

Inclusion London's response to the Law Commission: Consultation Paper 250

The logo for Inclusion London, featuring the text "Inclusion London" in white on a teal square background.

Hate Crime Laws

December 2020

Introduction

1. Inclusion London welcomes the opportunity to respond to the Law Commission's consultation on Hate Crime Laws.

Inclusion London

2. Inclusion London is a London-wide user-led organisation which promotes equality for London's Deaf and Disabled people and provides capacity-building support for over 70 Deaf and Disabled People's Organisations (DDPOs) in London and through these organisations our reach extends to over 70,000 Disabled Londoners.
3. Inclusion London is the lead organization for the London DDPO Hate Crime Partnership, working with 20 DDPOs across London to influence key policy makers on the issue, as well as working together to provide training, specialist casework support for Hate Crime advocacy, secondments to develop Hate Crime support within DDPOs, peer support for people with Learning Difficulties and to develop resources including a DDPO Hate Crime Toolkit. During the Coronavirus period, Inclusion London has been running a weekly survey, sent out to DDPOs which have a hate crime advocacy service, to collect information and data on the incidence and types of hate

crime disabled people have experienced during lockdown, and now, during the easing of lockdown.

The logo for Inclusion London, featuring the text "Inclusion London" in white on a teal square background.

Disabled People

4. There are 13.9 million Disabled people in the UK as of 2016/17, which is 22% of the population¹.
5. There are approximately 1.2 million Deaf and Disabled people in London².
6. 19% of the working age population are Disabled people, which is 7.7 million people³.

Inclusion London's Response

7. Inclusion London is not an expert in legal issues, but we are responding to the consultation because disability hate crime is such an important issue for disabled people, as the statistics below illustrate:

Disability hate crime statistics

8. Reports of disability hate crime rose by 9% between March 2019 and March 2020⁴, and by 14% between 2017/18 and 18/19⁵.
9. Research from Leonard Cheshire and United Response found that only 1 in 62 cases of disability hate crime received a charge in 2019/2020⁶.

¹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/692771/family-resources-survey-2016-17.pdf

²<https://www.papworthtrust.org.uk/about-us/publications/papworth-trust-disability-facts-and-figures-2018.pdf>

³ researchbriefings.files.parliament.uk › CBP-7540

⁴<https://www.gov.uk/government/publications/hate-crime-england-and-wales-2019-to-2020/hate-crime-england-and-wales-2019-to-2020>

⁵https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/839172/hate-crime-1819-hosb2419.pdf

10. Research into disability hate crime in London found that reports soared by 20% in 2019/2020 with around half classified as “violence”⁷.
11. 20% of repeat victims of anti-social behavior are disabled people⁸.
12. Research by Mind found that 71% of those with mental health issues had been a victim of crime in the preceding two years and 22% had been physically assaulted.⁹
13. More than half of disabled people say they have experienced hostility, aggression or violence from a stranger because of their condition or impairment (56%).¹⁰
14. Multiple discrimination increases risk and impact of hate crime on disabled people. The Office for National Statistics found that Disabled women were more than twice as likely to have experienced domestic abuse than non-Disabled women in the year ending March 2019¹¹.
15. Research from Leonard Cheshire shows that online disability hate crime rose by 33% over the course of one year (2016/17 – 2017/18)¹².
16. Attitudes towards disabled people are getting worse; increasing levels of abuse are being experienced, due to the false media portrayal of disabled people as scroungers and fraudsters¹³, with 66% of disabled people saying that they have experienced aggression, hostility or name calling.¹⁴

⁶ <https://www.leonardcheshire.org/about-us/our-news/press-releases/reports-violent-disability-hate-crime-continue-rise-number-police>

⁷ <https://www.hackneygazette.co.uk/news/crime-court/disability-hate-crime-rates-in-hackney-soar-1-6919046>

⁸ <https://www.equalityhumanrights.com/en/publication-download/hidden-plain-sight-inquiry-disability-related-harassment>

⁹ http://www.mind.org.uk/campaigns_and_issues/report_and_resources/894_another_assault

¹⁰ <https://www.transportforall.org.uk/news/almost-half-of-disabled-people-faced-discrimination-on-public-transport>

