact of all new policies on protected groups.
- Priorities for the Scottish Government and, through Single Outcome

<sup>5</sup> Available at: <http://odi.dwp.gov.uk/docs/odi-projects/hidden-in-plain-sight.pdf>

<sup>6</sup> See <http://www.equalityhumanrights.com/scotland/public-sector-equality-duty/specific-duty-regulations/>





Agreements, local agencies are set with reference to the National Outcomes and Priorities.

- Reform of the scrutiny landscape,<sup>7</sup> with a shift to a more proportionate, risk-based and shared scrutiny process.

## The response in Scotland

Following the launch of the inquiry report in September 2011, the Commission in Scotland concentrated on the sectors central to effective delivery of the inquiry recommendations. These are:

- central government
- criminal justice authorities
- leadership bodies such as the Association of Chief Police Officers in Scotland and the Association of Directors of Social Work
- the audit and scrutiny sector, particularly the Care Inspectorate.

The response from these sectors has been very encouraging, with recognition of the scale and seriousness of the challenge. Respondents have also effectively identified the legal and policy levers particular to Scotland.

The Scottish Government's Health and Well-Being Directorate, Justice Directorate and Finance and Public Reform Directorate all submitted formal and positive responses to the Commission's inquiry.

There has been strong action in some local areas, such as that following the case of the 'vulnerable adult' in Lothian and Borders in

2002.<sup>8</sup> The outcome of this case had a wide impact across public authorities in Scotland. It became a catalyst for change to the legislative and policy context for tackling disability-related harassment across the nation.

## Welsh Government

The Commission set out four areas for intervention in Wales:

- A determination to eliminate harassment needs to be shown by leaders. Partnerships to prevent and respond to harassment and share effective practice should be encouraged, including piloting Multi-Agency Risk Assessment Conferences (MARACs).
- The new equality duties should be used to prioritise tackling disability-related harassment.
- A human rights-based approach to safeguarding should be introduced by the Welsh Government.
- Increased reporting and public authorities to put in place measures to ensure a positive reporting experience and effective support.

As a result of our report, in December 2011 the National Assembly's Communities, Equality and Local Government Committee held an Inquiry into disability-related harassment. In its report,<sup>9</sup> the Committee calls on the Welsh Government to set a strategic direction in tackling disability-related harassment by driving through a collaborative action plan.

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<sup>7</sup> See <http://www.scotland.gov.uk/Topics/Government/PublicServiceReform/IndependentReviewofReg/scrutinyimprovement>

<sup>8</sup> *Hidden in plain sight: Inquiry into disability-related harassment*, Equality and Human Rights Commission (2011), pp. 26-9. Available at: [www.equalityhumanrights.com](http://www.equalityhumanrights.com)

<sup>9</sup> Available at: <http://www.senedd.assemblywales.org>

The Commission considers the Welsh Government's response to be comprehensive and strong, particularly in relation to:

- work with stakeholders to take forward an action-focused framework to tackle hate crime across the protected characteristics of race, disability, religion or belief, sexual orientation and gender reassignment
- adoption of an objective to reduce the incidence of all forms of violence against women, domestic abuse, 'honour'-based violence, hate crime (including disability), bullying and elder abuse within the Wales Strategic Equality Plan<sup>10</sup>
- commissioning of research *Who commits hate crime?* (available autumn 2012)
- publication of anti-bullying guidance *Respecting others: anti-bullying overview*.<sup>11</sup>



<sup>10</sup> Available at: <http://wales.gov.uk/topics/equality/equalityactatwork/?lang=en>

<sup>11</sup> Available at: <http://wales.gov.uk/topics/educationandskills/publications/circulars/antibullying/?lang=en>

# Developing the manifesto for change

In reviewing responses to the draft recommendations within *Hidden in plain sight*, we saw that a number of sector-specific recommendations were equally applicable to all sectors, and removed duplicates.

We have, where relevant, moved from a focus on one sector to wider agencies and partnerships. We have also recognised the need to address a range of de-regulated service providers by changing our focus from ‘public authorities’ to ‘authorities’. We have also amended some recommendations in the light of very useful feedback to our consultation, and grouped them into the following seven sections:

1. Reporting, recording and recognition
2. Addressing gaps in legislation and policy
3. Ensuring adequate support and advocacy
4. Improved practice and shared learning
5. Redress and accessing justice
6. Prevention, deterrence and understanding motivation
7. Transparency, accountability and involvement

We are pleased that the majority of respondents have already begun to draft their action plans. We realise these were based on the original draft recommendations. Our intent is that these revised recommendations serve as a guide for the ongoing development of sector action plans.

In each section below, we set out a summary of the relevant findings and original recommendations from *Hidden in plain sight* and our analysis of responses to these recommendations. Our final recommendations are listed at the end of each section.

Details of how we will evaluate how these recommendations have been implemented can be found at ‘Evaluating results’ at the end of this report.

