

Hate is a Strong Word: a Critical Policy Analysis of Disability Hate Crime in the British Criminal Justice System

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Dedication

This report is dedicated to the life and work of Ken Lumb for his role in pushing forward the disabled peoples' movement in the United Kingdom. He was founder member of the Greater Manchester Coalition of Disabled People

Abstract

Hate crime is now an established term in the fields of 'race hate', 'religious hatred' and has begun to be acknowledged in the outlawing and cultural proscription against hate motivated crime against Lesbian, gay, bisexual and transgender communities and individuals. Disabled people, as so often is the case are late in being afforded statutory recognition in hate crime. This can be explained in terms of wider constructions of disability as very diverse and more pernicious and muddled constructions of disabled people as categorically vulnerable. This latter has arguably weakened rather than strengthened the impetus to introducing hate crime provisions for disabled people.

The absence of hate crime protection cannot however be attributed to the absence of hate or hostility towards disabled people. There is now ample evidence of hate crime being evident in the lives of many disabled people and pervasive in the lives of mental health service users and people with learning disabilities (Higgins, 2006; Mind, 2007). This paper draws out two key aspects of hate crime policy and practice—firstly definitional challenges as to what can be taken to be hate crime, whether it is an appropriate term and secondly the efficacy of reporting systems on hate crime incidents where shared understandings as to what counts as disability hate crime is problematical.

Introduction

The recent publication 'Getting Away with Murder' (Disability Now, UKDPC & Scope, 2008) pulls together an alarming catalogue of hate crime against disabled people ranging from bullying and verbal abuse through to actual bodily harm, torture and murder. Although the term 'hate crime' is contentious, the evidence presented makes clear that disabled people are in some instances being targeted for abuse. The most serious offences have been committed against some of the most vulnerable people in contemporary society. The 'Getting Away With Murder' report, one endorsed by the Ministry of Justice, presents details of 17 deaths attributable to 'hate crime'. Little explicit academic and policy attention has been afforded to this issue in Britain, whilst few cases of alleged disability 'hate crime' have been successful in the British courts (Balderston & Morgan, 2009).

A key factor in limiting prosecutions is the legal construction of disability hate crime and notions of hate in opposition to notions of targeted vulnerability—that is, the law constructs hate crime as distinct from crimes targeted at those perceived to be vulnerable. Arguably, such constructions operate with stereotyped and untested notions of both 'hate' and 'vulnerability'. Indeed as currently constructed 'hate' and 'vulnerability' are constructed as opposites and as never sitting together in the motivational repertoire of those who commit crimes against disabled people. Prima facie, there is no evidence that this, nor are strong justifications provided in the Crown Prosecution Service guidance as to why such constructions underpin the operation of the criminal justice system around disability hate crime. An urgent policy and practice review is now required to ensure disabled people gain the fullest protection of the law and that where hate crimes occur that they are accounted for in official statistics.

Hate crime against disabled people has since 2003 received official recognition in the United Kingdom (HM Government, 2003). New legislative developments have been made to strengthen the sentencing provisions attached to primary offences which are seen to be motivated by hate (Iganski, 2008). However, unlike race hate and religious hatred no discrete new crimes have been created, but simply the scope to add to the tariff attached to an offence where hate has formed part of the motivation for the crime and can be evidenced from judicial procedure. The case law to date establishes that the threshold for hate crime, its occurrence, is very high and at times legal judgements seem to fly in the face of intuition where serial bullying, harassment or harm have been reported. The following paper and the studies upon which it is based, aims to play its part in furthering our understanding and response to hate crime by firstly unpacking notions of hate and vulnerability. Secondly, the paper will draw on findings from two linked studies funded by the UK Equality and Human Rights Commission. Firstly, a study of disabled people's experiences and perceptions of disability 'hate crime' in the North East of England (Balderston and Morgan, 2009), and a study of organisational responses and perceptions of disability 'hate crime' in the North West of England (Roulstone and Thomas, 2009). Both studies contextualise their work with an international review of the limited material available and offer complementary insights. For ease of distinguishing these two reports, we have distinguished between the findings of the 'North East study' and the North West study'.

Methodological Context

North East Study: The study was conducted in the North east England and included a questionnaire despatched to 1045 disabled people, from which 428 responses were received (response rate 40%), a hate crime mapping exercise of the location and prosecution of hate crime. Additionally, 15 'safe space' discussion events afforded disabled people a context in which to relate their experiences of 'hate crime'. The study was keen to comprehend the multiple oppressions that are attendant on much hate crime and explicitly sought the experiences and perceptions of disabled people to account for diverse sexual orientation, ethnicity and socio-economic context.

