

Disability Hate Crime



Policy for
Prosecuting
Cases of
Disability
Hate Crime

Crown Prosecution Service

**This booklet is a public document. It is available on the
CPS website:**

www.cps.gov.uk

**Produced by the Equality & Diversity Unit and
the Policy Directorate**

February 2007

Further copies may be obtained from

CPS Communications Branch

50 Ludgate Hill

London EC4M 7EX

Tel: 020 7796 8442

Email: publicity.branch@cps.gsi.gov.uk

**This booklet is available in Braille, easyread and on audio tape.
Contact CPS Communications Branch for details.**

Published by Blackburns of Bolton, tel: 01204 532121

Contents

Introduction	2
Disability hate crime	6
The role of the CPS	12
The Code for Crown Prosecutors	13
Policing hate crime	16
Prosecuting cases of disability hate crime	17
What happens if the victim withdraws support or no longer wishes to give evidence?	22
Continuing a case where the victim has withdrawn their support for the prosecution	24
Support for disabled Victims and Witnesses	27
Sentencing	35
Recording disability hate crime	37
Conclusion	38
Support organisations	39

Introduction

- 1.1 This policy statement explains the way that we, the Crown Prosecution Service (CPS) deal with cases of disability hate crime.
- 1.2 We are publishing this statement because we want disabled victims and witnesses and their families and communities, as well as the general public, to be confident that the CPS understands the serious nature of this type of crime. Feeling and being unsafe or unwelcome – from shunning or rejection to violence, harassment and negative stereotyping – has a significant negative impact on disabled people’s sense of security and wellbeing. It also impacts significantly on their ability to participate both socially and economically in their communities.
 - The Disability Rights Commission’s Attitudes and Awareness Survey (2003) revealed that 22% of disabled respondents had experienced harassment in public because of their impairment. Incidents of harassment were more acute among 15-34 year olds with 33% of this group of disabled people experiencing harassment (DRC, 2003).
 - Eight per cent of disabled people in London suffered a violent attack during 2001-02 compared with four per cent of non-disabled people. Research by Greater London Action on Disability (GLAD) found that, “The attacks have a major impact on disabled people. Around a third have had to avoid specific places and change their usual

routine. One in four has moved home as a result of the attack. Many disabled people are not confident that the police can help to stop the incidents” (GLAD 2002).

- Research by Mencap demonstrated that 90% of people with a learning disability had experienced bullying¹ and harassment. Sixty-six per cent of people with a learning disability have been bullied regularly with 32% stating that bullying was taking place on a daily or weekly basis (Living in Fear, 2000).

- 1.3 Safety and security, and the right to live free from fear and harassment, are fundamental human rights and the CPS recognises the wider community impact of disability hate crime where it strikes at all disabled people by undermining their sense of safety and security in the community. For this reason we regard disability hate crime as particularly serious. Such crimes are based on ignorance, prejudice, discrimination and hate and they have no place in an open and democratic society.
- 1.4 This policy statement is primarily focused on how the CPS deals with disability hate crime as defined by section 146 of the Criminal Justice Act 2003. However, we also recognise that some disabled people may be victims of crime due to their perceived vulnerability or because they have unequal access to safety. For example, relationships where there

¹We recognise that the term “bullying” may involve criminal acts. For example, 33% reported physical attacks and other attacks including: “being spat at, having your head hit against a wall, being called names, being stolen from and having stones thrown at them”.

may be unequal power between the parties such as where the defendant is the victim's carer. This policy statement will therefore also make reference to crimes committed against disabled people because of their perceived vulnerability, recognising that these people may need support to enable them to give evidence in order to ensure they have equal access to justice. We explain later how the needs of the disabled victim and any disabled witnesses will be assessed at the earliest opportunity in order to see what measures, including special measures, may be available and suitable to support them in court, so that they can give the best possible evidence.

- 1.5 Securing the confidence of those affected by disability hate crime *and* those that are targeted because of their perceived vulnerability because they are disabled is an essential part of our approach to dealing effectively with such cases. We want to make sure that **all** people have equal access to justice.
- 1.6 In the CPS we are committed to proactively promoting disability equality. We welcome the Disability Equality Duty (under the Disability Discrimination Act 2005) and the requirement to mainstream disability issues into our prosecution policies and practices as well as our employment policies and practices. This policy statement forms a key part of our response to the Disability Equality Duty and its development, implementation, and training to support implementation is included in our disability equality action plan. We are committed to its vigorous implementation, we will monitor its impact and we will report on outcomes.

- 1.7 Disabled people also go to court as defendants. We are mindful of our responsibility under the Disability Equality Duty to ensure that disabled defendants are treated fairly within the context of their disability and we would expect that those working with them will consider any support and assistance disabled defendants may need.
- 1.8 Every person has an equal right to be protected by the criminal law and by the criminal justice agencies. Stopping disability hate crime and bringing perpetrators to justice must therefore be a priority for our society and for the CPS. We are determined to play our part by prosecuting cases effectively. In doing so, we want to promote greater confidence in the criminal justice system – a key aim for all agencies involved in the criminal justice system.
- 1.9 The CPS is not the only agency that deals with cases of disability hate crime. The police, the criminal courts, magistrates and judges all have roles to play in promoting greater confidence of disabled people in the criminal justice system. We work with the police and other colleagues in the criminal justice system, both locally and nationally, to help us improve our understanding of disability hate crime to ensure that the whole criminal justice process brings perpetrators of disability hate crime to justice.
- 1.10 This policy statement has been developed and taken forward by a Steering Group with representatives from disability organisations with professional knowledge in the fields of disabilities, crime reduction and victim and witness support. We have also consulted with disabled people as well as representatives of disability and victims

organisations. We have greatly appreciated all input; however, the content of this document is the responsibility of the CPS alone. This policy statement is supported by more detailed guidance for all CPS prosecutors and caseworkers so that they have a clear understanding of the policy and how we deal with this sort of crime.