# Section 1: Reporting, recording and recognition

## What we found

*Hidden in plain sight* found that under-reporting of disability-related harassment was widespread; that disabled people often saw incidents as so commonplace as to be part of daily life and not ‘hate crimes’ and that those receiving reports of harassment were failing to ask about disability or see it as a potential motivation. As a result, the prevalence and impact of disability-related harassment were greatly underestimated.

## Our original recommendations

*Hidden in plain sight* made a range of draft recommendations to tackle these issues. These included identifying and recording whether a victim is disabled, changes to the use of language on hate crime and on special measures, and ensuring robust safeguarding alerts and accessible reporting systems for residents living in institutions.

## Response to the recommendations

The Commission received a positive response to these recommendations from most organisations. There was consensus that greater reporting, recording and recognition are required to address disability-related harassment. Although there were some questions about the practicalities of implementation, there were encouraging commitments to action.

Responses received highlighted potential difficulties in a number of key areas, including data capture and the sharing of information across authorities and agencies.

Authorities have indicated that establishing whether a victim is disabled is sometimes difficult for police forces in England and Wales (the legislation to do so already exists in Scotland). Our amended recommendation asks for this data to be included in the data already collected on other protected characteristics.

There were mixed views on our recommendation about the language of ‘hate crime’. The UK Government rejected this recommendation on the basis that it did not fit within a widely internationally and publically recognised framework for hate crime. The Commission recognises this problem and the associated problem of tackling multiple-identity hate crimes but we maintain the view, based on the evidence presented to us, that understanding of and identification with ‘hate crime’ language is a barrier for both victims and others in recognising, reporting and tackling the breadth of experiences of disability-related harassment. On that basis, we have incorporated the removal of the barriers created by terminology into a general recommendation on the removal of barriers to reporting.

In relation to our recommendation on use of the term ‘special measures’, the UK Government helpfully provided

clarification. We have removed this recommendation and replaced it with a general one that requires the removal of barriers for disabled people through all stages of the process of accessing justice, and in later sections we explain how this will be realised.

## Summary of our findings

There has been some significant progress in recognising and addressing the barriers to reporting. We recognise the problems in linking up data collection systems and appreciate that this can only be addressed as part of a longer-term strategy. There are also some very promising developments in the area of training.

We welcome the Government response on cyber-bullying in education, however cyber-bullying is a wider problem and Government should work with a range of partners to address it.

There has been promising progress by some police forces on police call screening for repeat victims. However, this is yet to be effective across the majority of forces in England and Wales, particularly where repeat calls rather than repeat incidents are used to trigger action.

Our evidence indicates that incidents may mount up before a first call is made, for a variety of reasons. A move towards recording repeat incidents will enable better triggers for deploying resources for effective early intervention.

We recognise the challenges that recording and reporting of incidents presents to organisations, and note the commitment and significant progress made by some organisations on this issue. We believe this data should be publicised, with information on action undertaken to challenge

harassment and the outcomes and consequences for perpetrators. This could act as a deterrent to perpetrators and help build the confidence of disabled people to report.

It remains a key priority for the Commission to encourage further exploration of the problems and solutions to recording and reporting, particularly at a local level, in the promising work on partnerships identified through the formal responses. The new Police and Crime commissioners in England could play an important role here.

## Final recommendations

Having reviewed the responses, the Commission has agreed the following final recommendations under Section 1:

1. Authorities should remove barriers to all disabled people reporting crime, antisocial behaviour or bullying, including 'cyber-bullying'. Authorities should also consider how they communicate with disabled people and use terminology that service users identify with.
2. Staff responding to harassment should be trained in how to better gather and record personal information about disability in an appropriate and sensitive manner.
3. Authorities should adopt recording systems that record whether the victim was disabled (along with other protected characteristics), and whether hostility/prejudice to disability was a motivation.
4. Authorities should recognise the potential for escalation and record incidents leading up to crimes in order to support the implementation of preventative actions.

5. Health and social care providers should put robust and accessible systems in place so that residents living in institutions can be confident when reporting harassment that they will be treated sensitively.
6. Police call screening should focus on acknowledgement, risk of harm and the number of incidents rather than the number of calls in order to identify and address repeat victimisation.
7. Staff delivering health and social care services to the public should be trained in safeguarding adults and children, including how to refer to appropriate services.



## Section 2: Addressing gaps in legislation and policy

### What we found

*Hidden in plain sight* identified a number of significant gaps in current legislative frameworks, including a disparity in sentencing guidelines for different groups and an insufficiently robust safeguarding referral process that means people are put at risk and criminal acts are not promptly referred to the police.

### Our original recommendations

*Hidden in plain sight* made a range of draft recommendations to tackle these issues. These included a review of eligibility criteria to increase social interaction and reduce social isolation for disabled people, revisions to the ‘No Secrets’ guidance in England, statutory recognition of adult safeguarding boards and parity in sentencing guidelines for all types of identity-based murders.

### Response to the recommendations

There has been substantial progress in implementing these recommendations, particularly from national governments. We were particularly pleased about the amendment to Schedule 21 of the Criminal Justice Act 2003 to achieve parity in sentencing guidelines for identity-based murders.