North West Study: The fieldwork for this research was conducted in North West England with a particular focus on Greater Manchester and Merseyside areas. A questionnaire was designed to find out from organisations how they define hate crime and what their response is to hate crime. A questionnaire was sent to third party reporting centres in Merseyside and Greater Manchester, housing associations, community safety bodies, officials known to the working on hate crime, disabled people's organisations and other third sector bodies.

Although several hundred electronic questionnaires were distributed and follow up messages sent, the response was disappointing. In total just 21 questionnaires (10% response rate) were received. This reflected the poor hate crime infrastructure in many localities and that many workers in third party reporting centres were unaware that disability hate crime was in their brief.

Defining Hate Crime

The Crown Prosecution Service (CPS) definition in the 'Guidance on Prosecuting Cases of Disability 'Hate Crime' is:

'Any incident which is perceived to be based upon prejudice towards or hatred of the victim because of their disability or so perceived by the victim or any other person' (Crown Prosecution Service, 2007)

Other terms are in use, but less commonly so, for example the UK Equality and Human Rights Commission use the term 'Motivated Crime' to describe hate crime (Equality and Human Rights Commission, 2009). This is an interesting linguistic shift which may have greater value in the future in going beyond the term 'hate' which is a very emotive term which in truth may not be a prerequisite of the often low key but often repeat forms of bullying and

intimidation that disabled people experience. The term motivated crime might also help counter notions of vulnerability being outside of hate-based constructions of crime.

The motivation to commit a crime may well deliberately take the form of targeting disabled people for their vulnerability; whilst hatred cannot be discounted from such targeted abuse. It is important however not to prejudge motivational issues ahead of research evidence, as the report findings below will point out, there are not clear behavioural or motivational precursors to hate crime. However, there is much evidence of longer-run attitudes towards disabled people as 'lives not worth living'. Perhaps most importantly, the many diverse forms of negative attitudinal response to disabled people need to be factored into the constructions of hate crime in British law. One strong message from the limited research findings to date is that disabled people are seen as likely to be judged unreliable witnesses by perpetrators of 'hate crime', as the murderer of Brent Martin is reported as saying: "I'm not going down for a muppet" (Balderston & Morgan, 2009).

There are also differences in the wider patterns of hate crime, for example, there is to date no strong evidence of planned group violence of the form detailed in the Stephen Lawrence Enquiry report and direct parallels with say race hate crime ought perhaps to be avoided where thresholds of aggravation require planning and coordination where that may not be a feature of disability hate crime (See Crown Prosecution Guidance, 2007: 6.5.5 on serious aggravating factors). It is noteworthy that disability hate crime takes its signals from race hate crime where organisation is more explicit element. However, the role of low-key attrition in disability hate crime may well mirror or even exceed those behaviours attaching a range of hate crime victims. In sociological terms, the histories of race and disablist segregation in the UK are different, so it would be unreasonable to expect crimes to present in the same way as 'Constructions of racist offending have given excessive weight to individual motives and intentions, while much offending behaviour is grounded in wider cultural and social contexts (Ray and Smith, 2004). Media stereotyping of disabled people, segregated living, care and charity discourses all offer unique socio-cultural contexts in which to begin to situate specific acts of 'hate crime' against disabled people.

In the USA, the equally useful term Bias Crime attaches to what in the UK we dub hate crime (Centre for Criminal Justice Policy Research, 2000; Lawrence, 1999). The lesser used term 'hate-motivated crime' also appears in the US literature (Craig, 2002). However, although hate crime policies have a longer heritage in the US, disability also appeared much later than other forms of officially acknowledged hate crimes (Jacobs and Potter, 1998: 41).

Disability Hate Crime in Context

Writings and evidence on disability hate crime is not extensive. Compared to work on 'race' and sexual orientation hate crime, disability hate crime receives significantly less attention-academically, legally and publically. This reflects both the relatively recent recognition of disability hate crime in the UK and the absence of key policy endeavours linked to specific disability hate motivated events. This contrasts with 'race' hate crime in the wake of the Stephen Lawrence Enquiry and the Macpherson report (McLoughlin and Murji, 1999). This event in part aided the impetus to greater understanding of the nature, pervasiveness, impact and possible interventions into hate crime. The rise of AIDS/HIV infections in the 1980s led to a number of 'high street' agencies that in time embraced hate crime and personal safety issues into their broader remit (Herek and Sims, 2008). In the arena of Lesbian, Gay, Bisexual and Transgender (LGBT) policy and research, the targeted bombing of the Admiral Duncan public house in London in 1999 helped add purpose to hate crime responses for LGBT populations (Dittman, 2003). Indeed, the above can both be seen to have elements of planned hate crime, with motivation being channelled into premeditated and concerted acts of hatred. A single event which captures the public imagination involving hatred of disabled people has not thankfully transpired, whilst the disabled peoples' movement has not to date cohered in a major way around hate crime and disability. However, one could argue that the visibility of impairment and the shift away from institutional living for some may lead to more frequent and repeated hate crime activity. It could be argued that the patterns of hate crime, their manifestations and legal constructions have militated against a full and fair response to

