



**Government Response to Hidden in Plain Sight, the
Equality and Human Rights Commission Report on
Disability Related Harassment**

July 2012

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Introduction

The Government is committed to ensuring that everyone has the freedom to live their lives free from fear of targeted hostility or harassment on the grounds of a particular characteristic and believe that disability-related harassment and hate crime should be viewed and dealt with just as seriously as any other type of harassment and hate crime.

1. Disability-related harassment and hate crime is not a new problem. In recent years there has been a number of reports and research that highlight the prejudice and hostility that disabled people have to face day to day¹. Findings from the 2010/11 British Crime Survey indicate that on average there are around 65,000 disability hate crimes committed each year². We have also seen an increase in media reporting of disability hate crime, for example the cases of Gemma Hayter, Brent Martin, and those relating to the Winterbourne View residential hospital.
2. The United Kingdom has one of the most comprehensive legislative frameworks for protecting victims of hate crime and punishing offenders in the world. However, the Government's plan to tackle hate crime, published on 14 March 2012³, emphasised that we cannot be complacent, and recognised that we, and the agencies that make up the criminal justice system, need to do more to improve the operational response to hate crime, including disability hate crime. We are committed to a criminal justice system that is joined up in its approach, where our ambitions are matched by practice on the ground. From the moment an incident is reported to the police, we must ensure that disability hate crime cases are carefully managed through all the stages of the process by professionals who understand the issues and keep victims informed as to what is happening. We will also keep the law under review, taking action where necessary to enhance the protection it offers victims.

¹ For example, Getting away with Murder, Disability Now, Scope, and United Kingdom Disabled People's Council – Katherine Quarmby 2008; Another assault Mind 2007; Living in Fear Mencap 2000.

² Home Office, March 2012, British Crime Survey 2010/2011, available at www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/crime-research/hosb0612/

³ Home Office, March 14, Challenge It, Report It, Stop It – the Government's Plan to tackle Hate Crime, available at www.homeoffice.gov.uk/publications/crime/hate-crime-action-plan/action-plan?view=Binary

3. However, this is just one aspect of the work being undertaken across Government and its agencies to ensure that the Government's vision for disability equality, "**to enable disabled people to fulfil their potential and have opportunities to play a full role in society**", can be realised. We recognise that we need to work together to do more to change negative attitudes and behaviours towards disabled people. That is why we are in the process of developing a new cross-Government disability strategy, '**Fulfilling Potential**', to give renewed impetus to the Government's commitment to disability equality. The strategy is being developed in consultation with disabled people and disabled people's organisations.
4. The **Fulfilling Potential** strategy will look at promoting positive attitudes and behaviours towards disabled people to enable them to participate in community life and wider society, tackling discrimination and harassment wherever they occur. The actions set out in this document and in the Government's plan to tackle hate crime will inform the cross-government disability strategy in relation to challenging the attitudes that drive disability-related harassment and hate crime.
5. The Government's response to the Equality and Human Rights Commission (EHRC) report, **Hidden in Plain Sight**, which sets out the findings of its inquiry into disability-related harassment, is set out below. We note that the harassment considered by the inquiry includes hate crime motivated by hostility towards disabled people, as well as anti-social behaviour and discrimination that falls short of criminal behaviour but which, as highlighted by the report, nonetheless has a significant impact on their lives.
6. As well as highlighting lessons to be learned from ten high-profile case studies, the Commission's report makes seven core recommendations and 77 targeted recommendations. The Government response addresses the Commission's core recommendations and then addresses the recommendations that are aimed at specific Government Departments and their agencies. The response to these recommendations has been divided into those concerning the criminal justice system, followed by the wider Government Departments and agencies. Where appropriate the response addresses some of the specific issues thematically.
7. We note that the majority of the Commission's recommendations are aimed at central Government. Ownership for tackling disability-related harassment

and hate crime is primarily the responsibility of local public authorities - the police, schools, local authorities - and the communities they serve. We believe that those authorities should be working together to develop local policies and initiatives to tackle disability-related harassment and hate crime in genuine partnership with disabled people. There is evidence that these partnerships have been more successful at tackling disability hate crime than authorities that work in isolation, because the solution is appropriate for the local area. An example of this is the partnership work of the Disability First project in Blackpool, where the close links between the voluntary sector and statutory agencies has meant increased confidence in recognising disability hate crime and increased numbers of incidents being reported. Central Government's role is not to be prescriptive but to lead, advise and encourage those local initiatives, and support the dissemination of good practice.

Core Recommendations

1. There is real ownership of the issue apparent in organisations critical to dealing with harassment. Leaders show strong personal commitment and determination to deliver change.

Accept

Lead responsibility: All

8. The Government and criminal justice agencies welcome this core recommendation by the Commission. We agree that those organisations which deal with disability-related harassment must take ownership of the issue and must demonstrate strong leadership and a commitment to accountability.
9. The lead for tackling hate crime must come from the local level, with professionals, the voluntary sector and communities working together to deal with local issues and priorities. The Government, however, plays a vital role in setting a national direction and supporting those locally-led efforts.
Challenge it, Report it, Stop it – the Government’s Plan to tackle Hate Crime demonstrates how we intend to lead the response to hate crime, including disability-motivated offences. Our programme of work set out in the plan is overseen by the Inter-Ministerial Group on Equalities, which is chaired by the Home Secretary.
10. At an operational level, work to tackle hate crime is led by the cross-Government Hate Crime Programme, which brings all relevant Government Departments together with criminal justice agencies. The Programme is advised by a dedicated Independent Hate Crime Advisory Group which is comprised of victims, community groups, academics and other experts. This enables Ministers to hear the views of victims and to demonstrate leadership across the broad range of agencies charged with reducing the harm caused by hate crime.
11. The Crown Prosecution Service (CPS) provides strong leadership on the hate crime agenda, as recognised in the body of the Commission’s report. While the Director of Public Prosecutions retains overall responsibility for all

matters relating to equality and diversity, the agency's Chief Executive Officer has the formal role of Equality Champion and chairs the national CPS Community Accountability Forum, which will oversee the implementation of the CPS Disability Hate Crime Action Plan.

12. The role of the CPS Equality Champion is to act as an agent of change, with responsibility for demonstrating the agency's commitment to being a prosecution service that performs its role fairly and transparently, addresses barriers and disparity effectively; and works with stakeholders and the public to improve its practice so that it can achieve high quality prosecutions and deliver better justice for all. In December 2011, the CPS also appointed a new Hate Crime Champion at Chief Crown Prosecutor Level, who is responsible for promotional activity, challenging barriers and promoting a learning culture regarding hate crime throughout the organisation.
13. At practitioner level, CPS Hate Crime Coordinators provide leadership on tackling hate crime in each CPS area, with responsibility for monitoring hate crime prosecutions; for community and stakeholder engagement, supporting Local Scrutiny and Involvement Panels and ensuring effective multi-agency working on hate crime across the criminal justice system; and for the implementation of policy, providing a point of contact in each area, disseminating relevant policy and guidance to prosecutors, sharing good practice and supporting specialist and dedicated hate crime prosecutors.
14. HM Courts and Tribunals Service (HMCTS) has also taken significant steps to focus on hate crime and equality issues, and is in the process of appointing a Board level Champion for equality and diversity, who will be responsible for championing equality and diversity, including those issues relating to disability, across the organisation. HMCTS will use the annual reporting process for its business plan and equality objectives to demonstrate its public accountability on these issues.
15. At the prison stage of the criminal justice system, the National Offender Management Service (NOMS), responsible for commissioning and providing offender management services in the community and in custody, has diversity and equality, and treating offenders with decency and respect, amongst its core values. The NOMS Women and Equalities Group takes ownership of all issues related to hate crime and harassment. The Group oversees a programme of work across prisons and probation to eliminate

discrimination and harassment and provides a focal point for the agency's response to hate crime and hate incidents.

