Disability Justice Project
Discrimination guide

Hate Crime

Disability Justice Project

Inclusion London
Supporting London's Deaf and Disabled People's Organisations

About this guide

We experience hate crime on a daily basis. Many of us don't always realise that what is happening is against the law, when others feel unable to do anything about it.

That's why we put this guide together.

This guide looks at specific problems Disabled people experience. It will help you to identify whether you have experienced hate crime and will take you through the process of reporting it and challenging discrimination step by step. You will find template letters you can use, practical tips on collecting evidence and sources for further information and advice.

The law has prohibited discrimination against Disabled people for more than 20 years, and yet we still face many barriers and sometimes find it impossible to access services. This is largely because it is left up to us to enforce this law. By taking action to combat discrimination, you aren't only making changes for yourself: you are improving things for other Disabled people.

Hate crime

Contents

2 About this guide

6 What is hate crime against Disabled people?

7 Have you been the victim of hate crime?

8 Hate incidents and hate crimes

10 Flagging disability hate crime

12 How the law protects you against hate crime

14 What you can do about hate crime

15 How to report a hate crime

16 Making an initial report

17 Giving the police an account

18 Meeting your access needs

19 Making your statement

20 Victim's Personal Statement

21 Investigation and prosecution

22 Your rights in police stations and the criminal courts

23 Victims Code

24 Vulnerable victims and witnesses

25 Achieving Best Evidence (ABE) interviews

26 Special measures and aids in court

27 Possible outcomes in the criminal justice system

28 What you can do if things go wrong

29 Consult a solicitor or an advocate

30 The Equality Act 2010

31 Victim's Right of Review

34 Making a complaint

39 Taking legal action

42 Letters

What is hate crime against Disabled people?

A criminal offence is a hate crime when the perpetrator acts out of hostility or prejudice towards another person because they are Disabled or because of their gender identity, race, sexual orientation, religion, or any other perceived difference (known as "personal characteristics").

The incidence of hate crime committed against Disabled people is disproportionately high and hugely underreported. Everyone's experience is different but many of the factors that make Disabled people more likely to experience abuse and hate crime at some point in your life stem from unequal life situations and discrimination.

The Crown Prosecution Service ("CPS") legal guidance on disability hate crime incorporates the social model of disability and reminds prosecutors that like all people, while some Disabled people might be vulnerable adults (which means that special measures should be available in police stations and the criminal courts), many Disabled people do not identify as "vulnerable" and may be offended by the use of that word to describe your position.

This section will look at:

- Have you been the victim of a hate crime?
- Hate incidents and hate crimes
- Flagging disability hate crime

Have you been the victim of hate crime?

If you think you could have been the victim of disability hate crime but you do not know, it might help to think through the below questions:

- Why do you think the offence happened?
- Do you think it happened because of who you are or because of something that the perpetrator perceived about you?
- Do you think this happened because you are Disabled or Deaf?

I have been subjected to a crime because I am Disabled

Whatever your experience - if the above statement is true for you, this makes the crime more serious both in the eyes of the law and in terms of how it is likely to impact on you. Being targeted because of a personal characteristic can be an extremely stressful and potentially traumatic experience. It may also send reverberations through your community.

In its Public Statement on prosecuting disability hate crime and other crimes against disabled people, the CPS recognises that hate crime reinforces established patterns of discrimination and prejudice and that is why it is so important that it is prosecuted effectively.

There are many barriers to reporting and following up hate crime – from the accessibility of the police station; concern that the authorities will not treat your allegations with the required seriousness to fear of repercussions, to mention just a few.

This guide sets out what the law says about disability hate crime; what to expect if you report hate crime; your rights in the criminal justice system and steps that you can take if you are not satisfied with the response from the police or the Crime Prosecution Service ("CPS").

Use our template letters

Hate incidents and hate crimes

The police make a distinction between **hate incidents** and **hate crimes**. Not all hate incidents will meet the threshold to be a hate crime. A hate incident is a hate crime when the act or conduct that you are complaining of is a **criminal offence**, meaning that it is against the criminal law.

It's equally important that you report hate incidents so that they can be recorded by the police. This means that the police have the ability to build up the bigger picture of a perpetrator or group's previous behaviour and can identify patterns, which might lead to an investigation or prosecution in the future.

There are many different types of behaviour that could be considered as disability hate incidents or hate crimes. The abuse does not have to be physical. Some examples are:

- Physical or sexual abuse or assault
- Verbal abuse, e.g. name-calling or offensive jokes
- Harassment
- Threatening behaviour or threats of violence
- Online abuse, for example on Facebook or Twitter
- Threatening or abusive communications
- Anti-social behaviour
- Harm or damage to your home, pet or vehicle
- Graffiti

It could be a one off incident; a combination of the above actions or an ongoing campaign of harassment or intimidation.

