

# Stay Safe East Response to Law Commission Consultation on Hate Crime Laws



*January 7<sup>th</sup> 2021 (permission was granted to submit this response by January 8<sup>th</sup>)*

*For access reasons, we have not used the questions in the consultation document but have used our own headings.*

## **1. Introduction**

Stay Safe East is a London-based organisation run by disabled people which supports Deaf and disabled survivors of hate crime, harassment, domestic and sexual violence and other forms of abuse. We are the only user-led organisation working across all forms of abuse-related crime.

Founded in 2010 as a local East London service, in 2018 we extended our services across London, as partners in the London Victims and Witnesses Service led by Victim Support and the CATCH Hate Crime partnership led by GALOP – as CATCH members we work alongside two other Deaf and Disabled People’s Organisations (DDPOs) to support disabled victims of hate crime. Stay Safe East is a founding member of the London Deaf and Disabled People’s Hate Crime Partnership led by Inclusion London, in which role we train and capacity build other London Deaf and Disabled People’s Organisations (DDPO) to provide hate crime advocacy; from 2017- 2019, we ran a London wide DDPO Hate Crime Advocates Forum. We employ two Hate Crime Advocates and an Independent Victim’s Advocate. From 2017 to 2020 we were funded by MOPAC to run a small pilot scheme working with disabled victims of cuckooing; a consultant will shortly be producing a review of this pilot. Our hate crime/general crime and domestic abuse/VAWG advocacy teams are currently supporting 147 disabled victims/survivors across London. In the past five years, we have supported over 400 survivors. We are members of the MOPAC Hate Crime Board and the Metropolitan Police Hate Crime Diamond Group, and of the Equally Ours Hate Crime Strategy Group. A Board member was a member of the initial Independent Advisory Group the MPS after

the McPherson Enquiry and another is a member of a local Independent Advisory Group. We work closely with the MPS on improving responses to disabled victims of hate crime.

Our response to this consultation is informed by our own casework and expertise and by the evidence we have collated from the CATCH partnership and other DDPOs we have worked with in the past few years. It should be read alongside evidence from Inclusion London and from GALOP, our partners in the above project, and Equally Ours. Of necessity, our data and evidence is mainly focuses on London.

Also attached is a presentation which the Stay Safe East CEO made to a joint consultation meeting organised by the Law Commission and Inclusion London on December 9<sup>th</sup> 2020.

Note: disabled people can be victims not only of disability hate crime but of any or several forms of hate crime – racist, homophobic, transphobic, faith based or misogynistic. However, our response focuses primarily on disability hate crime due to the current lack of parity in law and the particular forms of hate crime targeted at disabled people because we are disabled.

## **2. Summary**

Stay Safe East would like to thank the Law Commission for the thought they have given to hate crime against disabled people. while we do not agree with all the recommendations in the consultation document, it is the first time that parity in hate crime law has been proposed.

**Stay Safe East supports the introduction of a single Hate Crime Act.**

**We recommend:**

- **A definition of hate crime that includes hostility, prejudice and an additional term, *contempt***
- **A ‘by reason of’ limb to cover hate crime targeted at people because of their identity**

- **A clear definition of disability based on the social model of disability, to be developed in partnership with Deaf and disabled people's organisations**
- **A clear shift away from a 'vulnerability' model for disabled victims of hate crimes towards one based on equal treatment and outcomes for disabled victims**
- **A clear recognition in law of the different forms of hate crime which happen only to disabled people including:**
  - **crimes which prevent the disabled person from going about their daily activities**
  - **malicious accusations e.g. benefit fraud**
  - **Hate crime by paid and unpaid carers**
  - **Hate crime within institutional 'care' and a duty on police to investigate whether there is a hate crime element to this abuse.**
  - **cuckooing by individuals or groups of people who target the disabled person**
- **A review of aggravated offences which carry an enhanced penalty for hate crime so that the different forms of hate crime are covered**
- **A recognition in law of disability, homophobic, transphobic, racist hate crime within domestic violence**
- **A duty on police and CPS to identify and monitor hate crime against different groups of disabled people**
- **Extension of hate crime law to cover age, misogynist hate crime and hate crime against groups of people with alternative lifestyles**
- **A clear definition and inclusion of intersectional hate crime in the law, and a duty on police and CPS to record any multiple forms of hate crime relating to each case**
- **Incitement to hatred to include incitement to disability hatred, including on-line**
- **Football related hate crime to include all strands**