16. As well as taking ownership of issues related to disability-motivated hate crime and harassment, we agree with the Commission that it is important for criminal justice agencies to demonstrate public accountability and transparency concerning their handling of hate crime.
17. To help fulfil their duties under the Equality Act 2010, all Government Departments have now published Equalities Objectives⁴. For the criminal justice agencies, those published by the Ministry of Justice include objectives for HMCTS and for NOMS. The CPS has also published its own Equality and Diversity objectives which include a number of relevant actions, to which the organisation can be publicly held to account⁵.
18. To demonstrate public accountability and transparency on equalities more broadly, the criminal justice agencies also publish annual equalities reports. NOMS produces an equalities annual report⁶ which brings together equalities data on staff and offenders, demonstrating public accountability and allowing an assessment of the extent to which it has complied with its equalities policy statement and the legislation that underpins it. Demonstrating public accountability on hate crime specifically, the CPS publishes a **Hate Crime**

⁴ The Equality Act 2010 requires public bodies to publish information to show their compliance with the public sector equality duty, at least annually; and to set and publish one or more equality objectives, at least every four years. Departments' equality objectives can be found at: Ministry of Justice, www.justice.gov.uk/downloads/publications/corporate-reports/MoJ/2012/moj-equality-objectives.pdf, Home Office, www.homeoffice.gov.uk/publications/about-us/corporate-publications/equality-objectives/equality-objectives?view=Binary, Department for Communities and Local Government, www.communities.gov.uk/documents/corporate/pdf/2153837.pdf, Department of Health, www.dh.gov.uk/health/2012/04/equality-objectives-2012-16/, Department for Transport, www.dft.gov.uk/publications/equality-objectives/, Department for Education, www.education.gov.uk/aboutdfe/policiesandprocedures/equalityanddiversity/b00202789/equality-commitments, Department for Work and Pensions, <http://www.dwp.gov.uk/docs/equality-objectives-2012.pdf>

⁵ Crown Prosecution Service, www.cps.gov.uk/publications/equality/equality_diversity_objectives_2012-15.pdf

⁶ National Offender Management Service, equalities annual report, available at www.justice.gov.uk/downloads/publications/noms/2011/equalities-annual-report-2010-11.pdf?type=Finjan-Download&slot=00000170&id=0000016F&location=0A644212

and Crimes against Older People annual report⁷, which reports on hate crime performance, both nationally and broken down by CPS areas, and includes wider issues such as community engagement, policy development, research and casework scrutiny.

19. Beyond the criminal justice system, in health the Director-General level Equality and Human Rights Assurance Group, which oversees the Department of Health's performance in meeting its equality and human rights responsibilities, will include disability-related harassment into its work programme and discuss the delivery of Department's contribution to government-wide efforts in its future meetings.
20. To help NHS organisations improve their equality performance and comply with the Equality Act 2010, the NHS Equality and Diversity Council launched the Equality Delivery System (EDS) last year. The EDS provides a common framework to support NHS organisations to address all protected characteristics covered by the public sector equality duty and help them deliver better outcomes for patients and better working environments for staff, which are personal, fair and diverse.
21. The Department of Health has also become better informed about the issue of disability hate crime through the work of one of its key stakeholders and member of the National Learning Disability Programme Board, the National Forum of People with Learning Disabilities, which led a campaign for action on disability hate crime and keep the Department's Board and Ministers informed of issues of concern to people with learning disabilities.

⁷ Crown Prosecution Service, Hate Crime and Crimes against Older People annual report, available at www.cps.gov.uk/publications/docs/cps_hate_crime_report_2011.pdf

2. Definitive data is available which spells out the scale, severity and nature of disability harassment and enables better monitoring of the performance of those responsible for dealing with it.

Partially Accept

Lead responsibility: Home Office, Ministry of Justice, Office for Disability Issues

22. The Coalition's Programme for Government included a commitment to improving the recording of hate crimes. We agree that it is important to collect useful data to give us a better picture of the scale, severity and nature of all forms of hate crime to help the police and local areas use their resources more effectively. We are delivering on that commitment, and this summer, police figures on reported hate crimes, including disability-motivated hate crimes will be published as Official Statistics for the first time. However, we recognise that, because our data on hate crime depends on victims having the confidence to come forward and report crimes, a complete measure may not be feasible. The Commission has made a number of detailed recommendations as to the form that data collection should take, which the Government and relevant agencies are now analysing in detail.
23. A range of data is already collected concerning disability hate crime. This includes data relating to the hate crimes that are reported to the police, to victims' experiences of hate crimes which they may or may not report, and to the prosecution and sentencing of perpetrators.
24. When considering the Commission's recommendations, it is therefore important that we ensure our existing sources of data are being used as effectively as possible. As a first step we published analysis of data on the extent of and perceptions towards hate crime from the 2009/10 and 2010/11 British Crime Survey (BCS) on 29 March 2012⁸. The BCS data indicated that

⁸Home Office, March 2012, British Crime Survey, available at www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/crime-research/hosb0612/

there were some 65,000⁹ disability hate crimes a year on average in contrast to 1,569 that were recorded by the police in 2010. This underlines the importance of our efforts to build victims' confidence to come forward.

25. The Ministry of Justice and HMCTS are working together with the CPS to explore opportunities for improved sharing and collection of data concerning the prosecution of perpetrators. The CPS is also working with the police to explore how the recording of data regarding individual victims of hate crime can be improved, and to consider the most appropriate way of collecting data on the protected characteristics of all victims of crime.
26. In addition to the steps identified here, we will continue to work with the relevant agencies and the Commission to consider any other steps that could be taken to improve the collection and dissemination of existing sources of data relating to disability hate crime. We also plan to hold a seminar with key academics and stakeholders, to consider the evidence and research available on disability hate crime.

3. The criminal justice system is more accessible and responsive to victims and disabled people and provides effective support to them.

Accept

Lead responsibility: Ministry of Justice, Crown Prosecution Service

27. The Government welcomes the Commission's consideration of how the criminal justice system can be accessible and responsive to disabled victims. To reflect the commitment made in the Coalition Programme for Government, to improve the recording of hate crimes, the Government's plan to tackle hate crime includes several actions, including a commitment by the CPS to engage with communities at risk of hate crime to raise awareness of the law on hate crime; and the commitment by the cross-Government Hate Crime Programme to work with voluntary sector organisations to establish, review and disseminate good practice on alternative methods of reporting hate crime.

⁹ The number of incidents is derived by multiplying incidence rates by the population estimates for England and Wales and are averaged over two survey years. They include both personal and household crime related to disability.

28. We agree with the Commission that it is important for the police and prosecution services to consider whether a victim's disability may be a factor in why a crime occurred. Although the victim's perception is the key factor in determining whether the crime was motivated by hostility towards disability, CPS guidance is clear that prosecutors are not prohibited from treating a case as a disability hate crime because the victim does not perceive the incident to be motivated by disability¹⁰. Prosecutors have a duty of continuous review, i.e. to reconsider the case in the light of emerging evidence or information. Current guidance stresses the need to look for motivation, but each case must be considered on its merits in accordance with the code for Crown Prosecutors.
29. The Government is committed to providing appropriate support for all victims of crime, and, to providing specialist support for victims of specific crimes, including hate crime. The Ministry of Justice committed to provide £2.1m of funding over three years from 2011 to 2014 to 19 organisations which work with victims of hate crime, including several organisations which focus on disability hate crime. The Home Office also committed to fund 13 organisations working to tackle hate crime from the Home Office Community Action Against Crime Innovation Fund over two years from 2011/12 to 2012/13, which also includes many organisations focused on tackling disability hate crime¹¹. The cross-Government Hate Crime Programme will work to identify good practice from project funds for wider dissemination.
30. The Ministry of Justice is currently reviewing victims' services, including the Code of Practice for Victims of Crime, to ensure that all victims receive the most appropriate support throughout the criminal justice process. We are changing the way victims' services are commissioned to enable local victim support groups to provide support that is responsive to local needs. Some specialist services, including support for victims of human trafficking and those bereaved through homicide will continue to be purchased on a national basis. We have set out our plans in this area in the Government's response

¹⁰ Crown Prosecution Service, March 2010, Disability Hate Crime – Guidance on the distinction between vulnerability and hostility, available at http://www.cps.gov.uk/legal/d_to_g/disability_hate_crime_/index.html

¹¹ A full list of the projects funded under both programmes can be found at www.justice.gov.uk/downloads/information-access-rights/transparency-data/moj/vic-witness-general-fund-awards.pdf and www.homeoffice.gov.uk/publications/crime/innovation-fund-successful-apps

to our consultation, '**Getting it right for victims and witnesses**', which was published on 2 July 2012¹².

31. The CPS is also currently conducting a review of its commitments for victims and witnesses. As part of this review, pilots are being carried out with a view to focusing enhanced services to all intimidated and vulnerable witnesses and those most in need, including victims of hate crime. Quality assurance systems will be put in place once the review has reported, in order to ensure that new commitments are being properly met.

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| 4. We have a better understanding of the motivations and circumstances of perpetrators and are able to more effectively design interventions. |
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Accept

Lead responsibility: Ministry of Justice, Office for Disability Issues

32. In order to ensure that our action to prevent disability harassment is as effective as it can be, we need to understand more about public attitudes towards disabled people and disability. To aid our understanding, the ODI is considering the feasibility of including a disability module of questions in the 2013 British Social Attitudes Surveys (BSAS), which aims to measure public attitudes towards disabled people and disability. ODI ran a module of questions relating to disability in the 2005 and 2009 British Social Attitudes Surveys¹³. As noted previously in response to the Commission's recommendations concerning the collection of data, it is important to ensure that we make maximum use of existing sources to ensure that any new analysis focuses on priority data gaps. Building on the existing BSAS survey will provide one such opportunity.
33. The cross-Government Hate Crime Programme will support and keep abreast of research undertaken by external bodies. For example, the Programme is engaged with a pilot research project proposed by Nottingham Trent University, which aims to gain an understanding of the circumstances and motivations of disability hate crime offenders. The Welsh Government

¹²Ministry of Justice, July 2012, Getting it right for victims and witnesses, available at <https://consult.justice.gov.uk/digital-communications/victims-witnesses>

¹³ Office for Disability Issues, January 2011, Public Perception of disabled people, 2009, available at <http://odi.dwp.gov.uk/docs/res/ppdp/ppdp.pdf>

has also commissioned research in Wales on the perpetrators of hate crime which is being taken forward jointly between Cardiff and Manchester Universities and is due to be completed by September 2012. As set out in the Government's plan to tackle hate crime, the Government will continue to work with Local Criminal Justice Boards to identify opportunities for supporting projects that consider the motivations and circumstances of perpetrators.