¹¹ <https://www.ons.gov.uk/peoplepopulationandcommunity/healthandsocialcare/disability/bulletins/disabilityandcrimeuk/2019#domestic-abuse>

¹² <https://www.leonardcheshire.org/about-us/press-and-media/press-releases/online-disability-hate-crimes-soar-33>

¹³ <https://stopfundinghate.info/2018/08/26/how-hostile-media-coverage-can-fuel-disability-hate-crime/>

¹⁴ https://www.equalityhumanrights.com/sites/default/files/research_report_21_disabled_people_s_experiences_of_targeted_violence_and_hostility.pdf

17.Disabled women are twice as likely to experience violence than non-disabled women.¹⁵

The logo for Inclusion London, featuring the text "Inclusion London" in white on a teal square background.

Still Getting Away with Murder Report, 2020

18.This report was commissioned by Inclusion London and written by Dr Laura Chapman¹⁶. It is a follow up to the 2008 report, 'Getting Away with Murder'¹⁷, which was written by Katharine Quarmby, produced in collaboration with Disability Now, the UK Disabled People's Council and Scope and published by Scope. There are six key findings from the report that we encourage professionals, Disabled people, academics and the public to think about when attempting to understand the complex reasons why these crimes happen, and for professionals to use them when developing policies and practice.

19.Many institutional and attitudinal barriers that Disabled people face when accessing support can be overcome by working with DDPOs and Disabled people using a human rights approach when developing strategic policy and practice.

The six key findings of the report are:

- Disabled people are still overwhelmingly likely to be victims of crime
- Disabled people are still seen as unreliable witnesses
- Using a Human Rights based approach is aiding increased understanding of Disabled people's experience
- Institutional Disablism creates space for hate crime
- Disablism has the same characteristics as other 'isms' & more work is needed to improve understanding

¹⁵

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/480942/Disability_and_domestic_abuse_topic_overview_FINAL.pdf

¹⁶ <https://www.inclusionlondon.org.uk/wp-content/uploads/2020/09/FINAL-Still-Getting-Away-with-Murder-Sept-2020-FINAL.pdf>

¹⁷ https://www.equallyours.org.uk/wp-content/uploads/2009/07/Hate_Crime_Report_web11.pdf

- Coproduction with Disabled people works

Response to consultation questions

Hate Crime Law

20. Inclusion London believes hate crime law should protect all people. Therefore, we support the extension of hate crime law to women, philosophical beliefs, age, sex workers, people experiencing homelessness and people belonging to alternative sub-cultures.
21. On the finer detail of these new definitions, and changes to the current definitions we do not have the appropriate expertise to comment (barring the changes to the definition of disability, please see further down). However, as a Disabled led organisation that strongly believes in self organisation and the need for people in the affected groups to be co-producing policy decisions, we would recommend that the Law Commission further consult with specialist services led by people with lived experience.
22. We are pleased that the Law Commission collaborated with us to hold a consultation with Deaf & Disabled People's Organisations on 9 December to hear first-hand from some of our member organisations, to gain a deeper understanding of the impact of the lack of clarity and parity in current legislation affects disabled victims of hate crime. We hope that this in addition to the event in May 2019, will support the Law Commission's decisions relating to hate crime against disabled people.
23. Inclusion London believes that criminal conduct based on a victim's wrongly presumed lack of disability should be covered by hate crime law. This is because rhetoric, from both the media and the government, have portrayed Disabled people as "scroungers" and 'benefit cheats', and perpetrated extremely exaggerated figures around benefit fraud. As a result of this rhetoric, it has been found that many instances of hate crime have been motivated by the belief that Disabled people are faking being

Disabled¹⁸ – it is important that hate crime legislation takes into account this “scrounger” rhetoric and the effect it has had on crimes against Disabled people.¹⁹

The logo for Inclusion London, featuring the text "Inclusion London" in white on a teal square background.