- **A statutory duty on government to fund hate crime advocacy services, including those run by and for (and trusted by) specific communities affected by hate crime**
- **A possible duty on government to fund post trauma support services for survivors**
- **a clear link between Hate Crime Law and any new Victims' Law that might be introduced**
- **A strengthened statutory duty for multi-agency working**
- **A strengthened statutory duty placed on local authorities, landlords and the police to fully investigate repeat harassment, to assess whether it is a hate crime and to respond promptly**
- **Flagging of patterns of incidents as hate crime until fully investigated**
- **A statutory duty to develop local engagement and involvement of hate crime organisations in hate crime scrutiny panels and join casework 'Community MARACs'.**

### **3. Evidence and context**

Hate crime law arose from the racist hostility experiences by Black and minority ethnic communities and in particular the racist murder of Stephen Lawrence. As long as people are targeted for hostility and criminal behaviour because of their ethnicity, sex, disability, sexuality, gender identity, faith, age and some specific other characteristics, we need a hate crime law which recognises which recognises the specific and additional harms which is done by hate crime towards individuals or groups of people. The law recognises the disproportionate impact which hate crime has relative to other forms of hate crime, both on the victim and their immediate significant others, and on the wider society.

We place hate crime within a human rights context, and in particular the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) which the UK government is a signatory to. Articles of particular relevance are Articles 5 ( Equality and non-discrimination), Article 6 (women with disabilities), Article 12 (Equality

before the Law), Article 15 (Freedom from torture, inhuman and degrading treatment) and Article 16 (Freedom from exploitation, violence and abuse, which also recognises gender based violence against disabled women).

Rather than repeating the national data, we would refer to the Inclusion London response to this consultation [www.inclusionlondon.org.uk/campaigns-and-policy](http://www.inclusionlondon.org.uk/campaigns-and-policy) which sets out clear data on disability hate crime. There is no reliable national data on the number of other hate crimes against disabled people as this is poorly monitored, but we do know from our CATCH partners that a disproportionate number of the clients are disabled people experiencing racist, homophobic, transphobic or faith based hate crime. Nor is multi-strand intersectional hate crime adequately recorded. However, 45% of the cases referred to Stay Safe East involve some form of intersectional hate crime (disability *and* racist, homophobic, faith based or misogynist), though this may not have been picked up when they are first referred to us.

Disabled people are more likely to experience physical violence in any form, and more likely to have experience multiple forms of abuse through their life course. Hate crime against disabled people is more likely to involve sexual violence, property offences, and fraud and forgery compared with other forms of hate crime.<sup>1</sup> Hate crime against disabled people is more likely to occur at home; perpetrators by neighbours, local groups of young or older people, or by paid or unpaid carers who come to the person's home. The evidence from Stay Safe East and our partners' casework shows that hate crime against disabled people is more likely to be prolonged and less likely to be prevented from escalating from so-called

Recorded hate crime against disabled people has been steadily increasing, with nearly five times as many reports in England and Wales in 2018-19 as in 2011-12. According to Crime Survey data (which does

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<sup>1</sup> <https://www.equalityhumanrights.com/sites/default/files/being-disabled-in-britain.pdf>

not include people living in residential care or hate crime against children and is inaccessible to many Deaf and disabled people), the actual rates are likely to be four or five times higher. This is likely to include all forms of hate crime against disabled people. In 2015-16, MPS recorded disability hate crime saw a 300% rise, thanks to the work of disabled advisors working with the MPS leads on hate crime to train officers across London and to scrutinise existing cases. Organisational changes to the MPS meant this rise slowed in the following years.

Hate crime has risen further during the Covid pandemic, and in particular racist and disablist hate crime. In London recorded racist hate crime rose by 9% and disability hate crime rose by 9% between November 2019 and November 2020 against the previous 12 months, but reports of hate crime to the Deaf and Disabled People's Organisations (DDPOs) in the CATCH partnership rose by nearly 300%. All hate crime organisations reported substantial rises, but the data shows that confidence in reporting to the police continues to be a major factor in under-reporting – a major factor being lack of trust in the police amongst BAME communities exacerbated by responses during the Covid pandemic and Black Lives Matter.

There is ample evidence that whilst hate crime against disabled people is now recognised at national policy level, on the ground disabled people meet with whole unsatisfactory responses from the police and other criminal justice agencies, local authorities and other public bodies.