2. Disability hate crime

- 2.1.1 In April 2005 the law was changed by section 146 of the Criminal Justice Act 2003 (CJA).
<http://www.opsi.gov.uk/acts/acts2003/30044—o.htm#146>
Section 146 did not create any new offences; it imposed a duty upon courts to increase the sentence for **any** offence (for example, assault or criminal damage) aggravated by hostility based on the victim's disability (or presumed disability). Therefore, when an offender has pleaded guilty or been found guilty and the court is deciding on the sentence to be imposed, it must treat evidence of hostility based on disability as something that makes the offence more serious. The court must also state that fact openly so that everyone knows that the offence is being treated more seriously because of this evidence of hostility based on disability.
- 2.1.2 Section 146 is designed to ensure that these offences are treated seriously by the police, prosecutors and the courts and brings them in line with offences that are aggravated by racial or religious hostility or hostility based on sexual orientation.

2.1.3 The CPS therefore now has a duty to ensure that where there is evidence of such hostility, this is brought to the attention of the sentencing court.

2.1.4 In this policy we will refer to crimes which fall within the ambit of section 146 CJA as disability hate crime.

2.2 Definition of “Disability” and “Disability Related Incident”

2.2.1 For the purposes of section 146 “disability” means any physical or mental impairment.²

2.2.2 Section 146 is also relevant to cases where the offender has assumed a person is disabled, whether or not that *assumption* is correct.

2.2.3 There is no statutory definition of a disability related incident. However, to help us apply our policy on dealing with cases of disability hate crime we have adopted the following definition:

“Any incident, which is perceived to be based upon prejudice towards or hatred of the victim because of their disability or so perceived by the victim or any other person”.

2.2.4 This is the same definition used by the Association of Chief Police Officers (ACPO) in the March 2005 tactical manual

² This definition of disability is not the same definition of disability as defined by the Disability Discrimination Act 2005 which covers people with a wide variety of disabilities, including those people living with HIV or AIDS, or who have cancer or multiple sclerosis.

guidance issued to all police services, in relation to Hate Crime and Hate Incidents.

2.3 When will section 146 CJA apply?

2.3.1 *Section 146 CJA applies to offences committed in either of the following circumstances:*

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.

For example, an assault upon a disabled person by an offender who, immediately before hitting the victim, makes a derogatory and offensive comment about disabled people.

OR

The offence was motivated (wholly or partly) by hostility towards persons who have a disability or a particular disability.

For example, assault upon the parents of a disabled child committed by an offender where there is evidence of hostility towards the disabled child because of previous remarks.

2.3.2 It is important to note that these are alternatives. This means that in a case where a demonstration of hostility can be proved (this will usually be in the form of spoken words) there is no need to also prove a hostile motivation, and vice versa. Motive is always difficult to prove and it is likely that

more section 146 cases will relate to hostile acts than to hostile motivation.

- 2.3.3 However, section 146 will apply even if the incident was prompted by some non-disability related issue, provided the offender has gone on to demonstrate hostility based on disability.

For example, two motorists collide. One driver gets out and starts to abuse and threaten the other driver. He then becomes aware that the other driver is disabled and refers to this in derogatory and offensive terms. The driver's behaviour may amount to an offence of public order aggravated because he has also demonstrated specific hostility based on disability.

2.4 Proving that an offence was aggravated by hostility based on disability

- 2.4.1 Not all incidents that the victim or some other person has perceived to be a disability hate crime will actually be a disability hate crime in law. For section 146 to apply the prosecution must first have proved that the offender has committed a criminal offence and then have proved that that offence was aggravated by hostility based on the victim's disability. To help us decide whether an incident reported to the police amounts to a crime and whether there is enough evidence to prosecute the case, we use the Code for Crown Prosecutors. We explain the Code later in section 4 of this statement.
- 2.4.2 We do recognise that, to prove that an offence is aggravated under section 146 CJA, verbal hostility may

need to be “heard” by the victim or witness, and in some cases disabled victims or witnesses might not be able to hear or may have a learning disability that results in difficulties communicating. Some responses to these issues are identified in section 9 – “Support for disabled victims and witnesses”. We will also work with disability organisations when developing training for our prosecutors so that our prosecutors are aware of the challenges they may face and possible solutions to them.

2.5 Disability hate crimes and crimes committed against disabled people

- 2.5.1 It is important to make a distinction between a disability hate crime and a crime committed against a disabled person because of his/her perceived vulnerability. A disability hate crime is any crime committed in any of the circumstances explained in section 146 CJA. Where there is evidence available to prove that an offence is aggravated by hostility based on the victim’s disability we will do our utmost to ensure that that evidence is put before the court for sentencing purposes.
- 2.5.2 However, not all crimes committed against disabled people are disability hate crimes – some crimes are committed because the offender regards the disabled person as being vulnerable and not because the offender dislikes or hates disabled people. For example, the theft of a wallet from a blind person; if the offender was preying on the victim’s perceived vulnerability this will not be a disability hate crime within the definition of section 146.

- 2.5.3 In such cases, even where the offence does not fall within the definition of a disability hate crime under section 146 of the CJA, our prosecutors will have regard to guidelines issued by the Sentencing Guidelines Council³. The guidelines explain that, in assessing how serious an offence is, the court will have regard to the level of culpability of the offender and the harm caused or risked being caused to the victim. The level of culpability is considered higher where the offender deliberately targets a vulnerable victim. Also, where a victim is particularly vulnerable, this may indicate a more than usually serious degree of harm. The guidelines explain that in order to consider the appropriate sentence the court will need to take into account both the level of culpability of the offender and the harm that was caused to the victim.
- 2.5.4 Nevertheless, there may be other cases where it cannot be proved either that the offender demonstrated or was motivated by hostility or that the offender knew that the victim was disabled and targeted him or her because of that. In such cases, section 146 will not be relevant nor will the sentencing court be able to treat the perceived vulnerability of the victim as an aggravating feature of the offence.
- 2.5.5 We believe that it is important to make these distinctions now in order not to raise expectations that all crimes committed against disabled people will be prosecuted as disability hate crime.