This will amend the Criminal Justice Act 2003 to make the starting point for

sentencing in England and Wales for murder motivated by hatred or hostility towards disabled (and transgender) victims equal to sentencing for murder motivated by hatred or hostility to the other protected characteristics of race, religion and sexual orientation. (This was already covered in Scotland under the Offences (Aggravation by Prejudice) (Scotland) Act 2009.)<sup>12</sup> We have removed this recommendation as it has now been achieved.

In July 2012, the Government published the Care and Support White Paper and the draft Care and Support Bill. These documents set out the Government’s ambitious plans for transforming care and support so that everyone in England can plan and prepare for their care needs, access high quality care when they need it, and exercise choice and control over the care they receive.

The Bill contains clauses that puts Safeguarding Adult Boards on a statutory footing, better equipped both to prevent abuse and to respond when it occurs. Further clauses ensure local authorities establish and maintain a service to provide advice on how to raise concerns about risk and safeguarding. These reforms will set out a clear framework within which organisations must act which resounds significantly with the inquiry recommendations.

We have retained the recommendations on these important issues in recognition of the fact that at the time of publication of this report the amendments are still at the Bill stage.

<sup>12</sup> See [http://www.legislation.gov.uk/asp/2009/8/pdfs/asp\\_20090008\\_en.pdf](http://www.legislation.gov.uk/asp/2009/8/pdfs/asp_20090008_en.pdf)



Government rejected the draft recommendation to build reports and plans to tackle disability-related harassment into government strategies. The Commission supports the Government's role in devolving decision-making to a local level, but is still of the view that national Government strategies should address disability-related harassment and so have retained this recommendation.

## Summary of our findings

We welcome the significant progress and commitment made to addressing the gaps in legislation and policy that support action to tackle disability-related harassment:

- An amendment to the Health and Social Care Bill on the application of the Human Rights Act; the UK Government restated its view that local authority-commissioned care services in England and Wales are covered by the Human Rights Act.<sup>13</sup>
- The Welsh Assembly Government's draft Social Services (Wales) Bill is based on a human rights approach.
- The UK Government's hate crime plan 'Challenge it, Report it, Stop it'<sup>14</sup> will consider whether there is a case for changing the law on incitement of hatred on grounds of disability, which falls under the Public Order Act. The plan also includes a commitment to placing Safeguarding Adult Boards on a statutory basis, and defines the six principles governing the actions of the boards as empowerment, protection, prevention, proportionality, partnership and accountability. This is in line with our recommendation to all governments

to consider the impact of the public sector equality duty in tackling disability-related harassment within their jurisdiction.

## Final recommendations

Having reviewed the responses, the Commission has agreed the following final recommendations under Section 2:

1. National governments should:
  - review the adequacy and effectiveness of the legal framework for offences that are motivated by hostility to disability
  - review all statutory and common law restrictions on the public participation of disabled people, and other laws which unnecessarily and inappropriately treat disabled people differently to others
  - ensure government reviews of the public sector equality duties facilitate eliminating disability-related harassment
  - place adult safeguarding boards on a statutory basis
  - introduce and develop human rights-based approaches to safeguarding
  - working with other departments, ensure ownership within and amongst statutory authorities for tackling disability-related harassment
  - build reports and plans to tackle disability-related harassment into government disability strategies.

<sup>13</sup> Specific legislation, almost a decade old, already makes this explicit in Scotland.

<sup>14</sup> Available at: <http://www.homeoffice.gov.uk/publications/crime/hate-crime-action-plan/action-plan?view=Binary>

2. The Ministry of Justice and the wider criminal justice system should ensure that section 146 of the Criminal Justice Act 2003 is appropriately, consistently and transparently applied.
3. Authorities should ensure that policy developments on social inclusion incorporate the recommendations from the inquiry recognising the potential link between propensity for social isolation and segregation, taking a social model approach. These should work towards capacity for decision-making being supported, where appropriate, with a human rights-based approach.
4. Eligibility criteria for services should not be focused just on vulnerability or risk of harm, but instead on an individual's circumstances preventing them from fully achieving their human rights, and targeting resources to enable them to do so.
5. If a disabled person moves in order to avoid disability-related harassment, their security of tenure should not be adversely affected.

# Section 3: Ensuring adequate support and advocacy

## What we found

*Hidden in plain sight* found failings in the provision of special measures<sup>15</sup> to help disabled or intimidated witnesses give their best evidence in court across England, Scotland and Wales. There were also significant gaps in provision of support services, not just at the reporting stage but throughout and beyond the process of accessing justice.

## Our original recommendations

*Hidden in plain sight* made a range of draft recommendations to tackle these issues. These included: changing the procedure for special measures, early identification that a victim is disabled and the need for special measures, the availability of good quality accessible and independent advocacy throughout a case, and access auditing of support services.

## Response to the recommendations

A number of authorities indicated that resources could impact on the ability to implement the recommendation to undertake access audits of services.

However, we welcomed governments' support for this recommendation, their proposed work to review victims' services, pilots to focus enhanced services to all intimidated and vulnerable witnesses and the commitment to build in quality assurance systems to this work. We have retained a focus on accessibility in our final recommendations.