Research by the University of Sussex<sup>2</sup> and by Inclusion London<sup>3</sup> shows that inequality in law is underpinned by inequality and marginalisation of disabled people in society, and that we are seen as having little value. Disabled people are not believed, hate crimes

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<sup>2</sup> <https://www.sussex.ac.uk/webteam/gateway/file.php?name=final-report---hate-crime-and-the-legal-process.pdf&site=539>

<sup>3</sup> <https://www.inclusionlondon.org.uk/campaigns-and-policy/comment-and-media/inclusion-london-launch-new-report-still-getting-away-with-murder-disability-hate-crime-in-england/>

against us are not identified as such, and investigations are poorly conducted. Stay Safe East's experienced advocates report hate crime on behalf of clients to the police and regularly find themselves having to argue that these are indeed hate crimes with the 101 call centre operatives and with police officers called out to speak to the victim. Our advocates have to chase police who have not gathered video evidence. Even where there is evidence, we find that our client's cases are determined as 'no further action'. Multiple incidents not identified as a pattern of harassment by police or housing authorities. Long-term hate crime by neighbours is left to fester; this has exacerbated under Covid. In spite of numerous enquiries into deaths of disabled people as a result of hate crime, patterns of repeated harassment, targeting of people because they are disabled, and so called 'mate crime' (which we would describe as cuckooing, in line with MPS terminology) are not treated as constituting a hate crime.

Part of the poor practice lies in the specific nature of disability hate crime, part in an attitude that sees disabled people as 'other' and vulnerable adults or as being the problem, rather than victims of crime, and part in the differences in legal protection.

The numbers of reported hate crimes against disabled people are rising. This is clearly partly a rise in actual incidents, but also a growing awareness of hate crime amongst disabled people and the criminal justice system. We are seeing an increase in referrals – most of them complex and a significant percentage involve physical violence- from the 12 police BCU Hate Crime Liaison Officers who are taking in hand some of the long standing cases. This shows the importance of having dedicated officers with a hate crime remit and expertise.

A systemic focus on vulnerability means that disabled victims of hate crime (and indeed of domestic abuse and of institutional abuse) are more likely to be referred to adult safeguarding rather than to the police for help. Stay Safe East's casework shows that disabled people are failed at every turn by the safeguarding system- which at best has

become little more than a tick box process; at worst it puts victims at risk, for example by calling a meeting with the victim and the abuser – especially where the perpetrator is a paid carer or a family member. This increases the risk of retaliation. Disabled people who are seen as vulnerable may be offered institutionalisation as the only option to being ‘safe’.

#### **4. Types of offences: disability hate crime may take different forms**

For hate crime law to ‘work’ for disabled people, it is essential that the differences and similarities with others form of hate crime are understood and recognised in legislation. Some of these manifestations of hostility only happen to disabled people, others are shared across other characteristics.

We welcome the fact that the law commission is proposing to add to the list of offences that would carry an aggravated sentencing tariff for hate crime, and would like there to be a review of these offences to ensure that specific hate crimes against disabled people are included.

These are some examples from the last 3 years of casework by Stay Safe East, and from recent referrals to the CATCH hate crime partners:

- Damage and theft of disability equipment: mobility scooter, car used by Blue badge user, long cane of blind person
- Deliberate obstruction of Blue badge parking bay or of access ramp leaving the disabled person unable to leave their home
- Conflict over the disabled person’s right to ‘occupy a space’ on public transport and when parking
- Deliberate noise which the neighbour knows may trigger someone’s physical or mental health
- A very high proportion of neighbour related abuse involving threats to life, criminal damage, verbal abuse
- Allegations that the disabled person is ‘faking it’ and has no right to a Blue Badge, Motability vehicle, benefits, an accessible property, care package etc. In some cases, this involves making

false reports to the DWP which has led to people's benefits being suspended while the allegation is investigated.