Hate Crime Act

24. Inclusion London agrees with Option 3 presented in the University of Sussex paper, *Hate Crime and the Legal Process: Options for Law Reform*²⁰. There should be a single Hate Crime Act based on the relevant provisions currently contained in the Crime and Disorder Act 1998 but extending to all categories of crime. This paper also recommends the integration into the new Act of the stirring up offences currently contained in the Public Order Act 1986. As well as this, we believe that in any new Act, there should be parity across all strands of hate crime, and the production of a new, consolidated Act is an opportunity to legislate for said parity.

25. We agree that there should be ‘parity’ and ‘clarity’ through a Hate Crime Act, which would help reduce the unequal treatment for difference types of hate crimes.

Our member organisation Stay Safe East states:

“We would like the new law to address these issues:

- Hate crime incidents are hate crime if they are part of a pattern
- Hate crime is a big part of domestic abuse against disabled women and some disabled men
- Disabled and other victims of hate crime are discriminated against by the police and the courts and don’t get the right support
- The police don’t recognise hate crime against disabled people

¹⁸ <https://www.independent.co.uk/news/uk/politics/scroungers-rhetoric-over-benefits-fuels-abuse-say-charities-6579630.html>

¹⁹ <http://eprints.gla.ac.uk/57499/1/57499.pdf>

²⁰ <http://sro.sussex.ac.uk/id/eprint/70598/>

- The law should put a duty on the government to fund hate crime advocacy and support for victims of hate crime, in the same way it funds domestic violence services.”

26. The London DDPO HC Partnership has found that providing Hate Crime Advocacy long-term greatly improves engagement with the CJP and outcomes for victims.

Stirring up hatred

27. Inclusion London agrees that the law should be extended, so that stirring up hatred offences towards disabled people or people with a transgender identity are covered, and all protected characteristics are given parity within law. We agree that stirring up offenses be extended to all material. Hate crime has been stirred up by false rhetoric by politicians about disability benefit fraud, which has been relentlessly amplified by the press so now members of the general public abuse Deaf and Disabled people as benefit fraudsters and scroungers²¹. As detailed in our briefing on Online Abuse, Inclusion London believes that social media companies have a responsibility to proactively seek out and remove content which constitutes a hate crime, and should have penalties applied to them by a new regulatory body if they fail to do so.²²

28. Inclusion London further believes that in the event that if “likely to” in relation to stirring up offenses is defined in law, this definition should be applied to all protected characteristics in order to provide parity in law.

29. The stirring up offences currently contained in the Public Order Act 1986 are particularly relevant to Disability Hate Crime where someone is targeted by groups of people falsely accusing the Disabled person of being a paedophile, inciting prolonged incidents of harassment and threats, sometimes leading to serious crimes.

²¹ <https://stopfundinghate.info/2018/08/26/how-hostile-media-coverage-can-fuel-disability-hate-crime/>

²² <https://www.inclusionlondon.org.uk/campaigns-and-policy/act-now/tackling-online-abuse-inclusion-londons-evidence-to-the-petitions-committee/>

Online Hate

30. There is an overlap with online hate transferring to offline where disabled people are targeted for grooming leading to sexual and financial abuse.
31. We have examples of young disabled men who are targeted repeatedly by women working for criminal gangs who befriend the disabled person and lead the disabled person to believe they are in a romantic relationship, who are then set up for extortion after meeting, to have sex, or are persuaded that they will be arrested for sexual assault if they do not pay up.
32. We submitted to the Petitions Select Committee on online harms in 2019 recommending that Hate Crime Law includes online harm.²³

Evidence from a disabled woman:

“ Social media is a useful and largely accessible way for me, as a disabled writer, to communicate and share thoughts with the world. I enjoy it and have been an active participant for over 20 years.

However, I have experienced during this time chronic abuse with outbursts of intense and aggressive hatred focusing around my disability – and that of others close to me.

I’ve been called an ‘it’ many times – “what is IT doing?” “Look at the state of THAT”.

I’ve had remarks about how I look in my wheelchair, and a few times the statements “you should have been aborted”, and “you don’t deserve to live”.

I’ve also been attacked as stupid, cruel, evil for expressing views relating to my role as a disability activist. Terms such as spastic and retard are common terms of abuse that I’ve experienced personally.