It is important to recognise that a hate crime can be committed by someone that you know, as well as a stranger. For example, by a carer, a neighbour or someone you consider to be your friend. Hate crimes can occur anywhere, including in your home.

Use our template letters

Prosecutors are told to consider the wider circumstances of an offence to see if there is evidence of hostility. Some examples of harassment that are commonly reported by Disabled people and that could be an important for the CPS to think about are:

- Throwing or kicking away a walking stick or walking frame or using a mobility aid as a weapon against the Disabled person
- Removal of access ramp or other accessibility aid, preventing a Disabled person from access to transport or a building
- Challenging the right of a disabled person to use accessible facilities, such as reserved parking or seating; or showing impatience or annoyance towards disabled people using such facilities
- Targeting only Deaf or Disabled people's homes for crimes (for example, burglary or criminal damage)
- Staring, laughing at or doing impressions of a Deaf or Disabled person
- Carers or perpetrators of domestic violence moving a person's mobility aids out of reach; withholding food; water; communication; money or medication

Flagging disability hate crime

The police and the CPS have a system for identifying cases that involve disability hate crime, which is: *Any incident/crime which is perceived by the victim or any other person, to be motivated by hostility or prejudice based on a person's disability or perceived disability.*[1]

This means that if you believe that something that happened to you was a hate incident it should be recorded as such by the police. That is also true if another person, a witness or a police officer thought the incident was hate related.

When a disability hate crime is reported to the police, it should be **flagged** as a hate crime. This puts the CPS on notice and means that the CPS should be consulted early.

It does not necessarily follow that a criminal court will eventually convict someone but it is an important step that a possible hate crime is identified early. Prosecutors have to take it into consideration if an offence was motivated by discrimination or hostility towards a Disabled person or Disabled people. If there is evidence that it was motivated by discrimination or hostility then a prosecution is more likely to be required.

The courts also have powers to increase the sentence given to a person who is convicted of an offence, where there is evidence of disability hate crime.

In the next section, there is some more detail about legal definitions. Some people might may find this informative and useful but other people might prefer to go straight to the section on what you can do about hate crime.

1. Definition in CPS Public Statement on prosecuting hate crime

The important things to remember are that:

- At minimum, the police should record an incident as a hate incident if you believe that there was hostility because you are Disabled;
- Recording disability hate incidents means the police can build the bigger picture of a person or a group's previous behaviour and identify any patterns;
- If there is evidence of a hate crime, a prosecution is more likely to be required;
- Disability hate crimes can attract higher sentences.

You may find that you experience hate crime because you are Disabled and because of your other characteristics or identities. For example, because you are a black, disabled woman. You should explain this if you are reporting a hate crime. For example, "I believe this offence was committed against me because of the perpetrator's prejudices and attitudes towards people who are Disabled and/or women and/or because of my race". While we focus on disability hate crime in this guide, a lot of the information and suggested actions will apply to other types of hate crime as well.

How the law protects you against hate crime

Criminal law against disability hate crime

There is no specific, criminal offence but any crime can be a disability hate crime, if the person who carried out the crime targeted you because of hostility or prejudice towards Disabled people.[1]

When an offence is classed as a disability hate crime, the court has the power to increase the perpetrator's sentence. In practical terms, this means that a longer or tougher sentence may be given.

Section 146 of the Criminal Justice Act 2003 says the court must increase the sentence for any offence committed that involves either:

> The offender demonstrating towards the victim of the offence **hostility** based on **disability (or presumed disability)** of the victim;
>
> or
>
> The offence being motivated (wholly or partly) by **hostility towards persons who have a disability or a particular disability**.

The CPS defines **disability** as **any physical or mental impairment** and includes any person who is disabled by the definition under the Equality Act 2010.

Hostility does not have formal definition in the Criminal Justice Act 2003 but the CPS say that it can include: ill-will, ill-feeling, spite, prejudice, unfriendliness, antagonism, resentment or dislike.

1. You may be aware that there are specific criminal offences that relate to stirring up hatred on the grounds of race, religion and sexual orientation. There is no offence of stirring up hatred based on disability.

Crimes against Disabled people

The CPS make a distinction between crimes that meet the formal legal definition above of "disability hate crime" and broader category of crimes that are committed against Disabled people.

Even if the CPS or the criminal court do not reach the view that you have suffered a disability hate crime, the authorities should still consider whether a crime has been committed against you because you are disabled or you are perceived to be disabled.

The CPS Public Statement on prosecuting disability hate crime explains what this could mean: "some crimes are committed because the offender perceives the disabled person to be vulnerable and not because the offender dislikes or hates the person or disabled people".

In such circumstances, the CPS says it is committed to making sure that evidence that a Disabled person has been targeted is put before the court so that the full gravity of this offending can be considered in sentencing.