³ Overarching Principles: Seriousness (Sentencing Guidelines Council 2004)

3. The role of the CPS

- 3.1 It is the responsibility of the police to investigate allegations of crime and to gather evidence about what occurred.
- 3.2 Following the implementation of Statutory Charging it is now the job of the CPS to decide charges in all but the most routine cases and our prosecutors will work with the police to ensure that disability hate crime cases are identified as early as possible so that the correct charging decision can be made.
- 3.3 The criminal justice system in England and Wales relies on witnesses coming to court to give evidence about what occurred. Usually, witnesses give evidence in open court with members of the public and press there. The defendant is almost always present as well. The reporting of crime and the giving of evidence is a public duty and the key to any successful prosecution is based on the willingness of witnesses to come forward.
- 3.4 We know that those affected by disability hate crime are sometimes reluctant or unable to report the incident without support. Even if extra support is not required, we know that disabled people may not report incidents to the police for fear of repeat victimisation. This may also be the case where disabled people are targeted because of their unequal access to safety or on account of the environment in which they live, for example, in a hospital, care home or in their own home. Even if incidents have been reported disabled people may be reluctant to give evidence if the

perpetrator is prosecuted, or may need particular support and help to do so. We will do everything that we can to make giving evidence in court as easy as possible. It is important to us that crimes against disabled people are reported and prosecuted and that disabled people have equal access to justice.

4. The Code for Crown Prosecutors

The way in which we reach our decisions about whether to prosecute is set out in the Code for Crown Prosecutors. This document is issued by the Director of Public Prosecutions who heads the CPS. It is updated regularly so that it reflects current practice. We review the cases that are referred to us in line with the two tests that are set out in the Code.

4.1 The first test – the evidential test

- 4.1.1 Crown Prosecutors must first be satisfied that there is enough evidence to provide a “realistic prospect of conviction against each defendant on each charge”. This means that a jury or bench of magistrates, properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged.
- 4.1.2 To secure a conviction in a criminal court, we have to prove the case so that the court is sure of guilt.
- 4.1.3 The evidential test that we use is therefore different from the test that the court applies before it may convict a

defendant. Just because a case may pass the evidential test set out in the Code it does not necessarily mean that the case will result in a conviction. Many things can happen between our decision to prosecute a case and the court's verdict: witnesses may not attend court to give evidence; witnesses may give different evidence in court from that which they gave to the police; or the defendant may give evidence and tell a different version of events and this may cast doubt upon the truth of the victim's story. It is for the court to decide whether a defendant is guilty based upon the evidence that it hears or reads, therefore not all cases that are prosecuted result in a conviction.

- 4.1.4 If the case does not pass the first test based on the strength of the evidence, it must not go ahead, no matter how important or serious it may be. This is because we have reached the view that the court is not likely to convict the defendant of the crime alleged. In such cases, it is wrong to put the defendant through the criminal justice process and it is wrong to raise the expectations of victims and witnesses when we do not believe that a conviction is likely.

4.2. The second test – the public interest test

- 4.2.1 If the case does pass the evidential test, Crown Prosecutors must then decide if a prosecution is needed in the public interest. A prosecution will usually take place "unless there are public interest factors tending against prosecution which clearly outweigh those tending in favour".
- 4.2.2 When considering the public interest test, one of the factors that Crown Prosecutors should always take into account is "the consequences for the victim of the decision whether or

not to prosecute; and any views expressed by the victim or the victim's family". We always think very carefully about the interests of the victim when we decide where the public interest lies. But we prosecute cases on behalf of the public at large and not just in the interests of any particular individual. There can be difficulties in striking this balance. The views and interests of the victim are important, but they cannot be the final word on the subject of a CPS prosecution. The acts of an individual have to be put in the context of the wider society and balanced against the risks to other individuals.

4.2.3 We regard any offence motivated by hostility towards the victim because of the victim's disability or perceived disability as being more serious as set out in the Code for Crown Prosecutors at paragraph 5.9(k). As a result, the public interest in disability hate crime cases that are referred to us will almost always be in favour of a prosecution.

4.2.4 Some of the public interest factors that we will consider are:

- the seriousness of the offence;
- the victim's injuries – whether physical or psychological;
- if the defendant used a weapon;
- if the defendant has made any threats before or after the attack;
- if the defendant planned the attack;
- the chances of the defendant offending again;
- the continuing threat to the health and safety of the victim or anyone else who is, or may become, involved;
- the victim's relationship with the defendant; and
- the defendant's criminal history, particularly any previous offences against disabled people.

- 4.2.5 In cases of disability hate crime – as in all cases – the reviewing prosecutor must apply the Code for Crown Prosecutors. If there is sufficient evidence to proceed without the evidence of the victim, then subject to the public interest test, the case may still be able to proceed.
- 4.2.6 The Code is a public document. Copies are available from CPS Headquarters, 50 Ludgate Hill, London EC4M 7EX or from local CPS offices, or from our website http://www.cps.gov.uk/victims_witnesses/code.html

5. Policing hate crime

- 5.1 The Association of Chief Police Officers (ACPO) represents the 44 police services in England, Wales and Northern Ireland and in March 2005 a tactical guidance manual was issued to all services, in relation to Hate Crime and Hate Incidents.

A Hate Incident is defined as:

Any incident, which may or may not constitute a criminal offence, which is perceived by the victim or any other person as being motivated by prejudice or hate.