²³ <https://www.inclusionlondon.org.uk/campaigns-and-policy/act-now/tackling-online-abuse-inclusion-londons-evidence-to-the-petitions-committee/>

I've been trolled for defending other disabled people who have been attacked for how they look. On Facebook this once included attacks from a person listed as 'a care worker'!

The logo for Inclusion London, featuring the text "Inclusion London" in white on a teal square background.

Offensive terminology connected to outdated terms for a disability is still rife, as terms of abuse with no awareness that disabled people form part of the viewership on social media.

I've been targeted by sexual predators asking for photos of my 'disabled' body, in a manner where this is the most 'normal' thing to ask, reflecting the foul stereotypes of disabled women as being available and 'desperate' for sexual attention to validate them.

At present the zeitgeist of disabled people as scroungers and benefit cheats is almost a permission to further this abuse."

Hate Crime Commissioner

33. We would welcome the establishing of a Hate Crime Commissioner whose office has resources and capacity to hold regular meetings with external stakeholders to be part of decision-making processes and the powers and resources to be able to implement policies and practices.
34. We recommend that the office employs and is led by people with lived experience of the protected characteristics covered in hate crime legislation.

Our member organisation, Liberation Rights, provided research, "Keeping Control": A user-led exploratory study of mental health service user experiences of targeted violence and abuse in the context of adult safeguarding in England", that found, "Participants emphasised strongly that effective change cannot occur without the involvement of people in mental distress, a point again strongly emphasised in the UNCRPD (Article 4.3)."²⁴

²⁴ <https://onlinelibrary.wiley.com/doi/full/10.1111/hsc.12806>



According to Dr Laura Chapman, “Good practice begins by asking Disabled victims what wording they prefer to define their own experience, because their views on disability will vary. Responsible practice demands a professional fluency guided by an intersectional approach, and a knowledge of civil rights groups’ interests more widely.”²⁵

‘By Reason Of’

35. The Law Commission have stated that it does not feel that, ‘by reason of’ is enforceable. This legal test is put forward as a possible solution to capturing more crimes against disabled people as hate crime but may not work if applied to other types of hate crime relating to protected characteristics.²⁶

36. Because so many Disability Hate Crimes go unreported or unrecognised, there does have to be serious consideration to how the new reforms will create a framework that captures a more realistic picture of the experiences of disabled people.

Our member organisation, Stay Safe East provides this case study:

“A visually impaired woman had her home taken over by a local gang who used her home to sell drugs and for prostitution. She was abused physically and emotionally. She was locked out of her home or had to lock herself in her room. Her carer had let the gang into her home and had stolen her money.

The woman was a victim of cuckooing.

This abuse would not have happened if she had not been disabled.

²⁵ <https://www.inclusionlondon.org.uk/wp-content/uploads/2020/09/FINAL-Still-Getting-Away-with-Murder-Sept-2020-FINAL.pdf>

²⁶ <https://www.disabilitynewsservice.com/major-law-reform-would-help-close-huge-justice-gap-on-disability-hate-crime/>

She was targeted because she is disabled – by reason of her disability. This is a hate crime.”



Dr Laura Chapman states, “As Walters et al suggest, the motivation hostility element pertaining to disability hate is a major barrier. Therefore, a ‘by reason’ test would be more useful in bringing perpetrators to court. They argue that the motivation test is rarely (if ever) used and where it is applied it is often unsuccessful, because proving a motive of hostility involves the identification of a victim’s perceived vulnerability – or presumed “difference”. Thus, the targeting of individuals who are “different”, and based on the perception that these individuals’ difference makes them innately weak or an “easy target”, is a form of prejudice and hostility in and of itself.”²⁷

‘Due to hostility or prejudice’ – include contempt

37. Although ‘contempt’ is in the small print as part of the definition of hostility, we would like to see this included as, ‘due to hostility, contempt or prejudice’.

38. As mentioned before with hate crimes relating to ‘mate crime’ or ‘cuckooing’, we do not feel the current proposed wording is strong enough to capture crimes committed when a Disabled person is subjected to multiple incidents / crimes over prolonged period where there is no covert evidence of hostility or prejudice. The evidence of hostility, contempt and prejudice is in the evidence of prolonged abuse, neglect that can only be perpetrated when the victim is viewed with contempt for being ‘less than human’ due to their perceived impairment, disability or condition.