5. The wider community has a more positive attitude towards disabled people and better understands the nature of the problem.

Partially Accept. We propose amending this recommendation as follows:

Work with disabled people and their organisations and other stakeholders to help change perceptions of disabled people in the wider community.

Lead responsibility: Office for Disability Issues

34. One of the key themes of the **Fulfilling Potential** discussion document looked at “changing attitudes and behaviours”. We asked for examples of good practice as well as new ideas for practical ways to promote positive attitudes and behaviours towards disabled people, and to tackle discrimination and harassment wherever they occur.
35. In September we will publish a summary of responses to ‘**Fulfilling Potential**’ and a summary of current and planned actions across Government. Alongside this, we will outline our next steps based upon the issues and ideas disabled people have told us about. This will include our strategic narrative, priority areas for further action, and how we will continue to work with disabled people to deliver positive outcomes. It will also outline how we will explore what public, private and third sectors organisations can do to change attitudes by working together.
36. In the autumn we will publish an analytical document drawing on statistics and research, to explore the nature of disability in the UK today, and following on from this, and continuing to draw on joint working with disabled people, we will publish a further strategic document and action plan in the New Year.
37. In the meantime, the Office for Disability Issues will continue work to fulfil our commitments in the Government's plan to tackle hate crime, which

include using the 2012 Olympic and Paralympic Games to change perceptions of disabled people and working with Disabled People's Organisations and supporting other organisations, such as the Press Complaints Commission and the organisation that will replace it, to address negative media stereotypes of disabled people.

6. All frontline staff who may be required to recognise and respond to issues of disability related harassment have received proper training.

Accept

Lead responsibility: All

38. Training on recognising and responding to issues of disability-related harassment is an integral part of ensuring an appropriate response by public authorities and effective safeguarding against further incidents. To promote this learning, the Government provided funding towards a police Hate Crime Conference which was held in March 2012. The Conference was attended by representatives from a wide range of police forces, as well as by academics, voluntary organisations and victims of hate crime. Lynne Featherstone MP, Parliamentary Under-Secretary for Equalities and Criminal Information, and Maria Miller MP, Minister for Disabled People, attended the conference and joined senior police colleagues to provide guidance and inspiration to professionals on tackling hate crime. The conference featured a full day dedicated specifically to disability-related hate crime and harassment.
39. The Government notes that specific training packages on hate crime, and on equality issues more broadly, are already in place for frontline staff in criminal justice agencies. The CPS provides its prosecutors with a series of e-learning packages on hate crime, including a new package added in January 2012, developed in partnership with MIND, on supporting vulnerable victims and witnesses with mental health issues and learning disabilities.
40. The CPS also operates a live notice board which enables prosecutors to share knowledge and best practice on prosecuting hate crimes. A conference was also held for CPS Hate Crime Coordinators in December 2011, which prompted a number of initiatives around identifying and sharing good practice including a message board specifically for disability hate crime, FAQs for prosecutors on disability hate crime, preferred support structures for Hate

Crime Coordinators and a pilot Navigators' Workshop for advice agencies working with clients who may be victims of disability hate crime.

41. General equality and diversity training is already mandatory for all HMCTS staff. The training includes guidance on the relevant responsibilities of staff; including building awareness around disability issues, promoting equality and diversity, and challenging discrimination. HMCTS staff are also issued with detailed guidance on making reasonable adjustments for court users and disability fact sheets to support them in assisting court users with disabilities.
42. NOMS provides **Challenge It, Change It** training to all staff, designed to equip them to respond appropriately to inappropriate behaviour of all kinds, including disability-related harassment. Training for new prison officers includes a session on how to ensure the safety of prisoners, and a specific example about how to recognise and respond to disability-related harassment is being developed for inclusion within this.
43. Beyond the criminal justice system, in the transport sector the Department for Transport will seek to ensure that disability awareness training provided by transport operators includes modules on disability-related harassment, and involving relevant stakeholders. The Department is exploring with the Traffic Commissioner the development of a Code of Practice for bus operators aimed at reducing harassment on the bus network.
44. In the health sector, the Government published the statutory guidance on adult abuse called '**No Secrets**' in 2000. This gave local authorities the lead role in coordinating inter-agency arrangements to prevent and respond to the abuse of adults. This responsibility included ensuring clear understanding, at a strategic and operational level, across agencies about what constitutes abuse and how to respond to suspicions. '**No Secrets**' highlighted the need for training for staff and volunteers and the desirability of joint training. The guidance explicitly stated that "**Abuse is a violation of an individuals' human and civil rights by any other person or persons**". The Department of Health has made it clear that harassment and intimidation are forms of abuse, including that which is associated with a person's disability.
45. '**No Secrets**' remains in force but the Government is determined to improve the law and practice in this area. As part of a wider reform of adult social care law, we plan to introduce primary legislation that will both

strengthen the role of statutory organisations in this area and make them more locally accountable.

46. In education, the Department for Education has made clear the importance of schools having clear anti-bullying policies in place in its updated advice to schools, published in July 2011¹⁴. The Department was clear that different schools find that bullying is motivated by different issues (for example disability or gender), depending on their school population, and staff need to gather intelligence on what is causing bullying and conflict, and develop an approach that is targeted at those specific issues.
47. The Government recognises the importance of ensuring that training for front line staff, particularly those in the criminal justice agencies, is kept up to date. The CPS is planning to review the training on hate crime currently available for its staff this summer; and HMCTS is reviewing its training provision for front line staff with a view to building on its existing equality and diversity training. As committed to in the Government's Plan to tackle hate crime, the cross-Government Hate Crime Programme will work with voluntary organisations to identify practitioner roles where training on hate crime is not currently available and to develop tools to assist them in dealing with hate crime cases.

7. Promising approaches to preventing and responding to harassment have been evaluated and disseminated. We recommend that public bodies conduct rigorous evaluation of their current response and prevention projects, so that a shared knowledge can be built about the most effective routes to deal with harassment and reduce its occurrence.

Partially Accept

Lead responsibility: All

48. The Government is committed to ensuring that the criminal justice system's response to hate crime and safeguarding against incidents is effective and keeps up to date with the hate crime landscape. In the Government's plan to tackle hate crime, we have committed to several

¹⁴ Department for Education, July 2011, Preventing and Tackling Bullying - Advice for School Leaders, staff and Governing Bodies, available at www.education.gov.uk/publications/standard/publicationDetail/Page1/DFE-00062-2011

actions which focus on sharing local examples of good practice, and we are committed to keeping abreast of new research on hate crime and the motivations of perpetrators.

49. The Government is already conducting a wide ranging review of its support for victims and witnesses, including those who have experienced or witnessed hate crime. As detailed in this response, individual criminal justice agencies are also conducting their own reviews of the services they provide and the relevant training they offer to their staff.
50. Beyond the criminal justice system, in education the Government believes that it is important that schools work in partnership and learn from one another, and this is one of the key principles underpinning the Department for Education's reforms. At the heart of this is the creation of teaching schools designed to share and foster good practice, play a key role in the training and development of teachers and improve and close the gaps in attainment.
51. Another example of the Government's commitment to learning from and sharing best practice is in the transport sector, where the Department for Transport will be working in partnership with the police, voluntary sector and transport authorities such as the Passenger Transport Executives to identify how incidents can best be reported, building on existing good practice.
52. We note, however, that Government's vision of the future delivery landscape is for local agencies to take lead responsibility for their own performance and delivery, held to account by their local community. The Government's role is to set the strategic direction and to promote the sharing of best practice between local areas.

Criminal Justice System Response

53. The Government's response to the Commission's recommendations on behalf of the criminal justice system in England and Wales is set out below. In addition to the Ministry of Justice, the Home Office and the Attorney General's Office, this comprises the Police, responsible for the initial response to hate crimes and incidents and anti-social behaviour; the Crown Prosecution Service, responsible for the prosecution of hate crimes; HM Courts and Tribunals Service, responsible for the administration of these prosecutions; and the National Offender Management Service, which works to protect the public from, and reduce reoffending by, hate crime offenders, and is responsible for tackling any disability-motivated hate crimes and incidents which occur within the prison system.
54. It is important to note that this response does not address those recommendations relating to operational police matters, which will be subject to a separate response by Association of Chief Police Officers (ACPO). However, ACPO continues to work closely with the Home Office in the development of policing policy. Although the Crown Prosecution Service is included in this response, it will also be providing its own response to the Commission's report, addressing its recommendations for the prosecution of hate crime in detail.
55. The Government's response to the Commission's targeted recommendations concerning the criminal justice system is set out below. Where these matters are devolved they will be subject to separate responses by the devolved administrations. The Welsh Government has accepted four targeted recommendations made within a bespoke report produced by EHRC in Wales which will be implemented during the development of a Framework for Action on Hate Crime, by spring 2013. However, criminal justice matters in respect of the Welsh Government are not devolved and are covered as part of this response. For ease of reference, the Commission's targeted recommendations have been addressed thematically for each sector.