- Intersectional hate crime (racist, homophobic, islamophobic) linking the person's impairment and other characteristic which arguably may not have happened if the victim had not been visibly disabled
- Verbal abuse and over expression of disgust at a disabled person's appearance
- Malicious accusations of benefit fraud and of child abuse
- A high incidence during the first Covid lockdown, mostly still continuing, of hate crime by neighbours against disabled children, particularly those with autism
- Escalation of ongoing neighbour hate crime during lockdown
- Covid related incidents involving visibly disabled people being spat on in public places; being challenged about their right to be in those public spaces, being blamed for lockdown or for the spread of Covid; overt hostility against exempt disabled people who are not wearing a mask in shops, even though many other members of the public may also not be wearing a mask. Many of these incidents are intersectional disability and racist hate crimes
- Hate crime against a Deaf person who tried to communicate with the abuser but was threatened when he did
- A physical assault on the companion of a wheelchair user following a dispute about use of the wheelchair space (there have been numerous similar incidents over the years)
- Financial abuse knowingly targeted at the disabled person
- Disabled men (and occasionally women) being called 'paedo' because their behaviour is seen as 'odd' or different
- Verbal sexual comments against disabled women
- Cuckooing by groups of people who have targeted the disabled person repeatedly, knowing that the person is not in a position

to speak out or will initially believe the abusers to be their 'friend'

- Hate crime by paid or unpaid carers: calling the disabled person names, undermining them on a daily basis, mocking them, physically rough treatment while assisting them, financial abuse
- On-line "discussions" about 'getting rid of autism' which in effect means getting rid of people with autism

## **5. Who should have the protection of hate crime law?**

Along with our partners organisations at Inclusion London and in the Equally Ours network, we support the two basic aims of hate crime law reform: **parity and clarity** in the law so that all groups have equal recognition and protection.

- All groups currently protected by the Equality Act 2010 should be covered by hate crime laws (except the category of pregnant women which is not an identity but a temporary state)
- We concur with the Equally Ours statement that '...to omit any protected characteristic without explicit justification unintentionally signals that some types of hate crime are more serious than others and/or that some groups are more deserving of protection, undermining notions of fairness, and implying a 'hierarchy of hate'.
- Parity and clarity makes the process of gathering evidence, charging and prosecution more effective. Whilst prosecution of racist and faith based hate crimes is also not always effective, the disparity not only in law but in processes makes the likelihood of a successful prosecution even lower for those crimes covered by Section 146; because S146 in effect only applies to disability and transphobic hate crime at sentencing stage, there is little incentive for police to gather evidence, as witnesses by some the cases Stay Safe East has dealt with.
- Streamlined legislation would also help in training police and other professionals who deal with hate crime, so that training can focus on the forms and context to hate crime, rather than having

to focus on the complex differences across the hate crime strands.

### **5a. Defining disability**

Stay Safe East supports the call for a clearer, social model definition of disability under hate crime law. using a medical model leads to misunderstandings about who is or is not a disabled person. At present part of the issue with lack of recognition of disability hate crime is a perception that disability is about visible and mainly physical or sensory impairment.

For example, adults and children with autism (including some of our clients and their children, and some of our staff) experience repeated mocking and hostility being called 'weirdo' or they are perceived as 'odd' or 'other'. they may also be the subject of deliberate sensory overload (noise, light etc.) by the perpetrators. Reporting this type of hate incidents is problematic, as police will argue that if the perpetrator did not say something specific relating to disability, it cannot be a disability hate crime. This often shows a lack of understanding of the experience of people with autism.

People with mental health issues, learning disabilities and impairments which are not immediately obvious share similar experiences.

Stay Safe East uses a definition of disability grounded in the social model similar to that used by Inclusion London<sup>4</sup> and which focuses on barriers not impairment, and on disabled people as victims of crime not 'vulnerable adults'. Disability hate crime arises from the exclusion of disabled people from society. Hate crime law could set a new standard for defining disability in criminal law which is not based on a 'vulnerability' model and which means that crimes against people with a range of impairments are recognised as such. As stated in the report

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<sup>4</sup> <https://www.inclusionlondon.org.uk/disability-in-london/social-model/the-social-model-of-disability-and-the-cultural-model-of-deafness/>

from the Parliamentary Scrutiny Panel into on-line abuse against disabled people<sup>5</sup>:

The interaction between vulnerability, disability and hate is complex, and provides a clear a reason to look at disability hate crime differently. Professor Walters told us in written evidence that *the vulnerability designation prevents disability hate crime from being fully recognised and perpetrators appropriately punished*. His research has shown that courts have preferred to declare that an attack happened due to the “vulnerability” of the disabled person than due to hostility against the victim on grounds of disability.

There is a need to respond to the concerns of disabled people from particular impairment groups and from the Deaf community that hate crime against their section of the disability community is not taken seriously. In our view, this is an across the board issue but there is also a need first to identify if hate crime against particular impairment groups is less or more likely to happen, or to be reported, and if there is a difference in sanction detection rates. This is no different from hate crime against Muslim, Jewish or Gypsy, Roma and Traveller communities being subsumed under racist hate crime, or data regarding LGBT hate crime being broken down by gender and sexuality.