We acknowledge the difficulties of early identification and follow through of special measures but retain this recommendation because of its importance to achieving justice.

## Summary of our findings

There have been some very promising developments in terms of accessibility of services with all authorities demonstrating a commitment to meeting the needs of disabled people. We recognise that the current economic climate may restrict the available resources for addressing accessibility of support services. We believe that it is only by undertaking an audit that service providers will be able to identify resource requirements and build these into their long-term service plans.

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<sup>15</sup> 'Special measures' are a series of provisions that help vulnerable and intimidated witnesses give their best evidence in court and help to relieve some of the stress associated with giving evidence. Special measures apply to prosecution and defense witnesses, but not to the defendant.

We are disappointed to note slow progress in improving the application of special measures and believe that for special measures to aid continuous transition through the criminal justice system, authorities and jurisdictions will need to work together.

We realise that the complexity of different authorities within the criminal justice system means there is work to be done to align procedures. However, we do feel this is a critical area for ensuring access to justice and sending out important messages to disabled people about their rights to access justice. These include that disability-related harassment will be taken seriously and that victims and witnesses will receive the support they require to give evidence.

We welcome the commitment made by the Ministry of Justice and Crown Prosecution Service to tackle the challenges of bringing together different systems for the purpose of overall monitoring and recording the application of special measures.

## **Final recommendations**

Having reviewed the responses, the Commission has agreed the following final recommendations under Section 3:

1. Requirements for special measures should be identified and implemented at the police investigation stage, and appropriate reasonable adjustments should be provided throughout investigation and prosecution. Lack of provision of either must not be a barrier to progression of a case nor a rationale for dropping a case. Authorities should refer disabled victims of harassment, antisocial behaviour and crime to support services (specialist services if appropriate).
2. Safeguarding Boards and Community Safety Partnerships should ensure that accessible information and advocacy services are available to enable disabled people to understand and exercise their rights.
3. Where authorities have obligations to provide or commission local support services, they should take into account their own public sector equality duties at the planning stage, and reflect adequate provision for access to disabled people.
4. The Ministry of Justice should provide a framework for a review of all barriers within the courts system for disabled people whether legal, attitudinal or physical, such as restrictions on jury service or provision of advocacy or interpreter services or access to court buildings. Disabled people should be involved in challenging the barriers.

# Section 4: Improved practice and shared learning

## What we found

*Hidden in plain sight* found barriers to joint working. These included problems with sharing data, failure to recognise ‘incidents’<sup>16</sup> and a failure to pick up incidents at an early stage.

## Our original recommendations

*Hidden in plain sight* made a range of draft recommendations to tackle these issues. These included developing reciprocal reporting arrangements between public transport providers, reviewing the guidelines for serious case reviews, developing and disseminating procedures and standards to minimise the risk of harassment, developing a strong citizenship and human rights agenda in schools, and ensuring security of tenure for a disabled person forced to move to avoid disability-related harassment.

## Response to the recommendations

We welcome and have adopted the Government’s proposed amendment to our draft recommendation on schools promoting understanding of disability and sharing good practice, which recognises the role of national and local leaders of education.

Good examples of strong partnership approaches included the commitment from police forces to work with social housing and education providers and transport providers to develop links with education providers for the purposes of preventative work on disability-related harassment.

Some transport providers and intermediaries indicated that was not practical. However, the British Transport Police and Department of Transport are taking a lead on this.

Transport providers identified problems with referring all allegations of crimes committed against disabled children and adults to the police and reciprocal reporting arrangements. However, the British Transport Police and Department for Transport have committed themselves to support reporting of disability-related harassment including across deregulated services, and we have adopted this as a final recommendation.

## Summary of our findings

Some responses received indicate a significant move towards joint and innovative approaches. The Director of Public Prosecutions, Keir Starmer QC, and the Association of Chief Police Officers’ (ACPO) lead officer, Chief Constable Simon

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<sup>16</sup> *Hidden in plain sight* defined incidents as those experiences deemed to be low level and not recorded as a crime or criminal activity e.g. name calling.

Cole, have taken very public leading roles within the criminal justice sector. We are pleased to see this beginning to take shape in other sectors.

A number of responses were silent on our recommendation about improved practice and shared learning. Given how important we found effective joined-up working to be in tackling the issue, especially at a local level, we call on all authorities to develop approaches for more effective joint working.

The 2012 Her Majesty's Inspectorate of Constabulary report<sup>17</sup> reflected our conclusion that there is a need for further evidence and stronger data on repeat victims and perpetrators.

For example, while many police forces are now able to 'flag' repeat victims, this can only be done on a 'repeat call' basis. This will not record those callers who have experienced repeat victimisation and make their first call some way into experiencing harassment. Currently only five police forces (out of 44 in England and Wales) consistently question the caller to establish whether repeat victimisation has occurred.