National Government

56. The Commission suggests that national policy makers in government could usefully encourage greater innovation in responses. For example, it suggests that there may be a role for service guarantees to provide greater confidence to disabled people, and that other non-criminal sanctions might be effective, such as modifications to the social housing tenancy agreements of known perpetrators. We note that the Government's plan to tackle hate crime included a specific commitment to assess the scope for alternative disposals, including restorative justice, to offer an alternative response to some hate crime.

The Home Office and Ministry of Justice

Research

Commission primary research on disability related harassment to help fill the knowledge and data gaps. This should include:

- 1. The economic and social costs of disability-related harassment**
- 2. How the criminal justice system treats victims of harassment to improve the chance of a successful prosecution**
- 3. Whether any specific groups of disabled people are more prone to particular forms of harassment and targeted crime**
- 4. Improving the understanding of how people with multiple identities are targeted and subsequently responded to.**

Partially Accept

57. There is clear evidence to show that being targeted because of who you are has a greater impact on your well-being than being a victim of a 'non targeted' crime¹⁵ and this is reflected in legislation, where enhanced sentencing powers are available to courts dealing with hate crime offenders. As noted previously in response to the Commission's core recommendation regarding the collection of data, we will need to take steps to ensure that existing sources of data are being used as effectively as possible before we could consider commissioning any new primary research. The Government recognises that there are some opportunities to improve the collection and availability of findings from existing data sources. We are currently reviewing existing sources to identify any priority gaps that need to be filled.

58. One notable achievement is the recent publication of findings from the British Crime Survey (BCS) 2010/11 which included the extent of and

¹⁵For instance Iganski P, Hate Crimes Hurt More, 2001 and Hate Crime and the City, Policy Press, 2008, pp. 6–17, 74–86 Garcia L, McDevitt J, Gu J and Balboni J, Psychological and Behavioural Effects of Bias and Non-Bias Motivated Assault, Final Report, National Criminal Justice Reference Service, December 1999, pp. 53–55, 87 and 94–95.

perceptions towards hate crime¹⁶. The report combines the last two years' data on hate crime, in order to make robust conclusions concerning respondents' experiences of hate crime. The report provided valuable information regarding the volume of hate crime experienced in England and Wales and the proportion of these that are reported to the police.

59. We do recognise the need for new research into the motivations and circumstances of offenders. The Ministry of Justice is engaged with a pilot research project in Nottingham, which will examine some of these issues at a local level, with a view to disseminating the findings to other areas.

Clarity over who has lead responsibility for dealing with harassment

Take the lead in working with other departments to clarify the ambiguity between statutory agencies over who has lead responsibility for dealing with harassment.

Partially Accept

60. The term "harassment" used in the Commission's inquiry covers both criminal offences and incidents, which fall short of the criminal threshold. The police have a clear responsibility for dealing with criminal offences. However, incidents which can often be described as anti-social behaviour in the first instance are reported to a number of agencies, including the police, local authorities and social landlords.
61. We agree that once harassment has been reported, agencies should work together to protect the victim from harm, with clear accountability for doing so. In the Government's plan to tackle hate crime, the Home Office and the Association of Chief Police Officers (ACPO) have committed to working with police forces, councils and housing providers to improve handling of public calls about anti-social behaviour, to identify possible hate crimes and individuals who are at risk. This builds on the findings of trials conducted by eight police forces and their local partners last year, to improve the service to

¹⁶ Home Office, April 2012, Hate crime, cyber security and the experience of crime among children: Findings from the 2010/11 British Crime Survey. Supplementary Volume 3 to Crime in England and Wales 2010/11, available at www.homeoffice.gov.uk/science-research/research-statistics/crime/crime-statistics/british-crime-survey/

repeat and vulnerable victims of anti-social behaviour. A Home Office summary report on the trials, Focus on the Victim was published in April 2012¹⁷. The Crown Prosecution Service (CPS) and ACPO are also committed to developing closer working relationships across this agenda and are exploring how this might work in practice.

62. However, whilst there is a clear need for agencies to work together to deal with harassment, the right agency to take the lead will depend on local circumstances. We do not believe it would serve the best interests of victims for the Government to dictate a single lead agency. The Government's response to the Commission's wider recommendations will consider this in the context of agencies outside the criminal justice system.

Amending and Reviewing Legislation

Amend Schedule 21 guidance to give parity in sentencing guidelines for all types of identity-based hate crime murders.

Conduct a review to consider the potential benefits of specific offences motivated by hostility towards disability.

Accept

63. The Government believes that disability hate crime should be viewed just as seriously as that motivated by hostility on the grounds of race, religion, sexual orientation or transgender. The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO), which received Royal Assent on 1 May 2012, amends the Criminal Justice Act 2003 so that murders motivated by hatred or hostility towards disabled or transgender victims will have the same starting point as for murders aggravated by race, religion and sexual orientation. This amendment will mean that murders aggravated on the basis of hostility towards the victim on the grounds of transgender identity or disability will attract a 30 year starting point, which in many cases will have the effect of doubling the current starting point for the calculation of the minimum tariff for life sentences in such hate crime murders.

¹⁷ Home Office, April 2012, Focus on the Victim, available at www.homeoffice.gov.uk/publications/crime/asb-call-handling-trials-report/asb-focus-on-the-victim

64. The LASPO Act also updates the Criminal Justice Act 2003 so that where any offence is shown to be motivated by hostility towards the victim on the grounds of transgender, as well as race, religion, sexual orientation, and disability, sentences must be made more severe. This will mean all five monitored strands of hate crime will be reflected equally in these provisions. The provisions are likely to be commenced in November, together with most of the other sentencing provisions in the LASPO Act.
65. The Government's plan to tackle hate crime commits us to conducting a review of sentences for offences motivated by these characteristics, in order to consider whether there is a need for specific offences. We will also carefully review any relevant evidence provided to consider whether there is a need to change the law on stirring up hatred on the grounds of disability. It is important to note that cyber-bullying and harassment (even where individual instances would not in themselves constitute a criminal offence) would already be subject to the Malicious Communications Act 1988 and the Protection from Harassment Act 1997 respectively; any evidence in support of an incitement offence would need to clearly demonstrate the existence of behaviours which would meet the necessary threshold for a criminal offence of stirring up hatred.
66. We note the emerging challenges that exist in relation to cyber-bullying and hate crime committed via the internet. The Government's plan to tackle hate crime includes a specific commitment for the cross-Government Hate Crime Programme to work with industry, the police and EU institutions and other international organisations to develop a programme of work to tackle hate crime on the internet. One initiative where work is already underway is the formation of an International Task-Force, which includes parliamentarians, academics, law enforcement and legal experts. The Task-Force has recently been joined by representatives of Internet bodies, such as Facebook and Google and it will report to the Inter-Parliamentary Coalition to Combat Antisemitism, which covers all forms of hate crime, including the harassment of disabled people.

Introducing national reports and plans on disability related harassment

Consider the introduction of national reports and plans on disability related harassment to ensure joined up national approaches are built into the planning procedures of all government agencies.

Reject

67. Whilst we accept the need for transparency and for agencies to reassure communities that hostility is being addressed, we believe that it is most appropriate for such reports to have a local rather than national perspective.
68. The Government has set out a new approach to cutting crime, based on freeing professionals from top-down micro-management and performance targets, and making the police democratically accountable to the communities they serve. Elected Police and Crime Commissioners, street-level crime maps and regular beat meetings will all focus police forces on the issues that matter to local people. This means local areas will be free to develop hate crime strategies that reflect local needs, rather than the concerns of those across Whitehall. In that new landscape, the Government's role is to focus on doing the things that only Government can do, rather than telling professionals how to do their jobs. That means: setting a strategic direction; making information available; sharing new ideas and examples of what works; and, where necessary, passing legislation.
69. The future delivery landscape is for local agencies to take lead responsibility for their own performance and delivery, held to account by their local community. The cross-Government Hate Crime Programme will work with local areas to identify and share good practice and offer support where required.