Stay Safe East use the following categories of impairment, a shorter version of which has been used by the Metropolitan Police on its CRIS system since around 2001, and was developed with the then Disability Independent Advisory Group:

- Physical impairment
- Sensory Impairment
- Deaf (Sign language user)
- Learning difficulty
- Mental health issues
- Autism, Asperger’s or other neuro-diverse condition
- People with a facial disfigurement/difference
- Other long term health condition (please state)

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<sup>5</sup> <https://publications.parliament.uk/pa/cm201719/cmselect/cmcompetitions/759/75907.htm>

We would suggest that a specific reference is made in the body of the new Hate Crime Law to people with visible and non-visible impairments.

The law must recognise that hate crime happens to disabled people who are perceived as non-disabled and as ‘faking it’ or having access to what some members of the public see as ‘privileges’ such as a Blue Badge or a Freedom Pass for example.

Using these categories in the legislation and requiring the CJS and other agencies to use them as monitoring tools also means that people who do not identify as disabled but as belonging to a specific impairment or cultural group (for example the Deaf community or many people with mental health issues) will be clearly included in hate crime data by the police and other agencies.

Having said that, we do not believe that having a separate crime of ‘learning disability hate crime’ for example is helpful – on pragmatic grounds. Many disabled people have more than one impairment, and it may be difficult to ascertain which part of a person’s impairments is being targeted- it is the person who is targeted, not the impairment. We also believe that separating people out by their impairment is a medical model approach as disabled people we are the subject of hate crime because we are different- whatever that difference may be.

The definition of disability in hate crime law must be the subject of further consultation with disabled people’s organisations i.e. user-led organisations and disabled people within other organisations or networks, not non-disabled ‘experts’ on disability.

## **5b. Age**

We are concerned that the Law Commission appears to be proposing to omit age related hate crime from the law. Examples of direct hostility towards older people, and in particular older women, abound. For example there have been many cases involving violent physical assault, rape and murders of older women after a burglary which can only arise from a hatred of older women.<sup>6</sup> Whilst some of the victims

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<sup>6</sup> <https://www.bbc.co.uk/news/uk-england-london-51361923>

were also disabled (or frail as is used to describe impairment in old age), some were not. None of the high profile cases have been identified as hate crime but we have no doubt that they are misogyny and age related hate crimes.

We would also argue that crimes which are deliberately targeted at older people meet the threshold for hate crime and is a 'by reason' hate crime. For example, a thief who targets older people collecting their pension may be seen as opportunistic but their behaviour, especially when accompanied by verbal abuse or violence, involves a deliberate and knowing act of only assaulting older people. We would argue this is an age (and in some cases disability) related hate crime. (see also our recommendations for a 'by reason of' leg of a new Hate Crime Law)

Older people in residential care will almost by definition be disabled people; acts of verbal abuse, rough treatment and assault are often an expression of hostility towards older people who may be seen as 'useless' by the very people whose jobs depend on caring for them. We would argue that some of these forms of abuse are both age and disability related hate crimes.

It is also worth noting that creating a clear category in law is a means of revealing particular forms of crime. Disability hate crime has only become recognised due to 25 years of campaigning by disabled people and their organisations. The same may happen for age related hate crime.

We do not feel qualified to comment in full on hate crime against young people, but believe that youth is a factor in some forms of intersectional hate crime and incitement to hate crime e.g. the demonisation of young Black men or young men from Gypsy, Roma and Traveller communities, or of young people with alternative cultures.

### **5c. Misogyny**

Stay Safe East welcomes the proposal to include misogynist hate crime in the new law.

We agree there are some concerns about not ‘taking away’ from other forms of violence against women and girls, but it is clear from surveys such as that conducted by the Fawcett Society that misogynist hate crime is a major form of hate crime which happens to women across the whole of society, but is also more likely to happen to BAME, disabled and lesbian women.

Along with many other Violence against Women (VAWG) organisations, Stay Safe East is currently engaged in responding to the Home Office call for evidence on its VAWG strategy. Misogynist hate crime is part of a wide pattern of VAWG and should be address both in domestic abuse and hate crime law.