disability and sexual orientation hate crime. Certainly the evidence presented below challenges any assumptions that the lesser and later response to disability hate crime results from a relative absence of hate crime against disabled people.

The problem of disability hate crime

Although no single recent event has occurred which captures the public imagination on disability hate crime, the negative categorical construction of physical, behavioural and intellectual difference remain the pretext for a range of oppressions against disabled people (Barnes, 1991; Garland-Thompson, 2002). Indeed it would be quite wrong to ignore the concerted violence meted out to disabled people in recent history. Disabled people formed a key population deemed unworthy of life during the period of the Nazi 'final solution'. Alongside Jews, homosexuals, gypsies and those described as 'degenerate', learning disabled people were a notable target population for the Nazi project, deemed 'useless eaters' (Oliver, 1990) and even their deaths were segregated as part of the T4 programme (Burleigh, 1994).

The large-scale institutionalisation of disabled people in long-stay institutions although not motivated by hatred in its strictest sense, was clearly motivated by a categorical construction of disabled people's lives being less valued and at times unworthy of mainstream life. Disabled people have as Oliver points out in his seminal book 'The Politics of Disablement' aroused notions of aesthetic distaste and existential anxiety in non-disabled people (Oliver, 1990). Many disabled people were 'locked away' quite simply (Miller and Gwynne, 1972). If one interprets disability hatred to include such wholesale process of incarceration then it is not a long leap to argue that this was also a crime as it was against the wishes of disabled people and their families. However, hate crime has been constructed, refined and applied through a professional, legal lens which often fails to fully account for the broadest manifestations of hatred or hostility.

In terms of official evidence, the UK government do not collect discrete data on disability-related hate crime. This is in part due to the absence of a specific offence badged as disability hate crime. However, Home Office (2006/7) figures using 'long-term condition' categories do point to an increased risk of crimes and also a raised fear of crime amongst disabled people. If we accept (and it is problematic) the link between long-term sickness and 'disablement' we can see that burglary for example is more than twice as likely to happen to disabled than non-disabled people. However caution should be exercised as strictly speaking people classified as long-term sick may live in areas of higher crime, may have experienced social drift (Royal College of Psychiatry, 2002) due to sickness and loss of income, and may have less money to engage in the 'target hardening' required in crime prevention. This, if it is the case, would be significant in itself as pointing to the broader risk factors in disabled people's lives in certain community and housing contexts. The push to community-based policies for disabled people needs to take account of the new found risks-that spatial integration does not of itself equal social and attitudinal acceptance (Roulstone and Morgan, 2009).

In the absence of reliable and definitionally sound research findings from official sources, much the best source of evidence comes from third sector campaigning organisations. Mencap's report 'Living in Fear' published in 2000 found that bullying was pervasive in the lives of people with learning disabilities, with almost 90% of respondents stating they had been bullied in the previous 12 months, many in public contexts (Mencap, 2000). A staggering 23% reported that they had been assaulted. Crown Prosecution Service guidance is very clear that the spirit of the law embraces bullying, abuse, name-calling alongside assault and other more serious primary offences. Bullying however is not seen as a crime unless explicitly accompanied by a primary offence-assault, vandalism, affray, property offences.

Research by Shamash and Hodgkins (2007) found that of the 45 research respondents, nearly 25% had experienced name calling or bullying, almost 10% reported having been assaulted in some form. Research by Mind, the mental health organisation entitled 'Another Assault' (2007) found that mental health service users were 11 times more likely to be victimised than non-disabled people (Mind, 2007). Mind compared its findings on mental health and victimisation with British Crime Survey (BCS, 2007) findings and claims major discrepancies between the two sources of evidence. The 'NE' study by Balderston and

Morgan (2009) that forms part of this paper, established similar findings to the Mind study as can be seen below:

<u>Mind Survey 2007</u>	<u>British Crime Survey 2007</u>	<u>NE Study 2009</u>
Victimised in last 2 years		
71%	24.4%	71%
Physically Assaulted		
22%	3.6%	6%
Sexually Assaulted		
10%	<1% (too small to record as %)	1%