Considerations for the Criminal Justice Sector as a Whole

‘Special measures’, a procedure that we have mentioned throughout this report aimed at ensuring disabled people can access the justice system, is an unhelpful term, and is currently failing to be embedded effectively in criminal justice systems. We recommend a change of language to focus on providing an equitable service. We are open to those services considering the most appropriate language themselves, but suggest the following options for consideration:

- **‘equalising’ measures**
- **‘fair trial’ measures**
- **we also recommend that the procedure for ‘special measures’ be turned on its head. If you need special measures, there should be a rebuttable presumption that you will receive them rather than the current ‘bolt on’ approach which is also overly complicated to process. These systems need to be simplified and streamlined, which will also take unnecessary costs out of the system.**

Reject

70. The Commission proposes that the criminal justice sector should consider a change of language for special measures in court proceedings, to focus on providing an equitable service. It is important to note that the term ‘special measures’ is defined in the Youth Justice and Criminal Evidence Act 1999, and that their purpose is not to act as “equalising measures”, but is to enable eligible victims and witnesses to give their best evidence in criminal proceedings.

71. Special measures are available to courts not just for disabled victims and witnesses but also to those who are deemed vulnerable due to their circumstances and/or the nature of the crime, including children, victims of domestic violence, and those who are intimidated. It is also important to note that not all disabled victims and witnesses will require special measures to provide evidence. In light of this, we do not agree that a change of language concerning special measures would be helpful.

Likewise the term ‘hate crime’ is unhelpful. Many of the acts of hostility and harassment we have highlighted in this report are not recognised as ‘hate’ crimes by either victims or service providers and failure to recognise is resulting in a failure to act effectively. We believe that a single new terminology should be adopted, and suggest the following alternatives are considered:

- **‘disability motivated’ crimes and incidents**
- **‘identity-targeted’ crimes and incidents**
- **‘hostility’ crimes and incidents.**

Reject

72. The Commission also proposes that the criminal justice sector consider a change of language in respect of the term ‘hate crime’ to aid the recognition of responsibility to provide an equitable service. The Commission notes that many of the acts of hostility and harassment highlighted in the report are not recognised as ‘hate crime’ by either the victims or service providers.
73. Hate crime is a nationally and internationally recognised concept. It is a term used by international bodies and observers, which allows external scrutiny and international cooperation. A move away from the language of hate crime may lose the benefits that are derived from such cooperation and scrutiny. The development of policy, legislation and public understanding of hate crime issues in the UK, which was brought around by the 1999 inquiry into the murder of Stephen Lawrence, has established the UK as one of the world leaders in responding to hate crime and the we have a valuable contribution to make in cooperating with other countries to share our experiences on tackling hate crime.
74. Since disability was added to the monitored strands of hate crime in 2007, the Government and criminal justice agencies have worked to raise awareness of the issue amongst victims, advocates and professionals, and we have seen the number of disability hate crime offences recognised and recorded by the police double between 2008 and 2010.
75. While it is important to recognise the focus of this Inquiry is on disability-related harassment, the Government is committed to protecting victims of all crimes motivated by hatred of a particular characteristic. Supporting a single

terminology in the manner proposed by the Commission would serve to overlook efforts to recognise combined strands of hate crime. For example, some victims of disability-related harassment may also be lesbian, gay, bisexual or transgender.

76. We believe that to review and change terminology would result in confusion and could set back the Government and criminal justice agencies' efforts to improve awareness and the provision of relevant services. We also note that the Government has had strong representations from disabled people's organisations that have called for recognition of disability as a strand of hate crime policy, together with calls for the same advances that have been seen in response to racist and other hate crime strands since the inquiry into the murder of Stephen Lawrence. The Government remains committed to raising awareness of hate crime, including disability hate crime, amongst the public and the relevant professionals.

The Police

77. The Government's position is clear – that the police's number one priority is to cut crime. However, reducing bureaucracy in policing is part of our broader objectives of freeing up the police service from central control, building professional responsibility and returning accountability to the public through the introduction of Police and Crime Commissioners. We recognise that police forces have a vital role to play in responding to hate crimes and incidents motivated by hostility towards disability and we will continue to set the strategic direction for the police in this area. As the Commission's detailed recommendations address operational police matters, it is most appropriate for individual forces to respond separately.

Prosecution Services

CPS Monitoring

Comprehensive monitoring systems should be introduced to identify whether victims of crime are disabled and the outcome of interventions to assist them.

Recording systems should be:

- **able to record whether the victim was disabled (along with other protected characteristics)**
- **able to record whether hostility/prejudice to disability was a motivation.**

Clear training, guidance and procedures on recognising and recording disability related harassment should be provided.

Hate crime and hate incident levels should be separately identified within crime figures.

Information on how many reported incidents in a local authority area were recorded as crimes and how many have resulted in prosecution should be published.

Accept

78. The Government notes that there are already systems in place to identify whether victims are disabled and the outcomes of interventions to assist them, but that the data collected is not sufficiently robust to draw conclusions. The relevant information is captured by the police and Witness Care Units. The CPS and ACPO are committed to ensuring that this data collection is as effective as possible, and the CPS has highlighted this issue in its draft Disability Hate Crime Action Plan.

79. We also note that disability hate crime may be flagged as such at any point during a prosecution; evidence of hostility is thereby actively sought and considered by the CPS throughout the duration of the case. The outcomes of all disability hate crime cases are reported and made publicly available

through the CPS' **Hate Crime and Crimes Against Older People annual report**.

80. The Government agrees that there should be clear training, guidance and procedures in place for recognising and recording disability related harassment. This training is considered in our response to the Commission's core recommendation concerning training.
81. Hate crime and incidents are recorded separately by the police and CPS, and are separately identified within crime figures. Whilst the Government agrees with the Commission that it is important to understand how many recorded hate crimes result in a prosecution, producing this information is not a straightforward task. Current practice is that ACPO publishes police force area-level hate crime data based on police force areas, while the CPS provides area-level hate crime prosecution data based on CPS administrative areas. From this summer, police force area-level hate crime figures will be published as Official Statistics for the first time. The CPS will consider with ACPO and police forces whether it is possible to improve the geographical matching of this data.

Supporting victims during criminal proceedings

Good quality accessible and independent advocacy should be available to disabled people throughout a case, enabling them to get the support that they need.

Access audits of the support services offered to victims should be undertaken to establish where disabled people are receiving inadequate support and remedies to providing equitable services provided.

Appropriate and accessible independent advocacy and support services, which should be drawn to the victim's attention by the police and/or prosecuting authorities, should be available to the victim throughout and, where necessary, beyond the prosecution process.

Courts need to take proactive steps to support victims appropriately within an adversarial court system. For example, attention should be paid to ensure that a victim's impairment is never used inappropriately during court proceedings, for example to cast doubt on their reliability as a witness.

Accept

82. The Government provides funding to a range of voluntary sector organisations which offer emotional support, practical assistance and advocacy, assistance with insurance and compensation claims, and personal safety and crime prevention advice to victims of crime. These include organisations which specialise in providing support to victims of specific crimes, including hate crime. Victim Support's Witness Service also provides support to witnesses during a trial. Voluntary support organisations are able to continue supporting victims beyond criminal proceedings if necessary.
83. We are currently conducting a broad review of victims' services, which has included a public consultation, to ensure all victims receive the most appropriate support throughout the criminal justice process.
84. The CPS is also currently conducting a review of its victim and witness commitments. Pilots are being carried out with a view to focusing enhanced

services to all intimidated and vulnerable witnesses and those in greatest need, including the victims of hate crime. There will be quality assurance systems put in place once the review has reported and been evaluated in order to ensure that new commitments are being met.

Sentencing

Where there is evidence of hostility/prejudice, police should gather evidence to support a prosecution under section 146 of the Criminal Justice Act 2003 (England and Wales) or the Offences (Aggravation by Prejudice) (Scotland) Act 2009 and prosecutors should prosecute as an aggravated offence. The courts should be clearer about when and how sentence uplifts are applied, and what the different sentencing outcomes were as a result.

Support

85. The Government notes that the courts already have a duty under Section 146 of the Criminal Justice Act 2003 to explain in open court that the offence was one where the offender was motivated by, or demonstrated towards the victim, hostility on the basis of the victim's disability. Section 174 of the Act also places a duty on the court to explain the reasons for deciding on the sentence. As noted in response to the Commission's core recommendation relating to data collection, we have identified an opportunity to improve the data collection regarding the application of Section 146. The Ministry of Justice will be working closely with HMCTS and the CPS to consider how this may be improved.

The new sentencing guidelines in England and Wales provide opportunity to re-assess and monitor consistency of sentencing for disability-related harassment offences. We recommend those opportunities are taken up to help provide an overview of the scale of the issue and how it is addressed.

Partially accept

86. The Sentencing Council is responsible for monitoring the operation and effectiveness of its sentencing guidelines. The information for this is collected through the Council's Crown Court Sentencing Survey which looks at the factors taken into account when sentencing. The Sentencing Council's

new guideline for assault offences specifically refers to the statutory aggravating features of an offence motivated by hostility on the basis of race/religion, sexual orientation or disability. Therefore, in the case of recent assault offences, the survey will indicate how often the presence of these features affects the sentence. The survey results will be published annually; the results for 2011 will be available in late May 2012.

Special Measures

Police should alert prosecutors at an early stage that the victim is disabled so that the need for ‘special measures’ can be considered and applied for in good time.

Applications for and availability of ‘special measures’ should be monitored.