We see no reason why a perpetrator could not be charged with misogynist, racially aggravated and/or disability aggravated sexual or domestic violence where the hate element can be evidenced and a conviction possible with a reasonable degree of certainty. Such an approach would underline the nature and severity of the abuse, and would vindicate the experience of the victim by recognising the full range of the abuse she has suffered (please see next section 5d. for further details regarding disabled women). However, we would not want to see the already low conviction rate, especially for sexual violence and for domestic and other gender based abuse against disabled women. This is more a matter for judgement by the prosecution.

Including misogyny in hate crime law would include hate crime against women working in prostitution (though any wording would need to take account of male/non-binary people working in prostitution).

A national network of VAWG organisations, Citizens UK and their allies is currently arguing for an amendment to include misogyny in the Domestic Abuse Bill<sup>7</sup>. Equally, hate crime law needs to reflect the fact that misogyny as a form of hate crime. Five police forces currently recognise misogyny as a form of hate crime. The paper argues that:

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<sup>7</sup> Misogyny and domestic abuse – Making the Link – Domestic Abuse Bill Amendment Briefing – Amendment 84

*“making misogyny a hate crime simply means that police forces would log and monitor such incidents, and then enable them to create a full picture of the problem, support victims and make them aware of where incidents are reoccurring. Women and girls needs to feel their concerns are being taken seriously by the police and that misogyny is not normalised. Without recognising the role of misogyny, an intersectional understanding is not facilitated by law.”*

Along with the coalition of VAWG organisations, Stay Safe East recognises that intersectionality is a key factor in misogynist hate crime- the disproportionate levels of hate crime against Muslim women are fuelled by both misogyny and islamophobia; hate crime against lesbians, such as that experienced in June 2019<sup>8</sup> by two women on a London bus is fuelled by misogyny and homophobia.

The experiences of disabled women are less likely to be recognised, in part because we are barely recognised as women – only as one dimensional ‘disabled people’ or ‘the disabled’.

Understanding hate crime against disabled people requires an understanding of hate crime against disabled women. Stay Safe East’s experience and that of our clients is that disabled women experience a disproportionate amount of harassment because of their sex and their disability – on the street, transport and other public places, in schools, colleges and work places, in their homes, in closed institutional settings, and on-line.

On-line hate is rife against disabled women, including on dating sites when women disclose they are disabled. Dehumanising, abusive language, ‘ugly, look at *that*, you are better off dead’ and sexual comments are part of the language of the internet against disabled women.

Disabled women are more likely to experience unwanted sexual or physical contact or hostility than non-disabled women.

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<sup>8</sup> <https://www.bbc.co.uk/news/uk-england-london-48555889>

For example, visually impaired women using public transport are more likely to experience unwanted sexual touching from men – this rarely happens to visually impaired men

In institutional setting, misogynist hate crime is rife.

#### **5d. Disability and other hate crime as part of violence against women and girls/domestic abuse**

Stay Safe East would like to propose a specific reference in Hate Crime Law to other forms of hate crime within domestic abuse. We submitted an amendment to the Domestic Abuse Bill currently before the House of Lords. We have argued that hate crime, and specifically hostility on the grounds of disability, is a significant factor in much domestic abuse against disabled women. To give an example of case involving a client of Stay Safe East (with permission; some details have been omitted to protect the client's identity):

A disabled woman was subjected to 4 years of highly controlling behaviour, physical and sexual violence and psychological abuse by her partner. Part of the abuse involved belittling her as a disabled woman, mocking her physical impairment, stopping her from sitting down which meant she would collapse, and telling her she was mad. This led to a breakdown in her physical and mental health and a loss of self-esteem for a woman who had been a highly competent professional. When the case went to court, our client, with our support expressed to the police officer in the case that this was also a hate crime; we helped to provide the evidence. The CPS would not accept this argument so did not ask for an enhanced sentence. After sentencing, our client and her advocate met with the Barrister and Senior Prosecutor, who would still not accept our arguments. We were told that 'this type of abuse could have happened to anyone'. The perpetrator was convicted, but had the enhanced sentencing been invoked, he would have served a longer prison sentence, leaving the victim safer for longer. The client told us that had this happened, she would have felt that the years of disability related abuse (she herself also used the word contempt) which she endured would have been recognised, and this would have helped her recovery.

The client asked that her case be used to illustrate the way in which disability hate crime is also part of domestic abuse.