Unfortunately, for many victims and survivors who report hate crime to the police, there is big gap between the above policy and guidance on prosecuting hate crime and what happens when individual cases are investigated. This can be incredibly disappointing and may also be frightening.

The following sections talk through how to report and follow up your allegations and the steps that you can take if you are not satisfied with the outcome.

Civil Legal Advice will put you in touch with lawyers who can help you
www.gov.uk/civil-legal-advice

Use our template letters

What you can do about hate crime

This section covers what to expect from the criminal justice system when you report hate crime. The CPS has an online guide called Support for Disabled victims and witnesses of crime, which you might also find helpful.

This section covers:

- How to report a hate crime
- Making an inital report
- Giving the police an account
- Meeting your access needs
- Making your statement
- Victim's personal statement
- Investigation and prosecution

How to report a hate crime

If you think you are at immediate risk or a crime is happening, you should use the emergency number to contact the police. An emergency is when a crime is happening, someone suspected of a crime is nearby, someone is injured, being threatened or in danger.

- Call 999 if you are at immediate risk
- If you cannot make a voice call, you can contact the 999 emergency services by SMS text from your mobile phone, information is available at: www.emergencysms.org.uk
- The Metropolitan police website explains different ways that you can get in contact with the police: safe.met.police.uk/contact/how_to_contact_us.html
- If it is not an emergency, you can report hate crime directly to the Metropolitan police online, who promise to get back to you within two days at www.met.police.uk/advice-and-information/hate-crime/how-to-report-hate-crime or by calling 101 or visiting your local police station.
- You can also report a hate crime to the police online via the True Vision website: report-it.org.uk/your_police_force or download a self-reporting form, which is available at: http://www.report-it.org.uk/self_reporting_form

Once completed, the forms can either be handed in at your local police station or posted to your local police force. Details on how to contact your local police force can be found at www.police.uk.

An Easy Read form may be easier to complete. This is available to download, print and fill at: http://report-it.org.uk/files/report_it_form_secure.pdf

Making an initial report

When you report an incident, you should ask for an incident reference number, to provide if and when you have further contact with the police. It's important to contact the police as soon as possible and to provide as many details as you can

The following information may assist the police to investigate disability hate crime:

- It's important to tell the police that you are Deaf or Disabled and in what ways;
- You should let the Police know any access and support needs that you have and ask for that information to be recorded and passed on to the officer investigating your case;
- Provide contact details for anyone who is supporting you to make your report, whether that be a friend, family member, a solicitor, an organisation and provide contact details if appropriate;
- Details of any witnesses: names, addresses if known and details of how the person was a witness and any connection to you or the perpetrator;
- Detail any other professionals involved in this or previous incidents, (e.g. housing officers, social workers, doctors, nurses);
- State what action you want the police to take.

Giving the police an account

Once you have made an initial report, the police may ask to interview you immediately or at an arranged time. For most people, the prospect of being interviewed by the police is stressful and intimidating. There are some basic things that you can ask for that might help you to feel more confident.

Initially, the police may visit you at home, at your office or other agreed place to get basic details of the case.

Once this is done, the police may ask you for a full interview. In most cases, you will be asked to come to a police station to give your statement. In some circumstances, it is possible for the police to take a witness statement at your home.

In any case, it is generally advisable for someone else to come with you. For example, you could ask a skilled advocate, a friend, family member or solicitor to come with you.

Meeting your access needs

In addition, you may have specific access needs and it is important to make these known as soon as you can. The police are required to make reasonable adjustments for you.

It is a good idea to contact the police officer conducting the interview to inform or clarify any access needs in good time before the interview. This is because police stations are often in older buildings with interview rooms accessed by stairs and without lifts. For Deaf people there can be problems with hearing loops not working or British Sign Language interpreters not being booked. If you can, confirm the access arrangements again the day before the interview to make sure everything is in place.

If the police refuse to provide you access to an aid that you require because you are Deaf or Disabled, ask them to provide you with a copy of the relevant police force policy, for example on taking reports from Deaf and Disabled victims or witnesses of crime. If you are not satisfied with the police response or policy or if there is no written policy covering the situation that you are faced with, you may want to consider bringing a complaint or legal action (see the section of this guide on **What you can do if things go wrong**).

Making your statement

The police will take a statement, which may later be used in court if the case goes to trial and it should include as accurate information as possible. The interview process is central to the criminal justice system and there are various, strict legal requirements that the police must bear in mind when they interview you and gather evidence. There is a risk that if the interview is not conducted properly, any future prosecution could collapse.

The interview will be recorded and the police officer will take down the statement, which is given to the witness to read, sign and date as an accurate record of what took place. The police officer will explain that the statement can only include what you actually saw or heard of the incident(s). It is completed to a standard format with no paragraphs or spaces and each page is signed and witnessed.