Current arrangements for ‘special measures’ to support victims should be reviewed and revised at the earliest opportunity (including an examination of whether the term itself is appropriate). In particular, their application should not impede or unnecessarily delay access to justice by using them in a ‘bolt on’ way. They should be mainstreamed into the provision of criminal justice services in such a way that they provide parity for disabled and non-disabled people in accessing the services.

Accept

87. The Government agrees that it is important for the need for Special Measures to be identified early, and that prosecutors and Courts are made aware at the earliest opportunity. This recommendation reflects existing practice in the criminal justice system; although it is important again to note that the purpose of Special Measures is not to act as “equalising measures”, but is to ensure that all victims and witnesses are able to give their best evidence.
88. Joint CPS, ACPO and MoJ guidance for the Police and CPS provides advice on identifying the need for Special Measures, and the MoJ will continue to work with agencies to ensure that opportunities are taken to identify the need for any Special Measures early in investigations. Courts will notify the parties of a decision on a special measures application within one day for vulnerable and intimidated witnesses and three days for all others of

the decision being made. HMCTS provides guidance to staff on Special Measures¹⁸, which is updated and publicised to staff regularly.

89. In his evidence to the Commission's Inquiry, the Director of Public Prosecutions recognised that the current system for applying for Special Measures could be improved. The CPS has carried out some internal research into the experience of applying for special measures and the draft report and recommendations is currently being considered.

¹⁸HM Courts and Tribunals Service, Guidance on Special Measures for HMCTS staff is provided in its Crown Court Manual, Magistrates' Court Manual, and Every Witness Matters Handbook.

The Courts and National Offender Management Service

Court Accessibility

Disabled people should have access to the court system and their experiences should form part of any system for evaluating the courts and criminal justice system. Courts should ensure that they are fully accessible to disabled people. All unnecessary barriers, whether legal (such as restrictions on jury service), attitudinal or physical (such as provision of advocacy or interpreter services or access to court buildings), should be removed.

We would like to see the courts service do more to proactively find ways in which disabled people can participate in improving the administration of justice in their areas.

Accept

90. The Government agrees with the Commission that court proceedings must be accessible for disabled people. Courts already ensure that arrangements and reasonable adjustments are in place for hearing dates, and offer pre-trial visits (operated by Victim Support's Witness Service) for victims and witnesses, where they are able to discuss and resolve any issues including those relating to courtroom layout, entering and leaving the building and the waiting area. All HMCTS staff are issued with guidance on reasonable adjustments, enabling them to understand the approach to reasonable adjustments and to implement them in line with the Equality Act 2010, ensuring that courts are accessible to disabled users¹⁹. Provision for interpreter services, including sign language interpreters, and intermediaries for victims and witnesses with communication impairments, are made through Special Measures and appropriate time allowances are taken into account for proceedings.

91. Reasonable adjustments are also made for disabled jurors, including the use of hearing loops, provision of evidence in different formats (such as Braille or large print), and arrangements for guide dogs. As a result many

¹⁹ HM Courts and Tribunals Service, "HMCTS Reasonable Adjustment Guidance for staff working with Public and Professional Users (Based on the Equality Act 2010)"

people with disabilities, including those with hearing impairments, can and do serve on juries. However, under common law the jury must conduct its deliberations without anyone else present; we recognise that unfortunately the effect of this is to exclude people who require the assistance of a third person in the jury room, who must be someone other than another juror, from jury service.

92. We note that customer service measures are currently in place to record the views of HMCTS users; and the organisation is currently developing a Strategic Vision which will ensure that disabled people are engaged in developing future measures, such as customer journey mapping and community engagement groups, to ensure that their views on the accessibility of court proceedings are effectively captured.

Managing Repeat Offenders

Appropriate sanctions should always be applied to convicted offenders at the earliest stage and should take account of their previous convictions. All perpetrators should be made aware of the full consequences of any repeat offending during sentencing and through all their contacts with NOMS and other agencies.

Prosecutors and those responsible for sentencing should recognise the full impact of harassment in their decisions and this should be clearly documented. This includes the wider impacts on the friends, relatives and carers of victims.

Accept

93. The Government recognises that hate crimes motivated by hostility towards disability can be the culmination of a pattern of escalating behaviour. We agree that it is important that perpetrators are made aware of the full consequences of repeat offending. During sentencing, recent and relevant previous convictions aggravate the sentence, and Section 174 of the 2003 Criminal Justice Act requires the court to explain the effect of the sentence and the effects of non-compliance.
94. Beyond sentencing, NOMS ensures that the consequence of repeat offending is made clear to offenders. Under the NOMS Offender Management Model each offender has an Offender Manager responsible for

the management of their sentence plan. Offender Managers use the Offender Assessment System to assess a wide range of factors, and the sentence plan is designed to deliver the sentence of the court through an individualised series of interventions and activities aimed at addressing these factors. In the Government's plan to tackle hate crime, NOMS has committed to producing a Hate Crime framework that will assist offender managers in identifying, assessing, intervening and managing people involved in hate related offending.

Wider Government Response

Office for Disability Issues

The Office for Disability Issues should, with other departments and disabled people's organisations, conduct a review of 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.

Accept

95. The Office for Disability issues is reviewing legislation that may treat disabled people differently to others as part of the work it is undertaking on the development of **Fulfilling Potential** - a cross-cutting strategy that aims at removing barriers and creating opportunities for disabled people.

The Department Of Health

Review the guidelines for serious case reviews to ensure that such harassment is always acted upon in prevention campaigns and in future police investigations. Serious case reviews should also be mandatory for cases involving adults at risk (as already applies to cases involving children).

Revise the 'No Secrets' guidelines in England as suggested by the Law Commission. In the longer-term, 'No Secrets' should be replaced by a rights based approach (such as the provisions in the Adult Support and Protection (Scotland) Act (2007), replacing a perception of individual vulnerability with one which sees disabled people as being 'at risk of harm'.

Review eligibility criteria for social services to better include support for social inclusion. Ideally, eligibility criteria should not be focused on vulnerability or risk of harm, but instead focus on an individual's circumstances preventing them from fully achieving their human rights, and targeting resources to enable them to do so.

Accept

96. The Caring for our future: reforming care and support' White Paper was published on 11 July 2012 which sets out the Government's approach to reforming our care and support system, including issues around safeguarding adults and the eligibility criteria for social care support. Statutory Boards will protect adults in vulnerable situations by providing leadership, ownership and co-ordination of multi-agency working at a local level, driven by the local social services authority, thereby reducing the risk of significant harm and abuse to adults. Boards will work closely in partnership with local communities to set their priorities and address the safeguarding priorities for their local area- representing the need to reflect the voice of people they will work with to keep safe.

Local Agencies and Partnerships

Adult Safeguarding Boards should be put on a statutory basis.

Accept

97. The Department of Health made a commitment to placing Adult Safeguarding Boards on a statutory basis in **Challenge it, Report it, Stop it: The Government's Plan to Tackle Hate Crime**. The commitment was first announced in a Statement of Government Policy on Safeguarding, published in May 2011.

Health and Social Care

Health and social care providers should put robust and accessible systems in place so that residents living in institutions can be confident of reporting harassment by staff or other residents.

Accept

98. Strengthening adult safeguarding arrangements, to keep people in vulnerable situations safe from significant harm, is a key priority for the Government. We are committed to preventing and reducing the risk of significant harm to adults in vulnerable situations, whilst supporting individuals in maintaining control over their lives and in making informed choices without coercion. The Government needs to create the legislative powers, set the strategic direction and take clear action to support partners in making improvements.
99. Providers of residential care are required to provide service users and those acting on their behalf with support to bring a complaint where such assistance is necessary. They must ensure that any complaint is fully investigated and, so far as is reasonably practicable, resolved to the satisfaction of the service user, or the person acting on their behalf.
100. Service users may also bring their concerns to the attention of inspection staff from the regulator, the Care Quality Commission (CQC). Outcome 17 in CQC's **Essential Standards of Safety & Quality** states that service users

should be able to be sure that comments and complaints are listened to and acted on effectively and that they know they will not be discriminated against for making a complaint. Providers must also send CQC, if requested, a summary of complaints received and action taken in response.

101. The Government published 'Caring for our future: reforming care and support' on 11 July 2012 which sets out the vision for a reformed care and support system.. The White Paper sets out the Government's plans for transforming care and support, so people 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.

Health and social care providers should review eligibility criteria to increase social interaction and reduce social isolation for disabled people.

Accept

102. The 'Caring for our future: reforming care and support' White Paper was published on 11 July 2012 which sets out the Government's approach to reforming our care and support system including issues around eligibility criteria.

Health services (especially GPs, accident and emergency and ambulance services) should ensure that their safeguarding alerts process is sufficiently robust and staff are adequately trained.

Accept

103. The Department of Health has issued high level safeguarding guidance for the NHS. Local health services are expected to translate these into local safeguarding policies and practices. Local health services are responsible for ensuring that staff are adequately trained.