A Hate Crime is defined as:

Any incident, which constitutes a criminal offence, perceived by the victim or any other person, as being motivated by prejudice or hate.

A Disability Related Incident (sometimes referred to as a disability incident) is defined as

Any incident, which is perceived to be based upon prejudice towards or hatred of the victim because of their disability or so perceived by the victim or any other person.

- 5.2 It is imperative that police investigators notify prosecutors that a crime has been identified as a disability incident and also of whether the victim(s) or a key witness is disabled as this informs the way that prosecutors will handle the case.

6. Prosecuting cases of disability hate crime

- 6.1.1 As we explained at paragraph 2.4.1, we may not always be able to prove that an offence that the victim or some other person thinks is a disability hate crime (a disability related incident) is a disability hate crime in law. However, it is important that any offence which has been considered to be a disability hate crime is identified as such by the police and the CPS as this will inform the way that we handle the case. All disability related incidents should be identified to us by the police and we will then monitor the way we deal with them.
- 6.1.2 We will adopt a proactive approach to seeking further information from the police to help us decide if a case can

properly be prosecuted as a disability hate crime. In some cases, we may advise the police to follow up other possible lines of enquiry. This might include looking at previous reported incidents involving the same victim, or the same suspect. It may also involve seeking information or evidence from other agencies, for example, Social Services, NHS, specialist support groups and community groups working with disabled people. For example, there may be current or previous eviction proceedings taken by a local authority or housing association involving the parties in the criminal proceedings. In all cases, prosecutors should liaise directly with the officer in the case to make sure all available evidence has been obtained and sent to the CPS to consider when reviewing the case. This may be especially important if the situation represents repeat victimisation.

6.1.3 We aim to build the strongest possible cases to put before the court. If we are satisfied that there is sufficient evidence to prove that the offence is aggravated in accordance with section 146, we will make it clear to the defence and the court that we intend to put this in evidence before the court for sentencing purposes.

6.1.4 Where a domestic violence offence is committed against a disabled person, we will also refer to our Policy for Prosecuting Cases of Domestic Violence.

6.2 Charge selection

6.2.1 The charges that we decide on in any prosecution should always reflect the seriousness of what took place, any element of pre-meditation or persistence in the defendant's

behaviour, the provable intent of the defendant and the severity of any injury suffered by the victim. The charges must help us present the case clearly and simply and they must give the court the power to impose a suitable sentence.⁴

6.2.2 The CPS and the police have agreed “charging standards” for certain types of offences including assaults. These are guidelines that help us to make consistent decisions about the right charges. We use them when reviewing all cases. Examples of charging standards can be seen at http://www.cps.gov.uk/legal/section5/chapter_c.html

6.2.3 In a case being prosecuted as a disability hate crime the charge itself will not reflect the fact that the crime is a disability hate crime. This is because, as explained in paragraph 2.1.1, section 146 does not create any specific offence but instead places a duty on courts to increase sentences for offences aggravated by hostility based on the victim’s disability. We do not have to prove the aggravating factor in order for the defendant to be found guilty of the offence charged (for example, assault or criminal damage). However, we do have to prove the aggravating factor to ensure that the offence is treated more seriously by the sentencing court under section 146 CJA. When we are prosecuting a case as a disability hate crime we will make it clear to the defence and the court, at the earliest

⁴ Prosecutor’s Pledge: “Take into account the impact on the victim or their family when making a charging decision” and The Code of Practice for Victims of Crime, section 7.2 refers to the CPS obligation to ensure that victims are informed of charging decisions taken by the CPS.

opportunity, that we are doing so.

6.2.4 Prosecutors have an obligation to inform victims of decisions not to prosecute.⁵

6.3 Bail

6.3.1 After a person is charged with an offence, the police will decide whether to release the person on bail to attend the next available court hearing (usually within two to five days of charge), or to keep the person in custody to appear before the magistrates' court that day or the next. Once the accused appears before the court, the magistrates will make the decision about bail after hearing from the prosecution and the defence. We can appeal, in certain circumstances, against a decision to grant bail.

6.3.2 The time after an offender is charged with a crime can cause anxiety for the victim and disabled victims may be particularly vulnerable. We recognise that some disabled victims may well be dependent for their care on the perpetrator of the crime committed against them and we will work with partners to identify support mechanisms which may be provided in the community. However, in order to protect victims and witnesses from the risk of danger or threats or repeat offences, we may ask the court to impose conditions on the bail or may ask for the defendant to be remanded in custody. The court can only agree if we can show that there are substantial grounds for

⁵ Prosecutor's Pledge and the Code of Practice for Victims of Crime (see 9.2.1. below)

not granting bail or granting bail with conditions as set out in the Bail Act 1976.

- 6.3.3 Conditions that the court can impose include requirements not to approach any named person or to keep away from a certain area. In making decisions about whether to oppose bail we will take account of information provided to us by the police about the fears of a victim or witness about harassment or repeat offending.
- 6.3.4 We will work with the police and the courts to make sure that the victim or witness is kept informed, either by the police or by us, of any change to the bail conditions or custody status of the accused person. Witness Care Units, run by the police and the CPS provide help and information for victims and witnesses and a Witness Care Officer will keep in contact with the victim or witnesses to let him/her know of any changes.

6.4 Victim Personal Statements

- 6.4.1 A Victim Personal Statement is a statement made by a victim of crime explaining the effect that the crime has had on him or her. In the statement victims can describe how they have been affected by the crime. They can talk about their wishes or needs during the case and any concerns they may have as a result of the offence, for example, about safety, intimidation or bail. They can mention support (or absence of support) for the prosecution and requests for help from any of the support agencies. In this way the court can better understand not only the crime but also the context in which it occurred. It is optional, and the victim should be asked whether or not s/he wishes to make

such a statement or if s/he requires help to make a statement from a support worker or family member. This statement can be made at any time and it is possible to make more than one statement. A victim can ask the police or their CPS lawyer for a leaflet which explains what Victim Personal Statements are and how they can be used.