If the above evidence from Mind and the NE report are robust, there must be major factors militating against disabled people reporting crime and a reluctance to prosecute in areas where mental health is misunderstood and where witness reliability might be unjustly challenged (Mind, 2007). The Disability Rights Commission in Scotland worked with Capability Scotland to look at the extent and experience of 'Hate Crime Against Disabled People' (DRC & Capability Scotland, 2004). Using a pan-impairment approach to capture the breadth of experiences, they found that 73% of respondents who had reported being frightened or attacked had been the victim of intimidation or verbal abuse. A total of 35% of these respondents had reported physical attacks. A survey of people with learning disabilities in Scotland (Higgins, 2006) established that as many as 20% of respondents had experienced attacks in one report week.

Although interpreted broadly in terms of a policy understanding of hate crime and disabled people, the strict interpretation of hate crime is provided by section 146 of the Criminal Justice Act of 2003. This section makes provision for additional sentencing powers and use of the tariff for penalties where hate crime has been established against disabled people. As noted earlier this does not create a primary offence of hate crime against disabled people unlike sections 29 and 32 of the Crime and Disorder Act 1998 relating to racial or religious hatred. More simply a sentencing provision is provided for aggravation of a primary offence, for example where common assault has been linked to an action motivated by hate crime towards a disabled person. Section 146:

..imposed a duty upon courts to increase the sentence for any offence aggravated by hostility based on the victim's disability (or presumed disability)

Here, the establishing of aggravation due to disability related hostility must be treated as more serious than an incident where such factors are absent. Such offender has to have either:

- a) Demonstrated disability related hostilityor
- b) Be seen to have displayed hostility based wholly or partly on a motivation particular to a persons disability (sic)

The above a and b are alternatives, with only one of these requirements needing to be met to satisfy the legislation that disability 'hate crime' has been established in law, for example where hostility has been established through words or actions there is no requirement for hate crime to be established through motivation. It is perhaps odd that having established the powers that attach to hate disability crime responses, that blanket exceptions come in to play where crimes are seen to be motivated not by hatred but by the perceived 'vulnerability' of a disabled person. Whilst safeguards are clearly required, it seems concerning that vulnerability should weaken disabled peoples' right to legal redress, especially where institutional practices

have helped cement notions of difference and where their categorical status is seen to be weakened rather than strengthen such rights:

However not all crimes against disabled people are disability hate crimes. Some crimes are committed because the offender regards the disabled person as being vulnerable and not because the offender dislikes or hates disabled people

(Crown Prosecution Service Guidance, date:9)

Of note the term 'hate' quickly morphs into 'hostility' in the CPS guidance, but there is little evidence that a lower test or threshold is being applied in the case law. Indeed, it is interesting that the above assumption that hate cannot and does not equal attendant perceptions of vulnerability is still taken to be the basis of case decisions on disability hate crime. It is interesting that the use of hostility in the Guidance suggest a wider uncertainty as to the value and efficacy of the term hate and hate crime. This then begs the question as to just what the motivations and perceptions are that do attach to aggravated crimes against disabled people? Indeed does hostility not get closer to notions of bias, discrimination and differential treatment that are used effectively in the wider British legal system? Also, does vulnerability not point to a similar set of dynamics to discrimination? Unless we take the view that vulnerability, pity, tragedy are all benign assumptions about disability which are very different to discrimination, prejudice, hostility then we begin to question the edifice on which disability 'hate crime' policy and law are built.

Relatedly, the notion of vulnerability, although not unique to disability can be seen as categorically more pernicious when used in certain criminal justice policy debates. For example if we assume that vulnerability is akin to saying someone was 'asking for it' or more generously was not as protected from crime as non-disabled people, it seems harsh to blame the individual or to take away rights to hate crime interpretations. For example there is a clear difference between arguing that an insufficiently protected house prone to burglary is equivalent to a blind person negotiating a quite subway after dark. The imperative is to support community safety not blame the individual in such publically defined spaces. As vulnerability is not an inherent phenomena, but the outcome of a series of social transactions and interactions between personal and statutory investment in community safety it seems inappropriate to deny the rights of an aggravation clause where for example community safety not personal self scrutiny is at stake.

Hate crime reduction: The official picture

Despite the absence of policy attention to this area, efforts are underway in the field of hate crime reduction. However, many of the schemes (public and third sector) are funded via 'soft' money and new crime related initiatives may be seen to steal the momentum from hate crime reduction activity. There is little permanent core funding for work in this area.