104. The membership of statutory Adult Safeguarding Boards needs to be appropriate so that the Board is able to fulfil its primary objective of strategically coordinating safeguarding in the local area- core membership will require attendance from NHS organisations (Clinical Commissioning Groups) and police organisations, convened by the local authority. We are also looking at how Clinical Commissioning Groups, as part of the

authorisation process, will evidence they are working appropriately with the local authority on safeguarding matters.

Department for Communities and Local Government

Local Authorities

Local authorities should play a lead role in driving local partnerships to deliver on preventing and tackling disability related harassment.

They should invest in awareness campaigns aimed at encouraging victims of disability-related harassment to come forward.

They should ensure that good quality accessible, independent advocacy is available to disabled people, enabling them to get the support that they need.

They should undertake access audits of the support services offered to victims to establish where disabled people are receiving inadequate support and action remedies to providing equitable services.

Partially Accept. We propose amending these recommendations as follows:

Local Authorities:

- **Play a lead role in driving local partnerships to deliver on preventing and tackling disability related harassment**
- **Invest in awareness campaigns aimed at encouraging victims of disability-related harassment to come forward**
- **Ensure that good quality accessible, independent advocacy is available to disabled people, enabling them to get the support that they need**
- **Undertake access audits of the support services offered to victims to establish where disabled people are receiving inadequate support and action remedies to providing equitable services.**

105. The Government accepts the above as recommendations to local authorities. We note it is important to ensure that additional burdens are not placed on local authorities. The Government is committed to ensuring that all

new burdens on local government are fully funded, to avoid any additional pressure on Council Tax.

Housing Providers

Regeneration and social housing design and planning should involve disabled people at planning stages in order to help 'design out crime' from future developments. Housing providers should identify and implement interventions to prevent harassment occurring in the first place and develop responses to prevent escalation.

They should consider appointing a harassment co-ordinator to support improvement of responses and should support third party reporting systems. They should also invest in awareness campaigns aimed at encouraging victims of disability-related harassment to come forward.

They should include provisions against disability harassment within tenancy agreements and take action against breaches. If a disabled person is forced to move in order to avoid disability-related harassment, their security of tenure should not be adversely affected.

Accept

106. We agree that regeneration and social housing design and planning should involve disabled people at the planning stages in order to help 'design out crime' from future developments. Most social landlords already have harassment co-ordinators in place to support victims and we would expect all tenancy agreements to include provisions against disability harassment and to take action against breaches.

107. Social housing providers have shown significant commitment to tackling anti-social behaviour (ASB) and hate crime. Over two hundred social landlords have signed up to the 'Respect – ASB Charter for Housing' a sector owned standard based around seven core commitments on ASB. Social landlords have been closely involved in call handling trials with local police forces, focussed on better identifying high risk cases and vulnerable victims from the outset.

108. The Government has made it very clear that existing secure/assured tenants who move for any reason to another social rent property will preserve

their security of tenure. The Government expects landlords to focus on dealing with perpetrators rather than the victim being effectively forced out of their home.

109. We are looking at how powers to tackle perpetrators can be made more effective. The Government has recently finished consulting on proposals to introduce a new mandatory power for possession where housing related anti-social behaviour has already been proven by a court. This will make it easier for landlords to evict persistently anti-social tenants.

110. The Government has also consulted on proposals to streamline and improve the existing toolkit available to the police, social landlords and others to tackle ASB so that victims and communities can be better protected from the serious harm caused by criminal and anti-social behaviour.

The Department for Education

Commission primary research on the extent to which segregated education, or inadequately supported integrated education, affects not just the learning outcomes of both disabled and non-disabled children, but also the ability of disabled children to subsequently re-integrate into wider society, and the extent to which segregation adversely impacts on non-disabled children's views of disability and disabled people.

Reject

111. The Government wants to see the development of a diverse range of good quality provision for disabled children, whether in mainstream or special school, so that parents have a real choice of the type of school for their children and individual children can benefit from a setting which is beneficial for them.

112. We do not, however, believe that it is necessary to commission new primary research in order to do so. The special educational needs and disability Green Paper Support and Aspiration pointed to Ofsted's findings that the most important factor in determining the best outcomes for disabled children and those with a statement of Special Educational Needs (SEN) is the quality of the provision rather than its setting. The Green Paper also highlighted the benefits of schools, including special schools, working together to develop staff expertise and improve the educational experience of disabled children and those with SEN.

Keep OFSTED's ability to make limiting judgements where schools under perform in equalities-related areas, and especially in identity-based bullying.

Partially Accept. We propose amending this recommendation as follows:

Ofsted should maintain a strong focus on equalities-related areas within school inspections, particularly on identity-based bullying.

113. One of the new Ofsted core judgements is 'behaviour,' which includes looking at identity based bullying – and specifically disability related bullying –

and how schools are dealing with this. The ways in which a school handles disability related harassment and bullying will still be able to change the overall inspection judgement on a school. As well as affecting the judgement on behaviour, poor leadership on the issue or poor systems for dealing with problems would affect the judgement on leadership of the school, and in turn the overall effectiveness judgement. Measurements of equality outcomes have been woven into the four core judgements of the new Ofsted framework.

114. In addition, later this year Ofsted will be publishing a bullying survey which considers identity and prejudice based bullying, highlighting areas of good practice which will serve as a guide to the education sector.

Ensure schools with strong citizenship and human rights agendas which promote an understanding of disability share good practice with other schools as a matter of course.

Partially Accept. We propose amending this recommendation as follows:

Encourage schools, with the support of local and national leaders of education, to promote an understanding of disability and share good practice with other schools as a matter of course. The designation of teaching schools and excellent leaders such as national and local leaders of education and the new specialist leaders of education will provide a framework in which our best schools and leaders can promote an understanding of disability issues and share good practice.

115. It is important that schools work in partnership and learn from one another, and this is one of the key principles underpinning the Department for Education's reforms. At the heart of this is the creation of teaching schools, which are designed to share and foster good practice, play a key role in the training and development of teachers and improve and close the gaps in attainment. We aim to create 500 teaching schools by 2014, and 218 have been designated so far including 25 special schools. Teaching schools will be key players in the deployment of national leaders of education of which there are currently 650, with plans to expand to 1,000 by 2014. There are also 2,000 local leaders of education.

116. In addition we have created the new designation of Specialist Leader of Education (SLE). These are senior and middle leaders who will be designated and deployed by teaching schools to foster improvements in school practice, including promoting good practice in provision for those who are disabled and/or have special educational needs. The Department for Education aims to create 5,000 SLEs by the end of 2014, and of the 1,000 created so far some 71 have a specialism in special educational needs and disability.

117. We have also asked the National College for School Leadership to review the National Professional Qualification for Headship (NPQH). The new NPQH will be launched in September 2012 and includes elective modules on 'Achievement for All' and 'Closing the Gap'. The Achievement for All modules will teach aspiring heads how to improve practice and raise expectations so that all pupils, but particularly those who are disabled and/or have special educational needs, can achieve. Participants will be taught how to improve assessment, and tracking and intervention and also how to work more effectively with parents to improve wider outcomes for children and young people.

Schools and colleges should actively develop material for helping students understand disabled people and the social model of disability, and the prejudice that disabled people face within society. The training should encourage a better understanding and respect for diversity and difference. The training should also 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).

Partially Accept

118. The Government recognises the importance of pupils understanding disability, and respecting difference and recognise that schools have a role to play in developing this understanding. Schools have the autonomy to decide to do this. The Department for Education (DfE) has produced guidance for schools on compliance with the Equality Act which includes some practical advice and examples for schools and outlines details of their duty to show due regard to the need to eliminate discrimination, promote equality and

foster good relations. The guidance can be accessed at the Department's website²⁰.

Schools and colleges may wish to develop material for helping students understand disabled people and the social model of disability, and the prejudice that disabled people face within society. The training should encourage a better understanding and respect for diversity and difference. The training should also 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).

Support

119. It is effective practice for schools and colleges to develop material for helping students understand disabled people and the social model of disability, and the prejudice that disabled people face within society. The training should encourage a better understanding and respect for diversity and difference. The training should also help students know what to do when they see others perpetrating bullying and harassment, both in school and outside, for example on public transport and in public places.
120. The Government believes that schools and colleges themselves are best placed to promote the welfare of all their students. The Government agrees that it is important that students understand disability and the prejudice that disabled people face. Personal well-being is one of five broad themes included under Personal, Social, Health and Economic (PSHE) education. Diversity is one of the key concepts that underpin the study of personal well-being, which includes understanding that there are similarities as well as differences between people of different race, religion, culture, ability or disability, gender, age or sexual orientation. Pupils should be able to value the differences between people and demonstrate empathy and a willingness to learn from people different from themselves. The Department for Education is currently reviewing the National Curriculum and PSHE education, to see how they can improve on what is taught in our schools.