You can take breaks and the police officer should explain this and other practicalities to you.

Victim's Personal Statement

You are entitled to make a Victim's Personal Statement ("VPS") about how a crime has affected you at the same time as giving a witness statement about what happened to the police. This is also an opportunity to set out your concerns and indicate whether or not you require further support.

Making a VPS is entirely optional and you are entitled to say whether or not you would like to have read your VPS aloud in court, you would like some else to read it aloud or whether it should be played back, if recorded. You should be aware that if you choose not to make a VPS when initially offered, you may not have another opportunity to make one later on.

The Victims Code sets out in much more detail the categories of crime where a victim or witness will always have the entitlement to make a VPS at any point before the perpetrator is sentenced and when there is a choice and what will happen.

A **Community Impact Statement** may also be made to show the impact of offending on the wider community, for example the Deaf and Disabled community. You can find more information about when the police should consider taking a Community Impact Statement and what it will include here: CPS guidelines on the use of CIS in hate crime cases. Community for this purpose includes communities of identity; groups of people who share characteristics, experiences or backgrounds or who are affected by the targeting of a building that they frequent, for example a day centre for people with a specific impairment.

Investigation and prosecution

The police will investigate the incident and decide whether there is sufficient evidence to prosecute the suspect. If there is not enough evidence then they may not seek involvement from the CPS. However, the CPS legal guidance on disability hate crime instructs the police to refer the case to the CPS for **early consultation** and it may be appropriate for the police to seek advice from the CPS on the types of evidence they should try to secure.

Prosecutors are instructed to take a **proactive** approach towards disability hate crime, which might mean that before deciding whether to charge the suspect, the CPS need to seek more information from the police. That could gathering information from other agencies, including social services, the NHS, specialist support or community groups working with you or Deaf and Disabled people in your community.

If the police find that there is sufficient evidence to prosecute a disability hate crime, they must refer the case to the CPS to make a decision whether to charge a person with an offence.

The decision to prosecute is not based on whether the CPS believe the suspect is guilty or not. Prosecutors must follow the framework set out in the Code for Crown Prosecutors. This involves asking two questions:

Firstly the prosecutor asks whether there is enough evidence against the Defendant. The prosecutor must be satisfied that there is enough evidence for “a realistic prospect of conviction” against the defendant.

If there is enough evidence, then a prosecution will usually take place unless the prosecutor finds that a prosecution would not be in the public interest. According to the public interest test, at 4.12 – 4.14(c) of the Code, a prosecution is more likely to be required if an offence was motivated by prejudice against the victim’s actual or presumed disability.

If the police or the CPS make a decision not to charge and you are not satisfied with the reasons that you are given, then you may wish to exercise the **Victim’s Right of Review** (explained in the section on **What you can do if things go wrong**)

Your rights in police stations and the criminal courts

There are a range of measures built into the criminal justice system to assist people who are victims of crime to participate fully or to the level that they are comfortable with in investigations and prosecutions. You may find yourself in a dangerous or intimidating situation; you may have access needs or perhaps you identify as a vulnerable person in the context of navigating the criminal justice system.

Using words like “vulnerable” and “special measures” can be disabling in itself. However there are a range of aids and protections that are available because of law and guidance that use that terminology and for practical purposes, it is likely to be useful to know your way around that guidance. In this section, we will use that language though we recognise that it is not always helpful.

This section covers:

- Victims Code
- Vulnerable victims and witnesses
- Achieving Best Evidence (ABE) Interviews
- Special measures and aids in court
- Possible outcomes in the criminal justice system

Victims Code

The Victims Code was published in 2014 by the Ministry of Justice and sets out the minimum standards that victims of crime are entitled to expect at all stages of the criminal justice system. Unfortunately, many people who have report crime find that the police and the prosecuting agencies fall far short of these standards.

The Code can be downloaded, including in easy-read and accessible formats, and is likely to be a useful guide to have available if you are reporting disability hate crime.

The Code sets out in detail the entitlements of all victims of crime, which include:

- A written acknowledgement that a crime has been reported, including the basic details of the offence;
- An enhanced service if you are a victim of serious crime, a persistently targeted victim or a vulnerable or intimidated victim;
- A needs assessment to help work out what support you need;
- Information on what to expect from the criminal justice system;
- A referral to organisations supporting victims of crime;
- Information about the police investigation, such as if a suspect is arrested and charged and any bail conditions imposed.

All criminal justice services must communicate in simple and accessible language, taking appropriate measures (e.g. Easy Read, Braille or the use of a Registered Intermediary) to assist you to understand and be understood.