39. There are multiple case examples where a judge views the crimes of finance and sexual abuse, torture and neglect as, ‘motiveless’ because there is no

²⁷ <https://www.inclusionlondon.org.uk/wp-content/uploads/2020/09/FINAL-Still-Getting-Away-with-Murder-Sept-2020-FINAL.pdf>

other evidence other than the way a person has been treated over time, as an 'easy target' or because the person is 'vulnerable'.

Definition of disability

40. We believe that it would not be feasible to sub divide into specific impairments and conditions to impose this legislation. We would recommend that any identification relating to disability needs to include the Equality Act definitions and be based on the Social Model of Disability and Cultural Model of Deafness²⁸. This is due to the growing number of people who do not identify as Disabled but would be subjected to acts of hate crime that would fall under legislation due to being targeted because of their perceived disability or impairment.
41. In response to having a specific category for people with learning difficulties; this relates to crimes committed where the victim is seen as, 'an easy target' or 'vulnerable' and subjected to multiple crimes known as
42. 'mate crime' or 'cuckooing'. This seems to affect victims with long term mental trauma and distress and people with learning difficulties. However, this crime is committed due to someone being in a vulnerable situation not because they are inherently vulnerable due to their impairment. For example, a single woman with learning difficulties living alone on a council estate would only be vulnerable to cuckooing if she were isolated, did not have a good support network of friends and family, had problems with finances and accessing work and other meaningful daily activities to be part of the community and most importantly been targeted due to her perceived 'vulnerability' and as an 'easy target'.

Enhanced Sentencing

43. Inclusion London does not believe that enhanced sentencing is the complete answer as research reveals that longer sentencing on its own is

²⁸ <https://www.inclusionlondon.org.uk/disability-in-london/social-model/the-social-model-of-disability-and-the-cultural-model-of-deafness/>

not a deterrent.²⁹ A variety of support is needed for those in prison, while in prison and on release³⁰. Community mediation/restorative justice methods may also be more effective than prison³¹.

The logo for Inclusion London, featuring the text "Inclusion London" in white on a teal square background.

44. We do have concerns relating to mediation / restorative justice, which if not handled appropriately and skillfully can lead to further abuse if the crimes have been ongoing and of a nature that humiliates and where the disabled person is treated as, 'less than human'.
45. This is also of concern if the hate crime is perpetrated by someone known to the victim, either in a care setting or family / friend that the disabled person may want to please the perpetrator to try and get the abuse to stop or for the perpetrator to like them, rather than to get a satisfactory resolution through Restorative Justice.
46. We recommend that the Law Commission seek further clarification from Stay Safe East on Restorative Justice, especially for disabled women who are victims of abuse and violence.³²

Demonstration of hate crime

47. Inclusion London believes that hate crime law should recognise the deliberate targeting of Deaf and Disabled people, as detailed in the Sussex report.

“The intentional targeting of members from protected groups “because of” their identity is to purposefully subjugate those individuals because of who they are. Such actions feed directly into the negative stereotyping of certain

²⁹ <http://www.prisonreformtrust.org.uk/PressPolicy/Parliament/AllPartyParliamentaryPenalAffairsGroup/PerspectivesonBreakingtheCycleFeb2011>

³⁰ <http://www.prisonreformtrust.org.uk/PressPolicy/Parliament/AllPartyParliamentaryPenalAffairsGroup/PerspectivesonBreakingtheCycleFeb2011>

³¹ <https://restorativejustice.org.uk/sites/default/files/resources/files/Full%20report.pdf>

³² <http://staysafe-east.org.uk/index.php/policy/>

groups and builds upon the social oppression that they have experienced historically”



“In many of these types of cases, there is no clear-cut outward (i.e. verbal) manifestation of hostility, neither will there always be sufficient proof to show that the defendant was “motivated” by hostility. Yet, these cases, and many more like them, illustrate how often certain groups of people are brutalised, sometimes tortured, and often abused not for anything they have said or done, but simply because of who they are. Their perceived vulnerability cannot be disentangled from the judgements that offenders make about the worthiness of their victim’s value as human beings.”