- 6.4.2 Prosecutors can use these statements to help them make decisions about cases, for example, when deciding whether they should ask the court to impose conditions when a defendant is on bail.

7. What happens if the victim withdraws support for the prosecution or no longer wishes to give evidence?

- 7.1 Sometimes, a victim will ask the police not to proceed any further with the case, or will ask to withdraw the complaint. This does not necessarily mean that the case will automatically be stopped. As a general rule, we will prosecute all cases where there is sufficient evidence and there are no factors that prevent us from doing so. If the victim has decided to withdraw support for the prosecution, we have to find out why. This may involve delaying the court hearing to investigate the facts and decide the best course of action.
- 7.2 We will take the following steps:

- we will ensure that an experienced prosecutor supervises the case;
- if the victim decides to withdraw support, we will ask the police to take a written statement from the victim explaining the reasons for that withdrawal, confirm that the original complaint was true and whether the victim has been put under any pressure to withdraw support; and
- we will ask the police to give their views about the evidence in the case and how they think the victim might react if they are compelled to attend court.

7.3 If the victim's statement, after withdrawing the complaint, is not the same as the earlier statement, we will expect the police to ask the victim to explain why it has changed.

7.4 If the victim confirms that the complaint is true but still wants to withdraw that complaint, we will consider first whether it is possible to continue with the prosecution without the evidence of the victim (the evidential test) and then, if it is possible, whether we should continue the case without the support of the victim/against the victim's wishes (the public interest test).

7.5 If we suspect that the victim has been pressured or frightened into withdrawing the complaint, we will ask the police to investigate further. The investigation may reveal new offences, for example, harassment or witness intimidation, or that bail conditions have been breached. If necessary, we will ask the court to delay any hearing so that a thorough investigation may take place before we decide about the future of the case. If the reason for a victim or witness's withdrawal is based on fear or intimidation, the prosecutor needs to have such evidence brought to their

attention and should consider further charges of witness intimidation.

- 7.6 We will explore all these options fully, before we decide whether to proceed with a prosecution. The safety of the victim or any other potentially vulnerable person will be a prime consideration in reaching our decision.

8. Continuing a case where the victim has withdrawn their support for the prosecution

- 8.1 Generally, the more serious the offence (because of, for example, the level of violence used or the real and continuing threat to the victim or others) the more likely we are to prosecute in the public interest, even if the victim says they do not wish us to do so.
- 8.2 In some cases if we have sufficient other evidence we could proceed without relying on the evidence of the victim at all.
- 8.3 If we decide that the case should continue and that it would be necessary to rely on the victim's evidence to prove the case, we have to decide:
- whether we could apply to the court to use the victim's statement as evidence without the victim having to give evidence in court;
 - if we can proceed with the prosecution by helping the

- victim to attend court by the use of special measures; or
- whether we should compel the victim to give evidence in person in court.

8.4 Background information is crucial in helping a prosecutor to make the correct decision about how to proceed in a case where the victim has withdrawn their support for the prosecution.

Some of the factors that should be considered include:

- the ability of the victim to testify;
- whether there is an ongoing relationship between the victim and the defendant, for example, where the defendant is the victim's carer;
- if there is an ongoing relationship, the history of the relationship and any instances of previous abuse;
- the chances of the defendant offending again;
- the impact on the victim of proceeding or not proceeding with the case; and
- whether there have been any threats made since the incident.

8.5 The prosecutor will want to know the reasons why the victim no longer wishes to give evidence. In cases of disability hate crime, this may be because the victim lives in a place in which they feel isolated or particularly vulnerable (and we recognise that feeling isolated or vulnerable may have deterred or delayed the victim from reporting the incident in the first place), where supporting the prosecution may place the victim at further risk of harm, such as in domestic violence cases or situations where the defendant is the victim's carer and where the victim is

fearful of other consequences of giving support to the prosecution. In such cases, the prosecutor must have regard to any special measures or other support available to the victim that may help them, at least in part, to overcome their concerns⁶.

- 8.6 In cases where it is necessary to call victims to give evidence against their wishes, prosecutors will only make that decision after consultation with the police and possibly others with a legitimate interest and with the safety of the victim as a prime consideration.
- 8.7 The law allows us to use the victim's statement in court without calling the victim to give oral evidence but only in very limited circumstances. It is for the court to decide whether to allow this and it will do so only if it is in the interests of justice to do so. If the victim is the only witness to the offence it may be difficult to satisfy the court that justice is being served when the defence cannot cross-examine the only witness in the case.

⁶ Prosecutor's Pledge: "Address the specific needs of a victim and where justified seek to protect their identity by making an appropriate application to the court" and The Code of Practice for Victims of Crime, section 7.8 states that CPS prosecutors must consider applications for special measures for potentially vulnerable or intimidated witnesses.

9. Support for disabled Victims and Witnesses

The CPS is fully committed to taking all practicable steps to help victims through the often difficult experience of becoming involved in the criminal justice system. Initiatives such as *No Witness, No Justice*, special measures, meetings between the CPS and vulnerable and intimidated witnesses, reporting restrictions and the Witness Support Preparation and Profiling initiative, are all designed to increase the confidence of victims in the criminal justice system. Support may also be available from a very early stage from the police, Social Services and other support agencies which can continue throughout the life of the prosecution.