At a macro-policy level the emphasis placed in the Crime and Disorder Act (1998) on crime reduction and the establishment of Crime and Disorder Reduction Partnerships (CRDP) can be seen to provide a framework into which local hate crime reduction strategies and initiatives can be formulated and applied. In terms of proactive policing, the Home Office & Association of Chief Police Officers' (ACPO) manual 'Hate Crime: Delivering a Quality Service-Good Practice and Tactical Guidance', also sets the tone for tackling hate crime seriously in all its manifestations and at all stages. Although not made explicit in the report this would clearly have to include hate crime prevention. A key role is also spelt out in the ACPO hate crime guidance (ibid) that:

'There may be attendant risks to the safety and well being of victims and witnesses. An important risk factor is the identification of potential further victimisation'

The handling of current investigations has a bearing on the crime reduction potential of possible follow-on events in the lives of disabled people. Professionals in the criminal justice

system have a pivotal role in crime diminution. The Home Office & ACPO report does make clear however the benefits of:

‘reinforcing the message to the general public that
hate crimes will not be tolerated by the police’
(2005: section 12.1.1)

At a policy level within the Department of Health, the ‘Safeguarding Adults with Learning Disabilities: Information for Partnership Boards’ provides insights to aid hate crime minimisation and appropriate protection protocols (Department of Health, 2007). The Protection of Vulnerable Adults Scheme (POVA) was made established in Part 7 of the Care Standards Act (HM Government, 2000). Evidence from one of the studies below (Balderston and Morgan, 2009) points to these Safeguarding Boards perpetuating unhelpful constructions of vulnerability in their work which may inadvertently exacerbate notions that perceptions of vulnerability forms the basis of much criminal behaviour towards disabled people (Balderston and Morgan, 2009). Rather than becoming a less used term, ‘vulnerable’ has increasingly entered the lexicon of (particularly) adult social care, with the term vulnerable adults often overshadowing previously dominant term-disabled adults (Prichard, 2008). The construction of vulnerability in relation to disability, or to be more accurate impairment, is complicated within the field of disability policy. On the one hand, there is no denying that by reason of impairment effects or limitations, disabled people are evidently more ‘vulnerable’ than non-disabled people; that is, they may experience or perceive themselves liable to be attacked by non-disabled people. On the other hand, notions of ‘vulnerability’ grate on the sensibilities of analysts committed to the social model of disability since the very admission of this status contradicts notions of equality that are at the heart of the social model. As a term, ‘vulnerable’ has connotations of weakness and is generally applied by members of a powerful majority to less powerful minorities. There is arguably something inherently paternalistic in the act of designating another as ‘vulnerable’.

Notwithstanding the major issue of language discourses and disability ‘hate crime’, there is evidence of localised good practice in ‘hate crime’ policy responses however. Mid-Suffolk District Council are expanding their work on racial harassment to also embrace disablist and homophobic crime. Coventry Crime and Disorder Reduction Partnership have established a disability hate crime sub-group to ensure that initiatives and campaigns against hate crime include awareness of disabled people and the risk of hate crime. Waltham Forest, a London Borough has funded a third sector organisation to support it’s Hate Crime Project Board and Safety Net Partnership Board across the fullest range of hate crimes. This initiative brings together a number of council functions, the voluntary sector and disabled peoples’ organisations in part to raise awareness of disability hate crime.

People in Partnership (PIP) have developed a ‘keep safe’ pack for people with learning disabilities to raise their awareness of hate crime risks. In Coventry, the West Midlands Police, Crown Prosecution Service and Victim Support are working together in part to rise awareness of hate crime ‘hotspots’ which is likely to provide greater insights, mapping and hopefully prevention of hate crime. There are however no available evaluations on hand to say what is effective in hate crime reduction. A consortium of learning disability groups have joined together to form the Learning Together Project which involves the organisations Better Days, Coast 2 Coast and Inclusion North to undertake peer training for people with learning disabilities to train others about hate crime. Values into Action (VIA) has established hate crime workshops to raise awareness of risks run by and on behalf of people with learning disabilities. They have also devised the publications ‘Let’s Keep Safe’ (2001) and ‘Let’s Report It’ (2001). Valuing Medway People Partnership Board stages ‘Keep Safe’ events for a range of stakeholders including disabled people, prosecutors, police, transport, health and social care providers. Film is used a medium to present the experiences of people with learning disabilities and hate crime.