## Final recommendations

Having reviewed the responses, the Commission has agreed the following final recommendations under Section 4:

1. Local agencies and partners should review the priority they give to eliminating harassment, and their information sharing systems, using joint intelligence to identify and stop repeat victimisation or repeat perpetrators and prevent further escalation.
2. Local Authorities should play a lead role in driving local partnerships to deliver on preventing and tackling disability-related harassment, and all authorities should develop approaches for effective joint working.
3. Regulators, inspectorates and ombudsmen, along with senior representatives of service providers and their clients, should work together to devise and disseminate procedures and standards which seek to minimise the risk of harassment.
4. Adult safeguarding boards should use professional networks to ensure:
  - lessons learnt from local serious case reviews are embedded in training and practice, and shared and evaluated nationally across all authorities
  - summaries of serious case reviews are publicly available and disseminated
  - educational establishments share continuous developments and practice in tackling disability-related harassment.
5. Serious case reviews should be mandatory for cases involving adults at risk unless proved unnecessary.
6. Transport providers should develop reciprocal reporting arrangements and work in partnership to address disability-related harassment.

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<sup>17</sup> Available at: <http://www.hmic.gov.uk/media/a-step-in-the-right-direction-the-policing-of-anti-social-behaviour.pdf>

# Section 5: Redress and accessing justice

## What we found

*Hidden in plain sight* found that very few cases of disability-related harassment go through the courts; and even when they do, sentencing does not always follow. There is very limited application of section 146 of the Criminal Justice Act 2003,<sup>18</sup> a failure to apply special measures properly and cases are often dropped because of perceived witness credibility.

## Our original recommendations

*Hidden in plain sight* made a range of draft recommendations to tackle these issues. These included: ensuring the seriousness of the offence, rather than the capacity of the victim, determines the basis for an investigation; investigation for potential aggravated offences throughout the progression of cases, where disability may be a factor, and ensuring that disabled people have equitable access to the court system.

## Response to the recommendations

The most promising responses throughout the inquiry relate to access to justice. There is currently a dearth of knowledge on the motivations of perpetrators of disability-related harassment and we welcome the UK and Wales Governments' commitments to begin to address this. This will help police forces and other agencies begin to develop early intervention measures once profiles and motivations are better understood.

## Summary of our findings

We have revised our recommendation on access to the court system, and disabled people's experiences, based on the significant commitment and progress made by Government.

Responses to the draft recommendations were promising. They included a commitment to review the recording of whether disability is a motivating factor in crimes, to establish whether this is being overlooked currently, and the consistency of application of section 146 of the Criminal Justice Act.

We also welcome the UK Government's proposal to put quality assurance systems in place to ensure that these commitments are being met.

## Final recommendations

Having reviewed the responses, the Commission has agreed the following final recommendations under Section 5:

1. The perceived capacity of the victim should never form the basis for decisions about police investigation.
2. Whenever repeat perpetrators or repeat victims are identified, the priority given to solving the case should always be increased to urgent.
3. Crimes motivated in part or in whole by hostility/prejudice to disability need to be recognised, investigated and

<sup>18</sup> See <http://www.disabilityhatecrime.org.uk/index.php/cjs/section-146>

prosecuted as such. Where there is evidence of hostility/prejudice police should gather evidence to support prosecution as an aggravated offence utilising section 146 of the Criminal Justice Act where appropriate.

4. Government should undertake an extensive review of how disabled people could be better protected within an adversarial justice system, including consideration of limiting when the victim's impairment can be used as evidence or in questioning in court.





# Section 6: Prevention, deterrence and understanding motivation

## What we found

*Hidden in plain sight* found a lack of investment in research into the motivation and profile of perpetrators. Equally significant, there is no statutory requirement to conduct a serious case review for the murder of a disabled person, as there is in England and Wales following the death of a child or adult from domestic violence.

## Our original recommendations

*Hidden in plain sight* made a range of draft recommendations to tackle these issues. These included: appointment of harassment co-ordinators; implementing interventions to prevent occurrences and escalation of harassment; understanding the characteristics and motivations of perpetrators; designing out potential for conflict in transport; commissioning of primary research on the impact of segregated education on attitudes to disabled people, and research to fill the knowledge and data gaps on disability-related harassment.

## Response to the recommendations

The UK Government partially agreed with our recommendation that definitive data should be available to spell out the scale, severity and nature of disability-related harassment and that this would enable

better monitoring of the performance of those responsible for dealing with it.

We have retained the existing recommendation but do not define how this should be achieved. We acknowledge the Government's point that achievement of this recommendation can include using existing data sources more effectively. Where a review of existing data highlights gaps, we expect that Government will fill these.

We were also pleased that the UK Government agreed with our draft recommendation on transport providers taking steps to 'design out' conflict, for example between wheelchair users and those with pushchairs utilising shared spaces on public transport. In reviewing the draft recommendations, we recognised this as an issue that extends beyond transport and we have therefore reworded it to address the new recommendation to all architects, planners and designers.

The UK Government recognised the benefits of adopting 'lesson learned reviews' and the sharing of good practice.

The Department for Education did not agree with the recommendation about primary research into the impact of non-inclusive schooling for disabled pupils.