9.1 The Prosecutor's Pledge

- 9.1.1 This is a 10-point Pledge that describes the level of service victims can expect to receive from prosecutors. The Prosecutor's Pledge should ensure that the specific needs of disabled victims and witnesses are addressed, that they are assisted at court to refresh their memory from their written or video statement and that they are protected from unwarranted or irrelevant attacks on their character.
- 9.1.2 The Prosecutor's Pledge can be obtained from our website http://www.cps.gov.uk/publications/prosecution/prosecutor_pledge.html

9.2 The Code of Practice for Victims of Crime

- 9.2.1 The Victim's Code sets out the obligations of the CPS towards victims. An example of one of the obligations is where a prosecutor decides either that there is insufficient evidence to bring any proceedings (following a full evidential report), or if the prosecutor decides to substantially alter or drop any charge. In those circumstances the prosecutor must notify the victim. If the victim is vulnerable or intimidated the prosecutor must notify them within one working day and within five working days for other victims. For disability aggravated offences, the prosecutor will also offer to meet the victim to explain the decision. Where a prosecutor has made a decision not to charge during a face to face consultation with an investigator, the investigator must advise the victim.
- 9.2.2 Copies of the Code of Practice for Victims of Crime can be obtained from CPS Communications Branch at 50 Ludgate Hill, London EC4M 7EX or from our website http://www.cps.gov.uk/victims_witnesses/victims_code.pdf

9.3 Witness Care Units

- 9.3.1 *No Witness, No Justice* is a joint initiative between the police and the CPS and is aimed at being responsive to the individual needs of victims and witnesses through the establishment of dedicated Witness Care Units.
- 9.3.2 We have Witness Care Units in all 42 CPS Areas and these are run jointly by the CPS and the police. Witness Care Officers provide a single point of contact and tailored

support for each witness to ensure that they are able to give their best evidence. This tailored support is based on a needs assessment which should lead on to the identification of specialist support that a disabled witness may need. For example, this support could take the form of accredited interpreters for hearing impaired witnesses and accessible courtrooms for physically disabled witnesses.

9.3.3 Witness Care Officers will manage the care of the victim from the time a defendant is charged right up until the final hearing.

9.4 Special measures

9.4.1 In some cases the court may agree to allow a witness to give evidence with the help of “special measures”. The use of special measures should be investigated first by the police and then with the prosecutor. The Witness Care Officer may also have an input following a needs assessment but it will be for the court to decide whether they should be granted.⁷ Special measures were introduced by the Youth Justice and Criminal Evidence Act 1999 and are available in both Crown and in the magistrates’ courts. They are available to help the following witnesses:

- children under 17 years;
- adults (17 and over) who may be considered vulnerable because of incapacity, such as a physical or mental

⁷ The Code of Practice for Victims of Crime, section 7.8 states that CPS prosecutors must consider applications for special measures for potentially vulnerable or intimidated witnesses.

disorder⁸; or learning disability; and

- witnesses whose evidence is likely to be affected because they are intimidated (for example, afraid or distressed about giving evidence).

9.4.2 Special measures can help disabled people give evidence in the best way and with as little stress as possible.

9.4.3 Special measures include:

- video evidence in chief;
- the court allowing the use of screens in a courtroom to prevent a victim or other witness from seeing the defendant;
- giving evidence away from the courtroom through a live television link (but the defendant will still be able to see them);
- clearing the public gallery in sexual offence cases or cases involving intimidation;
- the use of communication aids, for example, an alphabet board, sign and signal boards, or hearing loop;
- giving evidence through an intermediary;⁹ and
- in the Crown Court, advocates and the judge removing their wigs and gowns.

⁸ This includes someone who is living with a particular condition which may inhibit them from pursuing a prosecution if that fact is going to be widely broadcast.

⁹ Someone, usually a specially trained and registered speech therapist, who helps witnesses communicate with the court if, for example, they have a speech impediment.

9.4.4 In deciding whether or not special measures can be applied we have to determine if “the quality of evidence that the witness is going to give is likely to be diminished without the special measures that are requested”. We will positively consider special measures in cases involving disabled victims and witnesses who may benefit from them. We will apply for special measures but it is for the judge to decide and not all special measures are available in every court. As cases proceed individual circumstances may change so special measures may need to be adapted.

9.5 Using intermediaries for vulnerable witnesses

9.5.1 Use of an intermediary is a form of “special measure”. An intermediary is someone who is approved by the court to provide a service which enables witnesses and the court to communicate. Professional intermediaries – usually speech and language therapists or deaf intermediaries who understand deaf culture – work with witnesses to make sure they are understood and can understand the questions put to them. Intermediaries can work with defence or prosecution witnesses and assist in the initial taking of their evidence and when they are in court so that they achieve their best evidence at the trial. Intermediaries come from a range of backgrounds including social work, speech and language therapy and psychology. They will normally be a specialist by training or possibly through a unique knowledge of the witness.

9.6 Witness Support, Preparation and Profiling

9.6.1 This initiative was pioneered by the Investigations Support Unit (ISU) of Liverpool City Council working with the CPS

Policy Directorate and has been adopted in a number of other areas.

- 9.6.2 The initiative aims to promote equal access to justice for witnesses with learning disabilities and (other) vulnerable witnesses by providing an in-depth support and preparation programme. (This programme deals with the understanding, information and skills required of the witness, while avoiding any discussion of, or reference, to their evidence).
- 9.6.3 At the pre-trial stage, an assessment of the individual's potential to be a credible and competent witness in the trial is carried out. This detailed work is undertaken to enable the witness to be prepared to be able to give evidence and a witness profile is generated. The profile is served on the court, the prosecution and the defence in accordance with an agreed protocol.
- 9.6.4 The witness profile prepared by the ISU staff includes details such as the witness's functional skills and powers of concentration (in relation to giving evidence, specifically). Advice is also given to the prosecution advocate on how to ensure that the witness is able to give his/her best evidence and strategies to minimise or resolve potential problems are also included. This enables the prosecuting advocate to consider how to formulate questions at a level that the witness will understand.
- 9.6.5. Additionally, the witness profile can provide the judge with information as to the witness's specific requirements, which may lead to the judge giving directions as to any assistance that the witness may need in the courtroom.