There are other rights in the Victims Code, including those set out in brief below. If you think that one or more of these situations applies to you, you may wish to refer to some of the further resources referred to in this guide or ask a supporter to help you to find out more.

Vulnerable victims and witnesses

Vulnerable victims are entitled to enhanced services under the Victims Code. This includes support during the police interview, before the trial and during court proceedings.

The legal definition of a vulnerable victim is if:[1]

- You are under 18 years of age at the time of the offence; or
- The quality of your evidence is likely to be affected because:
  - i. you suffer from mental disorder within the meaning of the Mental Health Act 1983;
  - ii. you otherwise have a significant impairment of intelligence and social functioning; or
  - iii. you have a physical disability or are suffering from a physical disorder.

If you need assistance to understand or to make yourself understood in your first contact with the police, you are entitled to be accompanied by a person of your choice, unless the police have reasons to think that it would be contrary to your interests or could threaten the integrity of the investigation or prosecution.

People with learning disabilities, mental health support needs and anyone else who has difficulties either communicating what has happened or understanding the questions and context should always be interviewed with someone independent of the police, such as their support worker.

The Ministry of Justice has published guidance on interviewing and special measures when the police and prosecuting authorities are working with victims of crime. That guidance, called Best evidence in criminal proceedings is extremely detailed but might be a useful resource for you or your advocate.

1. As defined by Section 16 of the Youth Justice and Criminal Evidence Act 1999 (as amended by the Coroners and Justice Act 2009)

Achieving Best Evidence (ABE) interviews

In exceptional circumstances, it might be an option for your police interview to be video-recorded to make it easier for you to tell the police what happened.

There can be delays in setting interview dates because not every station is equipped for ABE video-recorded interviews and not all the rooms used for these interviews have wheelchair access. It is a good idea to explain your needs with the investigating officers as soon as you can. As there are a number of additional arrangements that can be made, such as the environment of the interview, that can be made to meet the particular needs and circumstances of the individual, to achieve the best evidence. The guidance referred to above is again helpful to support any requests.

ABE interviews should only be done by officers who have undertaken ABE training. Where the a person has learning disabilities and communication needs, for example they are Deaf and have a learning disability, or they have autism, the interview must be conducted by an officer who has undergone specialist, advanced ABE training. This is essential to avoid mistakes being made and your evidence being discounted.

You or your advocate should ask if the officer conducting the interview is ABE trained, and where relevant if they are advanced ABE trained. Finding the right officer to do the interview may take a while, it is essential you keep pushing for this to happen promptly. For many people with learning disabilities, cognitive impairments or memory problems, time is of the essence.

Special measures and aids in court

If the case goes to court, you could be called a witness and you may also wish to ask for Special Measures to help you give evidence. You can ask the police investigator or your liaison officer or the Witness Care Unit. Special measures can include:

- Screens or curtains in the court room so that you do not have to see person or people accused of carrying out the crime ("the defendant");
- Giving evidence in private – the public gallery can be cleared in cases involving a sexual offence, human trafficking or where the court is satisfied that someone other than the accused may seek to intimidate the witness;
- A live video link allowing you to give evidence from somewhere other than the court room
- Providing someone to help you as questions ("an intermediary")
- Access to communication aids, such as an alphabet board or access to a registered intermediary.

The CPS will decide whether to make an application for special measures and the court decides whether Special Measures are granted.

If you have an assessed communication needs, you may require the assistance of a registered intermediary. Registered Intermediaries assist at the police interview as well as in court to a help to explain questions and answers so far as that is possible without changing your evidence.

If you have a speech impairment, you may be able to write down your evidence at court. Sign language interpreters or lip-speakers can be made available if you are Deaf or have a hearing impairment.

Judges and magistrates have an Equal Treatment Bench Book which explains how they should treat people in court and which includes suggested **reasonable adjustment**s for specific impairments.

Possible outcomes in the criminal justice system

If the suspect is convicted of a criminal offence, they may be sentenced to a term of imprisonment; a community order or to pay a fine.

There are additional orders that can be applied by the prosecutor over the course of a criminal prosecution, including restraining orders and compensation for loss, injury or damage. It is important that you tell the police if you have concerns about your future safety because of a specific perpetrator or group of perpetrators. In some cases, a restraining order for the purpose of your protection can be issued by the court even where the suspect has been acquitted.

What you can do if things go wrong

If you are not satisfied with the response or decisions made by the police, the Crown Prosecution Service or another criminal justice service that you come into contact with, this sections tells you how you can take action.

Before taking action, you should bear in mind that if there are ongoing criminal proceedings against the suspect, there can be a risk of “prejudice” to the criminal case and so it is likely any complaint or proceedings will get put on hold until the conclusion of any criminal case It is also advisable if you are or may be called as a witness in the future to not provide a separate factual account of what happened, in addition to the account that you have given to the police.