Liverpool, as the other major population centre in the North West England also has a recent history of responding to national initiatives in a local context. Liverpool City Council established a Hate Crime Policy Review from September 2006 and also appointed an Investigation manager as part of its Community Safety office. Merseyside police have been

active in sharing ideas on Hate Crime staging major events, for example, the joint work with Sefton Equalities Partnership entitled 'It's not a crime to be different' and a recent conference strand on hate crime 'National Disabled Police Association Conference 2008 'Disability Hate Crime'. Remaining in Liverpool, People First Bootle were awarded monies by the Valuing People Steering Group to spread the word on hate crime against people with learning disabilities. Further afield, Cumbria police have appointed a hate crime officer to lead on this topic and work other interested agencies.

The accurate and up-to-date reporting of hate crime is a central concern of disabled people and organisations close to issues of hate crime. As John Armstrong, Acting Superintendent, Cheshire police recently noted-circa 90% of hate crimes (all groups) go unnoticed (Crown Prosecution Service, 2007). It is important to reflect on those measures in place to capture the extent of hate crime. Whilst thinking about reporting as a specific response to a perceived hate crime event, we ought also to reflect that reporting can take the form of more macro-level reporting processes. For example, the Home Office Practice Guide 'Learning Disability Hate Crime' makes clear the wider role of disabled peoples' organisations and Community Safety Partnerships in registering the combined levels and experiences of hate crime, noting:

Advocacy groups, Learning Disability Partnership Boards, and Community Safety Partnerships must work together to produce a single report that explores the experience of hate crime...advocacy groups might provide more qualitative information telling real life stories, whilst Community Safety Partnerships may be able to offer more facts and figures' (2008: 4)

In reality, reporting refers to the process of crime reporting that follows a given (perceived) hate crime incident or incident of crime not yet connected to motivations of hate. Generally disability hate crime reporting takes place in the context of wider reporting services and protocols in most local authorities; hence some of the following refers to pan-issue, pan-group hate crime reporting centres.

Examples of innovative hate crime reporting are: Leicestershire County Council's multi-agency Hate Crime Incident Monitoring (HIMP) has established a network of reporting centres across Leicestershire, including drop in centres in schools. The data deposited at these reporting centres is collated together. LCC are also trying to formulate an easy words format form for hate crime reporting. The Greenwich Association of Disabled People has established a 'third party' reporting centre alongside a Disability Hate Crime advocacy project.

Tameside council have introduced self reporting systems for reporting hate crimes with the aim of apprehending the fullest extent of hate crime in the Tameside area and help plan the local response to hate crime. Across Cheshire, 49 hate crime reporting centres for example in Chester, Warrington, Birchwood, Halton, Great Sankey and in a variety of organisations (CILs, schools, voluntary sector projects, mainstream disability organisations) have been established to build a fuller picture of hate crime across Cheshire. As Cheshire police note:

'...these centres will be a venue where a member of the public can report hate crime in non-policing environment. We have a large number of voluntary partner and statutory agencies that have agreed to become centres' (2007).

A Critical Review of Hate Crime Experiences and Responses

Reporting 'Hate Crime'

As we ended the official appraisal of disability hate services looking at reporting it seems logical to begin a critical policy and practice review with reporting and under-reporting. Perhaps the most worrying evidence to emerge from the 'NW study' (Roulstone and Thomas, 2009) was the mismatch between official and 'street-level' provision for disabled people who

want to report hate crime. on third party reporting centres comes from a. Two police division evaluations within the 'North West' force area established that many of the third party reporting centres established in the area after the Macpherson Report (Macpherson, 1999; See also the Crime and Disorder Act) were no longer functional. Whilst a small number of centres were still in place, there was little support or systematic networking with the local Hate Crime Panel. In one divisional area (division 'S') of the 32 reporting centres established in 1999, some 37% were no longer operating. Of those that were, 98% no longer had the same centre coordinator in 2007 as they had in 2000 and those centre staff that responded to the evaluation all were unaware of 'Form 730D', the principal multi agency report form ('North West England' force area report 2008). All felt they required further training in their role. Overall, the evaluations established that the reporting centre system needed an overhaul and that senior management buy-in is required to embed hate crime work in the force area.

Under-reporting is not simply a phenomenon rooted in disabled peoples' personal reticence in reporting for fear their story will not be believed. However, the very limited prosecutions in alleged hate crime cases may exacerbate these behaviours. Under-reporting is systemic to the criminal justice system in that the British Crime Survey has not collated data on hate crime. The Home Office have committed from 2009 to recording more fully numbers of hate-motivated crimes and has asked all police forces in England, Wales and Northern Ireland to record hate crime in consistent ways. This is to be welcomed. Arguably, this needs to be matched by more harsh sentences and a greater connection between reported and sanctioned hate crime. All too often allegations of often serious abuse and hatred are worn down by the judicial process. As of 2008, some five years after the passing of the 2003 Criminal Justice Act, there remains an acknowledgement of under-reporting (ACPO, 2008) which needs to be changed.