There were also gaps in responses from government departments on the effective

dissemination of learning from serious case reviews, other than in the ‘case of the vulnerable adult’ in Scotland. There was also some disagreement with the recommendations from the social care sector.

The Commission would like to see further progress on sharing of lessons learnt from serious case reviews, across authorities and geographical areas.

We recognise the challenge this recommendation represents but have retained it because progress on communication and learning will be even more crucial when power is devolved to a local level.

### **Summary of our findings**

A significant issue for the inquiry was that the new sentencing guidelines in England and Wales should be used to enable monitoring and evaluation of consistency of sentencing for disability-related harassment offences. The response from the Ministry of Justice was that this is already possible. The Commission has removed reference to the new sentencing guidelines from the final recommendation but kept the reference to monitoring and evaluation.

We were very pleased that the UK Government agreed with our recommendation that authorities and agencies should include provisions against disability-related harassment within tenancy agreements and in taking action against breaches.

We have changed the responsibility for the recommendation on investment in research from the police to national governments. This is because governments have already taken a lead (for example in

the UK cross-government hate crime programme) and are better placed to respond.

Research will allow authorities to develop an in-depth understanding of motivation of perpetrators.

We have had some promising responses to learning more about perpetration and motivation. We welcome the UK Government’s commitment in this area and look forward to reviewing the outcomes.

We welcome the significant gains the new sentencing powers bring. In order to be an effective deterrent, it is important the criminal justice authorities make full use of the opportunities these bring to tackle disability-related harassment. Consideration is also needed on whether specific aggravated/incitement offences would act as a further deterrent.

The UK Government has recognised the link between bullying and harassment and strengthened teachers’ powers to tackle poor behaviour and bullying.

However, they have rejected our recommendation for the Department for Education to commission research on the impact of segregated education. The Government made the point that quality of provision rather than setting is important. However, the Commission believes that setting may also be important and that separating disabled children from their peers at an early stage may have a long-term impact. We suspect that this could be in terms of social isolation and resilience of disabled people, attitudes among non-disabled children and adults, and the capacity for positive interaction. We therefore believe research on this would be beneficial.

## Final recommendations

Having reviewed the responses, the Commission has agreed the following final recommendations under Section 6:

1. National governments should take the lead in developing collective understanding of the motivations of perpetrators of disability-related harassment, including for the purposes of prevention, profiling and early intervention.
2. The Department for Education and devolved administrations in Scotland and Wales should review existing evidence on the extent to which segregated education (or inadequately supported integrated education) affects the ability of disabled children to be included within mainstream society. They should also consider evidence on the extent to which segregation adversely affects non-disabled people's views of disability and disabled people. Where sufficient primary evidence is unavailable, they should consider commissioning new research.
3. Public authorities should use the public sector equality duty as a framework for helping promote positive images of disabled people and tackle the low representation of disabled people across all areas of public life.
4. All authorities should:
  - develop, implement and review awareness raising campaigns to encourage victims and witnesses of disability-related harassment to come forward
  - encourage all individuals and organisations to recognise, report and respond to any incidences of disability-related harassment they may encounter
  - identify and implement interventions to prevent harassment occurring in the first place and develop responses to prevent escalation. This should include using legal and non-legal sanctions as deterrents to would-be perpetrators, such as provisions against disability-related harassment within tenancy agreements
  - ensure that perpetrators of harassment face consequences and that these are properly implemented.
5. Authorities should identify and implement ways to design out potential for conflict in use of shared space within environmental infrastructures.
6. Police forces should develop an in-depth understanding of the characteristics and motivations of perpetrators, design local prevention strategies accordingly and evidence their effectiveness.
7. Schools and colleges should develop material for helping students understand disabled people and the social model of disability, and the prejudice that disabled people face within society. The materials should encourage a better understanding and respect for diversity and difference and help students know what to do when they see others perpetrating bullying and harassment, both in school and outside (on public transport, in public places, etc).
8. Schools and colleges should ensure disabled pupils and those with special educational needs (SEN) are able to participate in all school/college and after-school/college activities on an equal basis with non-disabled pupils (mainstreaming as a prevention).



# Section 7: Transparency, accountability and involvement

## What we found

*Hidden in plain sight* found that the absence of data is a major problem to identifying, preventing and tackling disability-related harassment. This makes it harder for individuals and organisations at a local level to hold authorities to account for their performance.

In addition, regulators, inspectorates, ombudsmen and authorities themselves need to better understand the nature of the problem in order to address it, and the collation of relevant data will help identify where and how to best implement necessary changes.

There is already promising progress in the criminal justice sector from inspectorates in starting to identify the nature of the problem, but as yet little is evident across other sectors.

Schools are hugely important in shaping and changing young people's attitudes towards disabled people. Their interpretation and application of the national curriculum can make a significant impact on the inclusion of disabled people in everyday life.

## Our original recommendations

*Hidden in plain sight* made a range of draft recommendations to tackle these issues.