9.7 Meeting between the CPS and vulnerable or intimidated victims and witnesses

- 9.7.1 When an application is made for special measures, the witness will be asked if he/she would like to meet with the prosecutor. The purpose of meeting is to reassure witnesses that their needs will be taken into account and thereby help build trust and confidence. The witness does not have to attend that meeting by themselves. They can bring a relative, a carer or other supporter. In order to facilitate communication with the victim it may be appropriate for an interpreter or other similar person, to attend the meeting. Wherever possible, the CPS prosecutor will ensure that the advocate who will be conducting the trial will attend the meeting between the CPS prosecutor and the disabled witness. The CPS prosecutor will also offer the disabled victim a court familiarisation visit.
- 9.7.2 Further information about meetings with vulnerable or intimidated witnesses is contained in the leaflet *“Witnesses, Your meeting with the CPS Prosecutor”*.

This leaflet is available from CPS Communications Branch, 50 Ludgate Hill, London EC4M 7EX or from our website <http://www.cps.gov.uk/publications/prosecution/witnesseng.html>

9.8 Reporting restrictions (Youth Justice and Criminal Evidence Act 1999, section 46)

- 9.8.1 In some cases, the law allows the CPS to apply for an order preventing the reporting of certain details of witnesses in the media that may lead to their identification. The court

must follow a set procedure when considering such an application and must determine whether a witness is eligible and, as with special measures, whether the reporting restriction will be likely to improve the quality of the witness's evidence. The focus of all of these measures is to ensure that giving evidence is made as easy as possible for the witness.

9.8.2 When deciding whether a witness is eligible, the court must take into particular account:

- the nature of the alleged circumstances of the offence to which the proceedings relate;
- the witness's age;
- if relevant, the social and cultural background and ethnic origins of the witness, the domestic and employment circumstances, and any religious beliefs or political opinions; and
- any behaviour towards the witness on the part of the defendant, members of his/her family or associates, or any other person who is likely to be a defendant or witness in the proceedings.

9.8.3 Once these factors are determined, the court will consider:

- whether it would be in the interests of justice to make an order; and
- the public interest in avoiding a substantial and potentially unreasonable restriction on the reporting of proceedings.

9.8.4 Where an order is made (the defence and/or the media are entitled to object to any application we make), the effect will be that no matter relating to the witness during his or her lifetime shall be included in any publication if it is likely to identify him or her as a witness in the proceedings.

10. Sentencing

10.1 Evidence of aggravation based on disability makes a case more serious and the court has a duty under section 146 CJA to take this into account when it sentences the accused and to make it clear that it has done so. We will make sure that the court has all the information it needs to carry out this duty.

10.2 When a defendant pleads guilty or is found guilty, the court has to decide on the sentence to impose and can choose from a broad range of penalties. The penalties may be in the form of rehabilitative orders, community penalties, fines, “bindovers” or custody.

10.3 We will challenge defence mitigation which unfairly attacks the victim’s character¹⁰.

10.4 If the defendant pleads guilty or is found guilty of an

¹⁰ Prosecutor’s Pledge: “Protect victims from unwarranted or irrelevant attacks on their character and may seek the court’s intervention where cross-examination is considered to be inappropriate or oppressive.

offence but disagrees with the prosecution that the offence was aggravated by hostility based on disability, the judge or magistrates will have to decide whether the aggravating feature is proved or not. The prosecution must call witnesses who can give evidence about the hostility and the defence will be able to cross-examine them before the court makes a decision. This process is called a “Newton hearing”. At the end of the hearing the court must announce whether it is satisfied, having heard the evidence, that the offence was aggravated by hostility based on disability. If so, the court must treat the offence more seriously when deciding on sentence, in accordance with section 146. If not, section 146 will not be relevant.

- 10.5 We will give the court information to help it decide whether to make any orders it has power to make in addition to the main sentence¹¹. This includes making orders in appropriate cases for compensation for loss, injury or damage¹².
- 10.6 In all cases it is for the magistrates or judge alone to decide what the sentence should be. In respect of only a limited number of offences (and only when the defendant is sentenced in the Crown Court) we have the right to ask the Attorney General to challenge a sentence, if it falls outside

¹¹ The Code of Practice for Victims of Crime, section 7.12 states that the CPS must answer any questions the victim has about the sentence if the victim is referred to the CPS by the Witness Care Unit (this is if the Witness Care Unit is unable to answer the victim’s questions.

¹² Prosecutor’s Pledge: “On conviction, apply for appropriate order for compensation, restitution or future protection of the victim”.

the range that could reasonably be considered appropriate. The victim or the victim's family may themselves wish to draw the sentence directly to the attention of the Attorney General, if they consider it to be unduly lenient.

11. Recording disability hate crime

- 11.1 It is essential that cases that involve a demonstration of hostility or are motivated by hostility towards the victim on account of their disability are correctly identified. We will record cases identified as a disability related incident by the police and monitor our performance to ensure that we are using the legislation and applying this policy consistently. We will report on our performance to communities in order to build confidence in the criminal justice system.

- 11.2 The Code of Practice for Victims of Crime has imposed new duties and obligations on the CPS. Monitoring disability hate crime and monitoring the outcomes of crimes involving disabled victims and witnesses will help us to ensure that we are complying with our obligations and that we are providing a quality service for all victims of crime.