This section covers:

- Consult a solicitor or an advocate
- The Equality Act 2010
- Victim’s Right of Review
- Making a complaint
- Taking legal action

Use our template letters

Consult a solicitor or an advocate

It is almost always worth seeking advice first. For example, you could talk to an advocate at a hate crime or a disabled people's organisation.

If you are on a means test benefit, or your income is low, you may be able to get government funding for legal representation (legal aid). If you are not eligible for legal aid, some solicitors may be able to discuss other funding options with you.

This is a specialist area of law. If you think you will need legal advice and representation, get in touch with our Disability Justice Project or see here for the list of organisations to contact.

Whether you end up taking action yourself or with assistance, making a complaint could potentially lead to changes that will help other disabled people. You may also be able to take the police or the CPS to court for breaching your human rights or the discrimination law. In this guide we call it "taking legal action".

The Equality Act 2010

Under the Equality Act, public authorities (and many others) have a responsibility to make sure that Disabled people can access services as easily as people who are not Disabled. This is known as the "duty to make reasonable adjustments" and it includes equal access to the police and criminal justice services.

Section 149 of the Equality Act 2010 creates what is known as the 'Public Sector Equality Duty'. This states that public bodies must eliminate the discriminatory conduct prohibited by the Equality Act, advance equality of opportunity and foster good relations between those who have protected characteristic and those who do not.

If the police or other criminal justice services are not making reasonable adjustments to facilitate your use of and access to their services, not properly dealing with reports of hate crime, or perpetrating discrimination in any other way, they may be breaching this duty.

Victim's Right of Review

The Victim's Right to Review Scheme enables people who are victims of crime to seek a review of **some** of the decisions that are made by the police or CPS not to start or not to continue a criminal prosecution, to see if it was the wrong decision.

If a person is unable to access the scheme directly as a result of something arising from disability, a family spokesperson can ask for a review.

However, outside of this, if you want or need assistance, you could also ask a support worker, friend or other advocate to help you to prepare your request for a review.

What type of decisions can be reviewed?

Only some decisions by the police and CPS are open to review under the scheme. In the case of decision made by the CPS, these include decisions:

1. not to charge
2. to discontinue all charges
3. to offer no evidence against the suspect
4. to leave all charges to "lie on file".

If the decision to take "no further action" was taken by the police, and not by the CPS, then it may be appropriate to challenge the police decision.

Each police force has their own Victim's Right to Review Scheme. You can find the details of this online or by asking the officer dealing with your case to provide this information to you in an accessible format.

At the time of writing this guide, the Metropolitan police force did not have information on its website about the Victim's Right of Review. However, some information is publically available online as a result of a Freedom of Information request by a member of the public.

How do you challenge a police decision?

The police should write to you informing you of their decision not to charge someone with an offence within 5 working days of the decision. If you do not receive a written record of the decision not to charge, you are not provided with reasons or you are not provided either in a form that you can understand – you should ask for this first (a template letter is included at in the resources section of this guide).

If there has been a decision not to take further action following your report of disability hate crime, you could consider the following questions:

- Have the police and/or the CPS understood that you are Deaf or Disabled and how this impacts on the allegations that you are making?
- Have the police and/or the CPS understood that the person you are complaining against has committed an offence against you because you are disabled?
- Have the police made appropriate arrangements to interview you or gathered evidence from witnesses who have information and from other sources?
- Do you think the public interest test may not have been applied correctly?

If you are not satisfied with the response from the police, you can write to the police asking for a review of the decision under the Victim's Right to Review Scheme. You should provide your request to the police within 3 months of being told about the decision but it is best to do this as soon as you can.

We have included template letters in the resources section of this guide, which also include more suggestions.

What happens next?

A police officer or prosecutor who was not involved in the investigation, and is senior to the officer who made the first decision, will review the decision. You should be informed of the outcome of the review within six weeks. For complex or sensitive cases, this can take longer and you should be kept informed of progress.

There are a number of possible outcomes including:

1. The original decision is upheld
2. They may overturn the original decision, and the suspect may be required to go to court or the case may be dealt with by way of a caution. The police might refer the case to the CPS to make a decision
3. The police may recommend that further enquiries are completed before making a decision
4. In some circumstances, even if the original decision is overturned, it may not be possible to take the suspect to court.

What happens if you still disagree with the outcome?

If you remain unhappy with the outcome and want to challenge it further, you could apply for judicial review of the decision in the High Court. The risks involved in bringing a court action go beyond the scope of this guide but we would strongly suggest that you seek advice from a legal representative before you decide to start a case at court.

If you do decide to apply for judicial review, you must act “promptly” and in any event, you must start your case within 3 months of the decision that you want to challenge. Depending on your circumstances, there may be legal aid available.