These included:

- the availability of comprehensive data to enable performance monitoring
- the use of the new sentencing guidelines in England and Wales to monitor consistency of sentencing
- the review of no-criming and 'motiveless' procedures
- the ability to make limiting judgements where schools under-perform in equality-related areas e.g. identity-based bullying
- that regulators should include performance measures for dealing with disability-related harassment and other forms of hate crime
- regulators intervening in serious cases of repeat disability-related harassment
- the identification of hate 'crime' and hate 'incident' levels within crime figures.

## Response to the recommendations

We recognise that it would be difficult to report on historic data and see the new sentencing guidelines as an opportunity to begin to collect and evaluate current and future data to inform future policy.

We have retained the recommendation that all authorities should have monitoring

systems in place to record details about victims, alleged perpetrators, the nature of incidents and repeated harassment. However, we recognise the significant resource implications of this recommendation and welcome the feasibility study proposed by the UK Government.

ACPO and the National Policing Improvement Agency, in their response, stated that all forces work within the framework of the NCRS (Home Office Counting Rules for Recorded Crime) in relation to recording incidents as crimes and when a recorded crime is re-classified or deleted – ‘no-criming’.<sup>19</sup> Forces are audited for compliance on this and on the quality of their data. The recommendation around no-criming has been retained but re-worded slightly to help pick up disability-related harassment hidden within other crime data such as domestic violence, rape and sexual assault in order to help properly understand the scale of the issue.

Following clarification from regulators and inspectors we have amended the recommendation that regulators should always intervene in serious disability-related incidents leading to death or significant injury. Our new recommendation refers to the need for regulators and inspectors to be satisfied that action is taken by the appropriate agency, and to intervene when it is not.

### Summary of our findings

We understand that the progress of the localism agenda will ensure that local agencies dictate local priorities and that national regulation will play a much-reduced role. Preventative work, understanding perpetrators and

developing more effective deterrents will remain key priorities for tackling disability-related harassment.

We recognise the importance of effectively using existing data and research but also believe that an additional investment in new research to address the gaps in intelligence on disability-related harassment could potentially realise similar benefits to that of work on domestic violence.

### Final recommendations

Having reviewed the responses, the Commission has agreed the following final recommendations under Section 7:

1. Leaders of authorities and elected representatives should show strong personal commitment, ownership and determination to deliver change.
2. Authorities should:
  - proactively work with disabled people and their representative organisations to identify where risks of disability-related harassment are higher and take appropriate action to address it
  - proactively engage with disabled people to improve services and practice on preventing and tackling disability-related harassment, ensuring the provision of reasonable adjustments to aid involvement and participation.
3. Authorities should collect and share data about victim(s), alleged perpetrator(s), nature of incident(s) and repeat offending.

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<sup>19</sup> ‘No-criming’ is the term used for actions taken when it is established that a crime did not in fact occur.

4. Regulators, inspectorates and ombudsmen should:
  - ensure that comprehensive data is collected and shared which spells out the scale, severity and nature of disability-related harassment within localities
  - ensure that application of section 146 of the Criminal Justice Act 2003 is monitored, evaluated and reported on to ensure appropriate application is considered in all cases.
5. Regulators, inspectorates and ombudsmen should:
  - limit judgements of inspection and regulation by performance on equality objectives, including measures taken to prevent and tackle disability-related harassment. Poor performers should be identified and sanctioned if no improvement is apparent within a reasonable period of time
  - ensure their responses to harassment are joined-up and use common standards and criteria for its identification
  - ensure a proportionate intervention when a serious or repeat case of disability-related harassment emerges within their sector.
6. Police should review their rates of ‘no-criming’ where the victim is disabled, across all crime types, and address any issues (i.e. disbelief) that may emerge as a result.
7. Disabled people should be involved in public transport policy development and transport providers should work in partnership with criminal justice authorities to reduce risk on and around transport provision.
8. Regeneration and social housing design and planning should involve disabled people at planning stages in order to help ‘design out crime’ from future developments.
9. The Ministry of Justice should encourage the publication of accessible performance statistics that clearly identify:
  - the number of reported incidents recorded as crimes
  - the number of reported incidents resulting in prosecution
  - harassment crime and harassment incident levels within crime figures
  - the performance of local agencies and partnerships in addressing harassment
  - service guarantees.

# Evaluating results

The Commission acknowledges the difficult economic climate in which authorities are working and the policy and structural changes that are taking place. These include the moves towards localism and new commissioned and locally managed police, health care and other services.

The Commission believes implementation of the final recommendations will deliver the changes required to ensure disability-related harassment is prevented where possible and dealt with effectively when it does occur.

Current data availability does not provide a full picture of disability-related harassment. This is addressed within our recommendations, and we are committed to following up in a fuller review in 2015 how and where those recommendations have been acted upon to enable measurement of authorities' response to disability-related harassment.

The Commission proposes to evaluate the emerging impact of the inquiry at various points over the five year period following the launch of this Manifesto:

## **Schedule**

- October 2012 – baseline measures agreed
- September 2013 – at the end of year one we will review progress against the initial baseline measures and publish a review on the initial response by authorities to the inquiry's recommendations
- September 2015 – at the end of year three we will update our review of changes against the baseline data and publish a further review to assess the extent to which our recommendations have been implemented by the relevant authorities
- September 2017 – at the end of year five we will conduct a final review of changes in the baseline data, assess the ultimate impact of the inquiry and publish a final review of the inquiry.