One issue that is being slowly addressed is that of the poor accessibility of police stations as reporting centres to date. One report found circa 25% of disabled adults questioned reported that police stations were hard to access (Ipsos & Disability Rights Commission, 2007). Although a number of non-police reporting centres have opened as detailed above, the exact efficacy of these centres and the quality of their liaison with police and investigations is as yet unknown. The North East report asked respondents about physical access issues and only 37% felt that that access needs were met (Balderston and Morgan, 2009: 70).

Overall, the picture on reporting is a depressing one, with dramatic under-reporting and a sense that even if reported, many disabled people feel they are not taken seriously as Alice Maynard the CEO of the disability charity Scope notes in a recent report:

"Despite the horrific crimes documented in this report, disability hate crime remains largely invisible. Its existence is frequently denied and disabled people who report it are routinely ignored or are dismissed as unreliable witnesses. As a result those who commit disability hate crimes often go unpunished and public awareness of these incidents remains low (Scope et al 2008).

The North East study established that areas with similar population profiles had dramatically different levels of 'hate crime' reporting. For example, only 5 incidents of alleged 'disability hate crime' were reported in the Durham Police area in 2007/08 reporting year, compared to 38 for Northumbria and 337 for the Cleveland police areas. The geographical mapping of 'alleged' and convicted 'hate crimes' does not tally with these reports, with Sunderland, a key Northumbria policing division having the highest rate of incidents in the North East England. Although it cannot be stated categorically, this difference in reporting is likely to reflect differential reporting regimes and may also reflect poor experiences of the criminal justice system in the area of 'hate crime'. It is noteworthy that successful prosecution rate for disability 'hate crime' in the North East is less than 5% compared to rates of 10% for race and religious hatred and 20% for homophobic & transphobic hate crimes (CPS and Force Area Data, 2008). Of the 304 disabled people who had experienced verbal abuse or threats, actual attack or vandalism (70% of those surveyed) only 11 people had reported the incident to the police or other agency.

The North West qualitative report findings reflect the above data. The following relates the many factors involved in reticence to report alleged 'hate crime' :

Victims and witnesses who do not attend court unexpectedly...fear of reprisals, for example where the offender is their carer? Perhaps fear that they won't be believed because..they have a learning disability? Reluctance to report such incidents to the police in the first place (CPS respondent)

Defining Difference: Between Hate and Vulnerability

As stated above, a key concern of this paper is to unpack the assumptions that lie behind criminal justice policy constructions of disability, hate, vulnerability. In the North West study organisations responsible for responding to 'hate crime' used very different definitions of 'hate crime', the sources of 'hate crime' definitions also varied. Most bodies use the CPS definition (Crown Prosecution Service, 2007) or use similar wording. Whilst it may be expected that statutory organisations use this definition, some non-statutory organisations also use it. In this study it is only disabled people's own organisations that are not using this definition. A disabled people's organisation with a history of analysis and use of the social model of disability and whose members have a range of impairments commented:

Although we have not agreed our own formal definition of disability hate crime, we recognise it takes many forms, from name calling to murder. For many disabled people it makes no difference if our attackers think we are abominations who are unworthy of life, think that killing us is an act of kindness, or simply think they will get away with it because we are disabled people. The motives maybe different but the fear is the same and the reason seems to be the same, we are different.
(Disabled People's Organisation)

Learning disabled people do not use the exact CPS definition but recognise that they may be attacked because they are disabled people. One group is a third party reporting centre and noted:

[Disability hate crime is] when they know who to pick on and they pick on us because they think we will not fight back. They do it for the fun of it because of the way we are. We are not strong. People gang up on us. Some learning disabled people are frightened of getting on the bus. School kids call us names. Kids don't understand the situation a person is in. It becomes a hate crime when we heard them say they did it because we are disabled people. They do it when they are playing on us being disabled people. (Group of learning disabled people)

A membership organisation which specialises in working with people with HIV takes the view that people with HIV do not fit neatly under the heading of disability:

We treat all these as manifestations of hate crime; anything which disrespects people with HIV tends to be seen by us as a hate crime. So dentists refusing to take people living with HIV onto their lists (mystery shopping reveals there are vacancies for patients if you don't say you have HIV), and only ever seeing HIV+ patients at the last appointment. These may not, legally speaking, be hate crimes, but we interpret discrimination apparently based on HIV stigma as a hate crime. We may have to invoke other laws (DDA) however. (North West HIV organisation)