Similar situations happen with domestic abuse by family members of LGBT people, and in abusive relationships where partners are of different faiths or ethnicities. We are not legally qualified to draft a wording for this part of hate crime law, but would argue that it is essential for the experience of victims to be recognised. In the case some of the abuse against our client would be disability aggravated assault.

### **5e. Hate crime against disabled people living in institutional 'care'**

People living in residential care are not included in the national crime survey but it is clear from the many reports of abuse in residential homes<sup>9</sup> and from Inclusion London's 'Still Getting Away with Murder' report that it is rife in what are closed environments subject to minimal scrutiny. Hate crime is about prejudice; it is also about power.

Nowhere is this better demonstrated than in institutional 'care' where all the power lies with paid staff (though they themselves may have little power outside the institution itself) Whilst a small number of the more extreme forms of abuse have hit the headlines (Winterbourne View, Whorlton Hall, Mendip House), every day disabled people's human rights are abused in residential 'care', mental health institutions and in their own homes by care staff and other 'professionals'.

These include repeated incidents of hostility and contempt which do not happen to non-disabled people- from verbal comments such as 'hurry up and die', mocking and humiliating of residents, rough treatment, to forced isolation and severe physical abuse. of the many examples we have found, only the abuse of residents at Winterbourne Court was initially flagged as a disability hate crime by Avon and Somerset Police. However, none of the staff convicted of neglect or abuse of the 'patients' was subject to an enhanced penalty under Section 146 of the Criminal Justice Act. Abuse against disabled people

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<sup>9</sup> <https://www.leighday.co.uk/News/2019/September-2019/Report-published-into-the-abuse-of-residents-at-Ve>

in institutions is dealt with as an Adult safeguarding issue, and it is only in the most extreme cases, usually highlighted by persistent staff or family whistle-blowers, that criminal action is taken. The opportunities are lost to prevent such abuse, and by using hate crime law, to give a clear signal to abusers that this is a crime which has a wider impact on disabled people and on society.

Stay Safe East supports a number of people with learning disabilities living in supported housing or residential care. Some have experienced everyday humiliation and restrictions of their freedom, others incidents of verbal or physical abuse which constitute disability hate crime:

A visually impaired woman with learning disabilities living in supported housing disclosed to Stay Safe East that she was subject to regular name calling ('ugly', 'fat') by a paid agency care worker who assisted her with daily living. The worker had also pulled her hair, and when assisting her to get around, she would drag her along and forced her to walk too fast. The disabled woman was distraught at this treatment. This abuse was reported to the police, who 'no further actioned' the case, and to Adult Safeguarding – by the time a safeguarding investigation was launched, Stay Safe East had helped the client change agencies and she did not want to pursue the matter further, as she had other issues to deal with. At no point did the police deal with this matter as a hate crime. Yet this would not have happened had the victim had been a non-disabled woman, and the words and actions used were specifically about her being disabled.

**Along with other DDPOs, Stay Safe East would urge the Law Commission to ensure that any new Hate Crime Law makes specific reference to hate crime in institutional/care settings, and a duty on police to investigate whether there is a hate crime element to this abuse.**

#### **5f. Alternative sub-cultures**

We support the campaign by the family of Sophie Lancaster for hate crime against (mainly young) people who identify with specific

alternative sub-cultures to be included. However, it should be clear that this is not an open category. We are also aware that a substantial minority of the young people who belong to these sub-cultures are disabled people, and in particular neuro-diverse and may be singled out because they are seen as different in more than one regard.

### **5g. Intersectional hate crime**

Recognition and monitoring of intersectional hate crime is essential. There have been successes in charging perpetrators with more than one form of hate crime<sup>10</sup>. However, details of how many disabled people are victims of racist, transphobic, homophobic or faith based hate crime. The experience of disabled women, of disabled people from LGBT, BAME, refugee, faith and other communities is invisible. However, data from support organisations indicates that intersectional hate crime is rife. For example, a straw poll in 2020 of the non DDPO partners shows that at least 30% of their clients are disabled people experiencing other forms of hate crime. Around 40% of Stay Safe East clients have experienced an intersectional hate crime.