²⁰ Department of Education, June 2012, Equality Act Guidance, available at www.education.gov.uk/aboutdfe/policiesandprocedures/equalityanddiversity/a0064570/the-equality-act-2010

121. School Special Educational Needs Co-ordinators (SENCOs) have a key role in supporting disabled children and those with SEN in school and raising awareness of disability and SEN across the school population. All new SENCOs must now undertake training and that training must achieve certain outcomes such as an understanding of the laws and guidance on disability equality, how children's development can be affected by SEN and disability and a range of other factors including the physical and social environment in which they are taught and how to work with senior colleagues and governors to advise on and influence the strategic development of an inclusive ethos.

Schools and colleges should ensure that their procedures for identifying the bullying of disabled students and students with special educational needs are fully operative, effective, and understood by all staff and students.

These procedures should be based on a zero tolerance approach with early stage incidents, such as name calling, dealt with appropriately and firmly. It should not be assumed that harassment is committed only by, or to, other students but, potentially, by all those who work within educational establishments.

Accept

122. The DfE was clear about the importance of schools having clear anti-bullying policies in place in its updated advice to schools, published in July 2011. The Department was also clear that different schools find that bullying is motivated by different issues (for example disability or gender), depending on their school population, and staff need to gather intelligence on what is causing bullying and conflict, and develop an approach that is targeted at those specific issues. Successful schools create an environment that prevents bullying from being a serious problem in the first place. They do this by openly discussing the prejudices against differences between people that could motivate bullying, such as special educational needs and disabilities. Schools should involve pupils when they develop their anti-bullying policies so that all pupils understand the consequences of bullying and are clear about the part they can play to prevent bullying, including when they find themselves as bystanders. The DfE developed its advice with a range of organisations, including those with significant expertise in disability-related bullying, such as the Anti-Bullying Alliance and Mencap.

The growing threat posed by ‘cyberbullying’ should be recognised and dealt with on the same basis as face to face bullying. This is particularly important for schools to address as many perpetrators are young people.

Accept

123. The Government welcomes the recommendation. It is fully aligned with the Department for Education’s views on policy in this area.

124. The Commission’s report states that potential solutions may include the following: **“To reaffirm the importance of school bullying policies to include cyber-bullying, and to increase pressure on industry to protect their users in line with their corporate responsibility.”** In line with these solutions the DfE has been taking the following actions:

- The Department has updated statutory advice to school governors on how schools can use their powers to tackle poor behaviour including bullying outside school. To support schools further, the Department has published updated anti-bullying advice as part of a wider package of guidance to schools on behaviour. The advice summarises schools’ legal obligations and powers in relation to bullying (including cyber-bullying), outlines general principles adopted by successful schools, and signposts schools to further information and support from specialist organisations. Officials worked with specialist cyberbullying organisations such as Beatbullying and Childnet International when producing the advice. Those organisations are included in the list of further resources to schools and we continue to have a close working relationship with them and others, such as the Child Exploitation and Online Protection agency.
- Education Minister Tim Loughton (the Parliamentary Under Secretary of State for Children) jointly chairs the executive board of the UK Council for Child Internet Safety (UKCCIS). This brings together over 180 organisations and individuals from government, industry, law enforcement, academia, charities and parenting groups to help keep children and young people safe online. The emphasis of UKCCIS’ work is on improving the awareness of internet safety in schools, working with industry partners (such as social networking sites) to create safer online environments, and making sure that young people have the right advice and support to use technology safely, and to report cyberbullying where it happens.

- On 6 February UKCCIS launched internet safety advice which industry and others such as schools can use to develop their own internet safety messages for parents and children. The advice specifically covers the issue of cyberbullying, including stating what to do to mitigate instances of harm and how to get further help or report issues. This will help ensure consistent advice across the online services popular with children.
- The DfE sponsors Beatbullying to deliver CyberMentors which is a unique peer mentoring support programme, available to children and young people both on and offline. Cybermentors has seen tremendous success and, in January 2012 Nick Hurd, the Minister for Civil Society, announced that £1.3million of Social Action Fund money will be given to Beatbullying to expand and develop their work further.

125. The DfE would also like to suggest the following be included in the Commission’s final report, to reflect the ongoing work of the UK Council for Child Internet Safety.

“The UK Council for Child Internet Safety (UKCCIS) brings together 180 organisations and individuals from government, industry, law enforcement, academia and charities, including parenting groups. Its aim is to work in partnership to keep children and young people safe online. Working together in partnership - across industry and government in particular - is essential to creating practical and effective ways to help keep children safe online. Through the various projects operated through UKCCIS, it has proven an effective and successful forum to engage industry to improve their practices on child internet safety, including cyberbullying.”

Schools and colleges should identify and implement interventions to prevent harassment occurring in the first place and develop responses to prevent escalation and invest in awareness campaigns aimed at encouraging victims of disability-related harassment to come forward.

Accept

126. The Government has made tackling all forms of bullying, particularly bullying motivated by prejudice, one of its top priorities. This commitment was highlighted in the Schools White Paper **“The Importance of Teaching”** in 2010 and the Government has since, through the 2011 Education Act,

strengthened teachers' powers to tackle poor behaviour and bullying. The Government deplores all forms of bullying in our schools and the bullying of pupils, either by their peers or by members of the school workforce is totally unacceptable. All schools are required by law to have measures to encourage good behaviour and prevent all forms of bullying which must be communicated to all pupils, staff and parents. The DfE updated its advice to schools on preventing and tackling bullying in July 2011 to clarify the duties placed on schools. Schools are best placed to decide how best to respond to bullying and there is no single solution which will suit all schools. The Departmental advice sets out a range of effective practices which successful schools have used in tackling bullying. This includes preventing bullying from occurring; intervening to deal with bullying; and making it easier for pupils to report bullying. The advice also lists specialist organisations where schools can go for advice and help.

Schools and colleges should ensure disabled pupils and those with special educational needs are able to participate in all school/ college and after school/college activities on an equal basis with non-disabled pupils.

Accept

127. Schools are already under a duty to ensure that, so far as is practicable, children with special educational needs, and disabled children, engage in the activities of the school together with children who do not have SEN and statutory guidance supports their full participation in school life. Under the Equality Act 2010, schools have a duty to make reasonable adjustments so that disabled children are not discriminated against by being prevented from participating in school activities. The DfE would, of course, encourage schools to comply with their statutory duties.

Department for Transport

Transport Providers

Transport providers should identify ways to design out potential for conflict in new fleet and transport infrastructure design. For example, they should review their vehicles and waiting areas to ensure that conflicts between disabled passengers and those with pushchairs are minimised. They should also ensure that disabled access provisions are clearly identified and enforced and promptly resolve any disputes regarding these.

Support

128. The Department for Transport supports this recommendation and will work with transport operators and disabled passengers to identify existing good practice, such as that being developed by Transport for London, for resolving conflict (e.g. in terms of signage and layout design), and ways in which this can be disseminated. We note that some bus designs already include separate buggy and wheelchair spaces.

Public transport operators should develop reciprocal reporting arrangements between providers so that people can report harassment experienced at stops, stations and on transport to whichever operator they encounter. They should also develop systems to allow repeat perpetrators to be refused entry to each other's vehicles (similar to those already used by licensed premises).

Support

129. The Department for Transport agrees with this recommendation in principle and will work in partnership with the police, the voluntary sector and transport authorities such as the Passenger Transport Executives to identify an on-line incident-reporting tool that could potentially be used nationally, building on existing good practice. The Department will also consider how information can best be shared between different organisations.

Regular disability equality training should be provided for frontline staff on handling disability-related harassment and clear guidance to staff on routes to take when reporting an incident. This should be included as part of core training, before transport staff work with the public.

Accept

130. The Department for Transport will seek to ensure that disability awareness training provided by transport operators includes modules on disability-related harassment, and involving relevant stakeholders. We are exploring with the Traffic Commissioner the development of a Code of Practice for bus operators aimed at reducing harassment on the bus network.

Disabled people should be involved in public transport policy development and transport providers should work in partnership with criminal justice agencies to reduce risk on and around transport provision.

Accept

131. The Department for Transport will be exploring the options for successor arrangements for obtaining advice from stakeholders should it be decided that the Disabled Persons Transport Advisory Committee (DPTAC) is abolished. The Department will also explore the scope for disseminating amongst local authorities good practice on setting up and running local access groups, to ensure that disabled people and disabled people's organisations are consistently involved in the development of transport policy..

Data on high risk areas and subsequent actions to reduce risk should be collated. Based on this data they should provide adequate protection where known high risks exist, in the same way as other provision is made, for example, around football matches.

Support in Principal

132. The Department for Transport will explore with transport operators, transport authorities and the police the practicalities of collating information on high risk areas, and how the risks in these areas can be reduced. On rail,

responsibility falls to the British Transport Police, but elsewhere it falls to the local police force.

133. The Government notes that on 20 April 2012, the British Transport Police was the latest police service to sign up to the 'Stand by me' promise, instigated by Mencap and other voluntary organisations, which features a 10-point pledge for police services to better assist people with a learning disability and those who have been a victim of disability hate crime.
134. The Government is keen to see transport operating companies exploring ways in which they can take part in such good practices, to help raise awareness and act on preventing disability related harassment occurring on public transport

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