Conversely a national group for people with HIV noted that the CPS does not recognise hate crime in relation to HIV, people with HIV should be recognised as disabled people and attacks on them should be recognised as disability hate crime commenting:

However victims of HIV-related hate crime are not protected in this way. This is because, according to the CPS and Ministry of Justice, HIV is not included in the definition of disability in the Criminal Justice Act 2003 ('a physical or mental

impairment') (CJA 2003). This is despite the fact that HIV is recognised as a disability under the Disability Discrimination Act 2005. HIV sadly remains a stigmatised condition and NAT is aware of several incidences of HIV-related hate crime. (National HIV Organisation)

These differing views of definition in relation to HIV indicate a failure of the current CPS definition to take account of people with HIV. There are issues in addition to the medical condition relating to stigma, prejudice and discrimination that link with other groups – in particular gay men and race. Clearly in understanding the policy and practice challenges, misunderstandings about a definition of disability and 'hate crime' lead to a misunderstanding of *disability hate crime*. A definition which confuses disability with long term health conditions and impairments does not take account of current and past discrimination against disabled people. Nor can such a definition facilitate the removal of institutionalised disability. A definition which takes account of long term health conditions and the way in which people with such conditions are discriminated against is the social model of disability. This is gaining increasing recognition in some government guidance, for example:

The Department of Health subscribes to the social model of disability; that disability is defined as the disadvantage experienced by an individual as a result of barriers (attitudinal, physical etc) that impact on people with impairments and/or ill health. (Department of Health, 2009)

This definition of disability provides a way of looking beyond the individual for causes of discrimination and hate or targeted crime. That the status of an offence which is instigated by perceived vulnerability of the victim rather than the offender being motivated by hostility does not seem justifiable. This may have some impact on the different definitions used by statutory bodies and disabled people themselves. The Ministry of Justice does seem to consider some disabled people to be vulnerable:

Contacting the Police and potentially going to court may be daunting for many people particularly for vulnerable groups such as those with mental health problems¹⁷ and learning disabilities. (Ministry of Justice, 2008: 31)

Some people who would be covered by the Disability Discrimination Act are also in other groups who are subject to hate crime. Disabled people are in all Black and Minority Ethnic Groups, all faiths, of all ages, and may be lesbian, gay, bisexual or transgender. For those people with HIV there is an association with homophobia and racism and there are links with stigma and hostility. Transgender people experience a particular form of oppression, lesbians, gay men and bisexuals are generally comfortable with their original gender. For transgender, either before or after surgery, they are not comfortable with their original gender. Transgender people are not always accepted in lesbian, gay and bisexual communities, so it is vital that their issues should not be linked in with lesbian, gay and bisexual issues.

Conclusions

This paper has explored the key challenge of disabled people and criminal justice policy and professionals developing a shared understanding and language of 'hate crime' against disabled people. There is evidence from the above that presently this lack of shared language and understanding could severely limit disabled people's human rights in being afforded a safe, secure public space. Notions of vulnerability being used to continue to cancel out claims of disability hate crimes, has to be seen as ill conceived and simplistic. Misunderstandings about disability and why disabled people may be subject to hate crime or targeted crime needs further research. Statutory bodies need to gain a better understanding of the context of discrimination in which disabled people live. Learning about the social model of disability through a programme of Disability Equality Training (which covers history and current forms of discrimination) from an experienced trainer would facilitate understanding.

Misunderstandings about disability also continues because disabled people themselves are not part of the policy-making procedure in this area. Statutory bodies need to ensure that they take on board the perspective of disabled people, including disabled people working within the structures of the Criminal Justice System and through improved partnership working. The differing definitions indicate a gap between the Criminal Justice System and people who are likely to experience hate crime. In particular the issue of vulnerability needs to be addressed, that disabled people may be targeted because of perceived vulnerability rather than a motivation of hatred should not lead to a reduction in response from the CJS. There seems to be little if any preventative work in this area of hate crime against disabled people.

The issue of Partnership working is considered important by most of the organisations that responded to this study. Statutory bodies need to get closer to disabled people, this may mean going to places where disabled people are, rather than simply inviting disabled people to business meetings. The best way to involve disabled people is to employ them, statutory bodies need to review their employment practices to ensure disabled people are not only present but are free to express the perspective of disabled people.

Hate is a strong term to use in this context. Although it conveys the outrage many feel for the offences committed against disabled people, in practice it proves too high a legal and linguistic threshold to afford disabled people an equitable and responsive criminal justice system. The term disablist hostility has yet to be used widely in practice, however it and similar terms seem to offer better options in preferring more enabling criminal justice for disabled people.

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