## Outcome measures

At each stage of the evaluation, the Commission will analyse future waves of Crime Survey for England and Wales (CSEW)<sup>20</sup> data to monitor:

- the overall incidence of disability-related harassment (defined as those incidents which the victim felt were motivated by factors relating to their impairment)<sup>21</sup>
- the report rate of such hate crimes to the police and other authorities<sup>22</sup>
- the main reasons given by respondents for not reporting incidents of hate crime to the police and other authorities.<sup>23</sup>

This data will be compared to that compiled and published by ACPO on those hate crimes which have been recorded by police forces in England and Wales.

This will be supplemented by CSEW data on:

- the overall crime rates experienced by people with impairments analysed by the age of the victim
- disabled people's fears about being a victim of crime (including their perceptions of safety)
- victim satisfaction with police actions in dealing with incidents which appeared motivated by a strand characteristic.<sup>24</sup>

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**20** The Crime Survey for England and Wales (CSEW) is the new name for the British Crime Survey. CSEW is a face-to-face victimisations survey in which people resident in households in England and Wales, aged 16 and over, are asked about their experiences of crime in the 12 months prior to interview.

**21** Based on the following question (for all who mentioned an incident):

‘Looking at the things on this card do you think the incident was motivated by the offender’s attitude towards any of these factors?’

- Your religion or religious beliefs
- Your sexuality or sexual orientation
- Your age
- Your gender
- Any disability you may have
- Don’t know
- None of these’ (respondents can select all that apply)

The responses to this from the CSEW will be grossed up using demographic data to provide an overall estimate of the incidence of crimes against disabled people which were motivated by their disability.

**22** Proportion of CSEW hate crime incidents reported to the police (or came to be known about via other means). Because data on report rates are very small sample sizes overall, this will be monitored for all strands.

**23** Because data on report rates and the reasons for non-reporting are based on very small sample sizes overall, this will be monitored for all strands.

**24** This will be measured using CSEW data relating to victim satisfaction with the police handling of crime incidents for crime in general and for those motivated by the factors listed in footnote 21. Again, as a result of sample size issues, this monitoring will be for all strands.

Existing Commission research<sup>25</sup> will be used to set the baseline for each of the above measures, and changes in them will be reviewed in 2013, 2015 and 2017.

In particular, the Commission will be looking for a reduction in the current gap between the underlying incidence of disability-related harassment, the number of such incidents that are being reported by victims and the number recorded by police and ultimately prosecuted.

The Commission has chosen to use the CSEW because it believes it to be the best data source, at this time, for estimating the underlying incidence of various forms of crime and for tracking trends in these over time.

However it notes that, as is discussed in Home Office (2012, pp. 16-17),<sup>26</sup> there are various factors which may lead it to either under- or over-record the incidence of hate crimes. These may include, for example, a lack of understanding of the concept by respondents or other factors which may render an individual to be more likely to become a victim of crime that they may attribute to their personal strand characteristics.

As well as the evaluation measures listed above we will also be using the equality duties, the Human Rights Act and the United Nations Convention on the Rights of People with Disabilities (UNCPRD) to monitor progress.

## Next steps

To measure progress and drive the agenda for the inquiry recommendations the Commission will:

- encourage, guide and monitor the progress of public authorities in meeting their equality objectives, including in relation to their devolved contexts where different
- monitor progress made towards compliance with the Human Rights Act and the UNCPRD in respect of safeguarding and disability-related harassment
- work with adult protection professionals in Scotland and Wales at the local level to capture useful learning.

To measure progress and drive the agenda, we expect governments, public authorities and leadership organisations to:

- use the Human Rights Act 1998 and the public sector equality duties as enabling frameworks for data gathering, sharing and analysis, identifying priorities and involving service users from the outset in developing and implementing policy
- demonstrate that the partially hidden and under-reported issue of crime and harassment targeting disabled people is effectively addressed, and
- demonstrate commitment, clarity and transparency in setting clearly understood and shared equality outcomes for people and communities at risk of harm.

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<sup>25</sup> Some of these can be found in two recent Commission Briefing Papers. One, by Nocon *et al.* (2011) analyses disabled people's experiences of, and concerns about, crime. This can be downloaded from: [http://www.equalityhumanrights.com/uploaded\\_files/disabilityfi/briefing\\_paper\\_3\\_new.pdf](http://www.equalityhumanrights.com/uploaded_files/disabilityfi/briefing_paper_3_new.pdf)

The other, by Botcherby *et al.* (2011), provides a comparison of the experiences and concerns about crime for several equality strands. This paper can be downloaded from: [http://www.equalityhumanrights.com/uploaded\\_files/research/bp4.pdf](http://www.equalityhumanrights.com/uploaded_files/research/bp4.pdf)

<sup>26</sup> See <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/crime-research/hosb0612/hosb0612?view=Binary>

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