12. Conclusion

- 12.1 We are determined to play our part in stopping crimes against disabled people and in bringing offenders to justice. We are committed to improving our performance in handling cases of all hate crime and we want victims and witnesses to have confidence in the way in which we review and progress our cases.
- 12.2 We hope that this document will help victims of disability hate crime to understand the work of the CPS, how we make our decisions and the different stages of the prosecution process.
- 12.3 We will continue to work with the police and other colleagues in the criminal justice system and the voluntary and community sector at national and local levels to help us develop best practice.
- 12.4 We will monitor the way we deal with cases of disability hate crime and will publish this information.
- 12.5 The CPS intends to review this policy statement regularly, so that it reflects current legislation and societal changes. We welcome, therefore, observations that enable us to do this.

Annex A

Listed below are contact details for some of the organisations that support disabled people and that provide information on disabilities

Ann Craft Trust

The Ann Craft Trust works with staff in the statutory, independent and voluntary sectors to protect people with learning disabilities who may be at risk from abuse. The Ann Craft Trust also provides advice and information to parents and carers who may have concerns about someone they are supporting.

Centre for Social Work
University of Nottingham
University Park
Nottingham
NG7 2RD

Telephone: 0115 9515400; Fax: 0115 9515232

www.anncrafttrust.org

United Kingdom's Disabled People's Council (UKDPC)

UKDPC is an umbrella organisation that represents some 80 organisations run and controlled by disabled people to promote full equality and participation within society.

Litchurch Plaza
Litchurch Lane
Derby
DE24 8AA

Tel: 01332 29555; Fax: 01332 295580

www.bcodp.org.uk

Disability Rights Commission*

The Disability Rights Commission (DRC) is an independent body established in April 2000 by Act of Parliament to stop discrimination and promote equality of opportunity for disabled people.

The DRC Helpline is the first point of contact for all enquiries.

Telephone: 08457 622 633

Textphone: 08457 622 644

You can speak to an operator at any time between 8am and 8pm, Monday to Friday)

Fax: 08457 778 878

Post: DRC Helpline

FREEPOST MID02164

Stratford upon Avon

CV37 9BR

www.drc.org.uk

*From October 2007, the work of the DRC will become part of the new Commission on Equality and Human Rights (CEHR)

www.cehr.org.uk

Guide Dogs for the Blind Association

Guide Dogs for the Blind Association aims to create a world in which all people who are blind and partially-sighted enjoy the same rights, opportunities and responsibilities as everyone else.

Hillfields

Burghfield Common

Reading

RG7 3YG

Tel: 0118 983 5555; Fax: 0118 983 5433

www.gdba.org.uk

Mencap

Mencap is the UK's leading learning disability charity working with people with a learning disability and their families and carers.

123 Golden Lane

London

EC1Y 0RT

Tel: 020 7454 0454; Fax: 020 7608 3254

www.mencap.org.uk

MIND

MIND works to create a better life for everyone with experience of mental distress by advancing the views, needs and ambitions of people with mental health problems.

15-19 Broadway

London E15 4BQ

Tel: 020 8519 2122; Fax: 020 8522 1725

www.mind.org.uk

Leonard Cheshire

Leonard Cheshire is the UK's leading provider of disability support services, and campaigns on the rights of disabled people. Services include supported living, care at home, residential care, rehabilitation, resource centres and training and employment programmes.

30 Millbank

London

SW1P 4QD

Tel: 020 7802 8200; Fax: 020 7802 8250

www.leonard-cheshire.org.uk

Liverpool City Council — Investigations Support Unit

The Investigations Support Unit provides a Witness Support, Preparation & Profiling service to Vulnerable Witnesses, particularly those with a learning disability, who engage with the criminal justice system. This service aims to promote equal access to justice by identifying and reducing barriers for such witnesses and by supporting criminal justice agencies in fulfilling their responsibilities. The WSP&P model developed by ISU has been adopted in a number of other areas.

Investigations Support Unit

Liverpool City Council

Community Safety

c/o Municipal Buildings

Dale Street

Liverpool L2 2DH

Tel: 0151 233 4994 / 4987; Fax: 0151 233 4990

Email : investigations.support@liverpool.gov.uk

DIAL

Dial is a national organisation of a network of approximately 130 local Disability Information and Advice Line services (DIALs) run by and for disabled people, based throughout the UK. DIAL provides information and advice to disabled people and others on all aspects of living with a disability.

DIAL UK

St Catherine's

Tickhill Road

Doncaster

DN4 8QN

Tel: 01302 310 123; Fax: 01302 310 404

www.dialuk.org.uk

Respond

Respond offers a range of services which provide emotional and psychological support to victims and perpetrators of abuse who have learning disabilities. Respond also provides training and support to professionals and carers.

3rd Floor
24-32 Stephenson Way
London
NW1 2HD
Tel: 020 7383 0700; Fax: 020 7387 1222
Helpline: 0808 808 0700
www.respond.org.uk

RNIB

RNIB offers information, support and advice to people with sight problems.

105 Judd Street
London
WC1H 9NE
RNIB Helpline: 0845 766 9999
www.rnib.org.uk

RNID

RNID is the largest charity providing support, services and advice to deaf and hard of hearing people throughout the UK.

19-23 Featherstone Street
London
EC1Y 8SL
Tel: 020 7296 8000; Fax: 020 7296 8199
www.rnid.org.uk

Voice UK

Voice UK supports people with learning disabilities and other vulnerable groups who have experienced crime or abuse and offers support to families, carers and professional workers.

Wyvern House
Railway Terrace
Derby
DE1 2RU

Tel: 01332 295775; Fax: 01332 295670

www.voiceuk.org.uk

Victim Support

Victim Support is the national charity for people affected by crime. Our volunteers provide free and confidential support to help people deal with their experience whether or not they report the crime. Victim Support also runs the Witness Service and Supportline. The Witness Service helps witnesses, victims and their families before, during and after a trial. Trained volunteers provide emotional support and practical information about court proceedings, a visit to the court, and a quiet place to wait before and during the hearing.

Supportline can give practical help and emotional support in confidence and anonymously. 0845 30 30 900.

www.victimsupport.org.uk