If you want to understand more about what judicial review is, Public Law Project has a series of more general introductory guides available to download here.

Making a complaint

The police, Crown Prosecution Service and any criminal court will have a complaints procedure. We focus mainly on the police complaint system in this guide but time limits for complaining against the CPS and the basic procedure are set out further below.

What is a police complaint?

All police forces have a complaints procedure. This is the formal process through which you can register your discontent about how you have been treated and ask for changes to be made by the police force.

Complaints against the police normally fall into one of two categories:

- Complaints against one or more police officers
- Complaints about how the force operates

However, often these two types of complaint can go hand in hand.

What are the benefits of lodging a police complaint?

- The investigation of your complaint may help the force understand better your needs and the situation of other disabled people facing similar barriers;
- You may gain an understanding of why things happened the way they did, even if you still do not agree with decisions that were taken;
- Your complaint will be a matter of public record, which will also be reflected in the police complaint statistics
- If you think that a police officer should face disciplinary or criminal action, the police complaint system is the most practical option available to you for seeking this.

What are the drawbacks of lodging a police complaint?

- The rate of police complaints that are upheld by the local police force is low;
- The quality of investigation reports can be very poor;
- If your complaint – for example about disability discrimination - is not handled appropriately, you could be left feeling even more frustrated and that the process was pointless.

How long do I have to make a complaint?

You should make a complaint as soon as possible if there are no ongoing criminal proceedings and within 12 months of the conduct you want to complain about.

If there are ongoing criminal proceedings and you are a witness, it may be better for you to make your full complaint after the criminal case has been brought to a conclusion.

In those circumstances, you could write to the police force stating your intention to complain once the criminal case is concluded, say that you do not wish to "prejudice the criminal case" and ask for confirmation that they will accept your detailed complaint at later date.

How to make a complaint

There are 2 main ways you can make a complaint.

- Using the forces online complaints form
- Writing a letter of complaint to the police force.

If you decide that you would rather write your own letter of complaint, you should make sure to include the following information:

- Your full name and address
- The name of the police force you wish to be subject to the investigation
- Details of the allegations and complaints you are making.
- If you are think you have been discriminated against, you should that clear remind the force that your complaint should be dealt with in accordance with the Police Complaints Discrimination Guidelines (see further below)
- Details of the outcome you are seeking;
- Details of why you feel the police have acted

inappropriately and what you would have expected them to have done differently.
- Whether you are happy for the complaint to be investigated locally or by the Independent Office of Police Complaints ("IOPC").

If you think you have been discriminated against, you should make sure to include the following information in your complaint:
- Describe what it was that made you believe that an officer's words or actions were discriminatory;
- Did you notice any difference in the way you were treated compared to other people?
- Was the police station accessible to you and if not, were adjustments made for your needs?
- Was there anything about the police officer's language that you noticed?
- Describe the impact did this experience had on you
- Give details of anyone else who might have witnessed the incident and any comments or reactions they expressed to you since.

The Discrimination Guidelines

The Police Complaint Discrimination Guidelines set out how police forces should approach investigating allegations of discrimination. Although these guidelines are not written for complainants, they can be a useful resource because they indicate how your complaint should be investigated and what steps should be taken. They may help you to structure your complaint letter and to spell out what you are alleging.

Template letters

We have created three types of template letters to assist you in writing you letter of complaint.

1. Complaint if the police are not making reasonable adjustments
   - If you have had interactions with the police and they have not made the necessary reasonable adjustments to facilitate your experience, you can make a police complaint.
   - For example, police stations are often in old buildings that have not been fitted with access

Use our template letters of complaint

requirements. This is unacceptable and you have the right to move through the building as others would. For example, if you are obstructed from entering the building or rooms within this building, you can make a complaint against the police force.

2. Complaint if the police response to hate crime was not satisfactory:
   - A failure to recognise or take seriously an act of discrimination can be further discrimination in and of itself.

3. Complaint if you have been discriminated against by the police
   - If you think you have been discriminated against in any other way as a disabled person by a member of the police force, you can lodge a letter of complaint.

The complaints process

Once a complaint has been lodged, the police must assess its seriousness and consider whether it should be referred to the Independent Office for Police Complaints ("IOPC"). In the most serious cases (for example, those involving death), the investigation will be undertaken by the IOPC.

Most investigations are carried out are carried out by the same police force as the officers complained of.

Discrimination cases are often wrongly not referred to IOPC for initial assessment. If you would like your complaint to be referred to the IOPC, this is something that you should say in your complaint letter.

At local level, there are two different levels of investigation including local resolution and local investigation. Local resolution is not suitable if your allegations – if proved – would justify criminal or disciplinary action against the officer complained or if

Use our template letters of complaint

the subject of your complaint concerns very serious harm to you. If you are offered local resolution, you should therefore object if one of those circumstances apply. It is very unlikely that a complaint concerning disability discrimination would be suitable for local resolution.