The report recommends, “Amendment of section 28(1)(b) to replace motivation with a “by reason” test.”³³

Further to this, the Bracadale Report suggests “Ministers might wish to consider a new provision that would allow the courts to recognise offences that involve the exploitation of vulnerable people. This might include fraud offences where the victim has been chosen because they are perceived to be an easy target, perhaps because of their age or because they have a disability.”³⁴

48. Inclusion London would therefore recommend that hate crime law recognise the deliberate targeting of people with protected characteristics, even in cases where there is no outward proof of hostility or prejudice.

Aggravated offences

49. Inclusion London believes that disability hate crimes should have parity of sentencing compared with hate crimes motivated by racial or religious hostility or prejudice. Therefore, Inclusion London agrees with the proposal

³³ [Microsoft Word - vFINAL31-10-17_DG Justice Report_with_covers.docx \(sussex.ac.uk\)](#)

³⁴ <https://www.gov.scot/binaries/content/documents/govscot/publications/independent-report/2018/05/independent-review-hate-crime-legislation-scotland-summary-document/documents/00535937-pdf/00535937-pdf/govscot%3Adocument/00535937.pdf>

that the aggravated offences that currently cover race and religion or belief should be extended to cover disability, sexual orientation, transgender identity and any other added characteristics. We also believe that hate crime law should apply to other types of crimes, such as criminal damage to property or stolen property crimes. Otherwise, a strong message is sent to disabled people, which says the value of their life is worth less than the life of non-disabled people or worth less than property.

Intersectionality

50. Both of our member organisations who contributed to this response highlighted the impact of intersectionality on disabled people's barriers in access to justice. Disabled people can have intersectional protected characteristics. Lack of parity and clarity in current legislation creates confusion for both victims and professionals in the CJP.

Stay Safe East state:

“We think it is very important that hate crimes that involve more than one ‘issue’ (intersectional hate crime) are recognised in law. For example, Muslim women are more likely to experience islamophobic hate crime, disabled people from BAME communities are more likely to be victims of hate crime.”

Liberation Rights state (referring to the Keeping Control report):

“...most participants were female and many were living in deprived circumstances, but neither of these factors is covered at all by current hate crime law. Participants whom I’m describing were all Disabled people, by definition, and so covered less adequately by hate crime law. Among them were people who also defined themselves as lesbian, bisexual, or transgender. In their case, they not only experienced hate crime on more than one front, but had less protection against hate crime on either front. In addition, the ‘double whammy’ of experiencing both was not taken into account.”³⁵

³⁵ <https://onlinelibrary.wiley.com/doi/full/10.1111/hsc.12806>

Conclusion

The logo for Inclusion London, featuring the text "Inclusion London" in white on a teal square background.

51. Inclusion London firmly believes in parity of the law across all the hate crime categories in relation to hate crime. A single hate crime law to consolidate the current existing provisions would be an opportunity to realise this belief; and is an opportunity to extend the law to all people who experience hate crime because of their characteristics, perceived difference, or circumstances. We also believe that not all hate crime presents in a way where “hostility” can be easily demonstrated, and it is important that hate crime law is amended to ensure where someone has been deliberately targeted “by reason” of their characteristic it is covered by law. Failing that, ‘due to hostility and prejudice should also include ‘contempt’. Stirring up offenses should be extended to all people covered by hate crime laws, and should take into account the technology and communication methods commonly utilised in the 21st century – ensuring social media companies are properly regulated, and that stirring up offenses do not just apply to written materials. Online hate needs to be treated the same as offline hate and that social media companies are held to account. We believe that the definition of disability should be based on the Social Model of Disability and Cultural Model of Deafness, in accordance with the Equality Act definitions and that there is ‘intersectional hate crime’. We strongly recommend that any Hate Crime Commissioner’s office be led by and for people with lived experience.

52. We thank Stay Safe East and Liberation Rights for their contributions to this response.

Further Information

53. Please contact Inclusion London’s Disability Hate Crime Project Manager, Louise Holden, at louise.holden@inclusionlondon.org.uk