The outcome

You should receive a response from police within 15 days of them receiving your letter of complaint.

This response may not contain the outcome of the complaint investigation and the complaint investigator may ask you for further information, so in fact the process takes longer than this.

At the end of the investigation, you will receive a report with a summary of the evidence that has been gathered and conclusions.

If you are not satisfied with the outcome, then may be able to submit an appeal and the complaint investigation must tell you how to do this and the time limit that applies.

Complaints against the CPS

You must submit a complaint against the CPS within six months of the things that happened. There is information on the CPS website about how to make a complaint.

Taking legal action

By taking legal action here we mean starting a human rights or discrimination claim in the County Court or the High Court.

There are always risks involved in taking legal action and there are specific risks that apply when you bring a case against the state.

It is always a good idea to try to get legal advice before you start an action. Even if a lawyer cannot help you with your case, they may be able to give an informal opinion about the general risks and difficulties that you could face.

If you are on a means test benefit, or your income is low, you may be able to get government funding for legal representation (legal aid). If you are not eligible for legal aid, some solicitors may be able to discuss other funding options with you.

If you have a lawyer, they will usually draft the documents for you and guide you through the process.

Here we describe two types of legal action that might apply if you report hate crime and it is not handled properly, for example by the police or the CPS. Bear in mind that there might be other legal cases that you can bring. For example, if you are arrested yourself it may be possible to bring a false imprisonment claim.

A legal action of this type is for failures that happened in the past. It may conclude in you being awarded compensation, that is the most likely outcome. A civil claim will not lead directly to the punishment of an officer and cannot make the police or the CPS take a particular action in the future.

Equality Act 2010

The Equality 2010 says that the public authorities – which includes the police and the CPS – cannot discriminate against disabled people. Reasonable adjustments should be made so that everyone has equal access to and this includes equal access to the police and criminal justice services.

Human Rights Act 1998

There may be an action for failing to protect you; to investigate or to prosecute. The most relevant articles of the European Convention of Human Rights (which the Human Rights brings into domestic law) are article 2 (the right to life); article 3 (which protects you from torture and inhuman and degrading treatment); article 8 (the right to respect for your private and family life and your home) and article 14 (prohibiting discrimination). In general, to amount to a legal breach of your human rights, there will have been serious failings. It would be unusual for a routine or isolated incident to be a breach.

Deadlines

Important to seek legal advice as soon as possible and well in advance of the legal deadline.

Below are the deadlines for lodging claims at the court. You start counting from when the breach of your rights occurred. There are some limited circumstances in which these can be extended.

Discrimination contrary to the Equality Act:
6 months – less one day

Breaches of the Human Rights Act:
12 months – less one day

Tips

If you decide to take legal action yourself, below are some tips, templates of documents and links to resources that might be helpful:

- Disability Justice Project guide
- Judiciary.gov.uk guides for litigants in person
- Justice.gov.uk court forms
- Citizen's Advice taking court action

Criminal Injuries Compensation

If you suffer a physical or psychological injury as a result of a violent crime, you may be the entitled to compensation under this government scheme. This can include physical, psychological and sexual abuse. There is a set criteria and there is guidance is here: www.gov.uk/guidance/criminal-injuries-compensation-a-guide

If you are an adult, you must normally apply within two years of the incident but there are limited circumstances where the time limit can be extended.

Letters

Writing a complaint letter or requesting a review is the first step you will take in challenging decisions made by the police or CPS. We have made several templates you can use to write letters.

This section covers:

- Victim's Right of Review letters
- Police complaint letters

Letter types

Word template

Online form

Things to remember

- Victim's right of review
- Familiarise yourself with the relevant police force's Victim's Right to Review Scheme
- Read our tips about the scheme and what to think about before making a review request
- The time limit for requesting a review is 3 months of being told about the decision but it is best to do this as soon as you can.

Victim's Right of Review template letters

- Victim's Right of Review: request for information
- Victim's Right of Review – Police Station
- Victim's Right of Review – CPS

Things to remember

- Read information about police complaints system
- You should make your complaint within 12 months, but it is better to do it as soon as you can.

Police complaint template letters

- Failure to provide reasonable adjustments
- Unsatisfactory response to reporting of a disability hate crime
- Discriminatory treatment by the police

The Disability Justice Project

Inclusion London
336 Brixton Road
London SW9 7AA

www.disabilityjustice.org.uk
info@inclusionlondon.org.uk
020 7237 3181

We would like to thank the Equality and Human Rights Commission who funded the production of these guides through their grants programme

Produced by

Disability Justice Project

Inclusion London
Supporting London's Deaf and Disabled People's Organisations

The Baring Foundation