**We consider the use of the term ‘one or more’ forms of hate crime to be acceptable in recognising intersectional hate crime, but would like to see a definition of intersectional hate crime in the new Hate Crime Law.**

We are not arguing for enhanced sentencing if a hate crime is intersectional – it is the gravity of the offences and the impact on the victim that should set the outcome of any sentencing. We are arguing for the recognition and validation of the whole experience of the victim. The following incident, which received widespread press coverage, illustrates the impact that such crimes may have on victims, some of which may go unrecognised<sup>11</sup>:

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<sup>10</sup> <https://www.cps.gov.uk/london-north/news/racist-man-sentenced-two-hate-crimes-after-abuse-towards-jewish-family>

<sup>11</sup> <https://www.independent.co.uk/news/uk/crime/islamophobic-london-bus-rant-tottenham-zimmer-frame-father-pram-caught-video-assaulting-elderly-turkish-man-a6699756.html>

An elderly disabled Muslim man of Turkish heritage was the victim of a hate crime on a London bus in North London in October 2015. He was subject to violent racist and islamophobic verbal abuse by a man who was travelling with his young child in a pushchair. The incident initially rose due to the perpetrator challenging the right of the older man to be with his walking frame in the same space as the man's pushchair (it is in fact a priority wheelchair space which pushchair users can use when it is not needed). The abuser then threw the man's walking frame of the bus. In spite of the fact that the incident arose from a disability related issue, the perpetrator was charged and convicted only of Islamophobic and racist abuse. Yet in addition to the trauma of the verbal abuse, the immediate impact on the victim was that the loss of his walking frame prevented him from leaving the bus and could have caused him to fall. Disability hate crime was not recognised or taken account of in the case. this negates the intersectional nature of the hate crime and the full experience of the victim.

Most police forces have the ability to record intersectional hate crime on their databases but rarely use it. **any new Hate Crime Law should make it mandatory for police forces to record all strands for each hate crime, and training must be provided.**

## **6. Residual category**

**We agree with the proposal to introduce a residual category.** This would help cover hate crimes against homeless people and any other groups who might be the subject of hostility in the future because of their identity, lifestyle or other characteristic.

We have an open mind about including homeless people as a specific category of victim of hate crime. It is worth noting that a high proportion of homeless people are disabled people and that this should be considered as part of the motivation.

## 6. Demonstrating hostility

**Stay Safe East supports the proposal to retain demonstration of *hostility* as a key component of hate crime law and agrees with GALOP that proving motivation is often very difficult.**

**We agree with the proposal to add *prejudice* to the legal proof of hate crime.**

**We would strongly urge the Law Commission to add a third term, *contempt*.** This proposal has the support of Inclusion London and the Equally Ours hate crime network.

**Contempt** is the most common thread that runs through hate crime against disabled people. It can be defined as “the attitude or feeling towards a person considered to be worthless or despicable”.

“Contempt is a pattern of attitudes and behaviour, often towards an individual or group, but sometimes towards an ideology, which has the characteristics of disgust and anger.<sup>12</sup> “

This definition fits within the legal framework and would not only fit examples of disability hate crime referred to below, but might for example be applied to incidences of hate crime against people or premises relating to a particular faith.

Examples of hate crime involving contempt towards disabled people include the case of Christine Lakinski, who was urinated on by a man as she lay dying on a pavement. He was later jailed for his actions.<sup>13</sup> This case was not treated as a hate crime. Other examples include much of the behaviour exhibited by the perpetrator of hate crime at Winterbourne Court (which, unusually, was identified as disability hate crime) and disabled people being spat at during the Covid pandemic, which is both a direct attempt to spread the virus and an expression of contempt.

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<sup>12</sup> TenHouten, W.D. (2007). *General Theory of Emotions and Social Life*. Routledge quoted in the Wikipedia definition of contempt.

<sup>13</sup> <http://news.bbc.co.uk/1/hi/england/tees/7063366.stm>

Hate crime law in some countries does recognise contempt, as mentioned by both the Law Commission and the Braccadale review in Scotland. Some countries use the term ‘serious contempt’.

Current CPS guidance on dealing with disability hate crime also shows indicates the gap in the law:

“Expressions of, or behaviour consistent with, contempt for the individual victim is unlikely alone to suffice, unless it can be shown to amount to the necessary demonstration of hostility based on the actual or presumed disability.<sup>14</sup>”

Including contempt in a new Hate Crime Act would also cover incidences of aggravated offences where for example the victim is made to perform humiliating acts, or is mocked or derided for other’s amusement. It would cover some of the hate crimes which led to the murder of disabled people, as set out in the original Getting Away with Murder report into disability hate crime, published in 2010. For example, the people who were subsequently found guilty of the murder of Stephen Hoskin in Cornwall treated him as their slave, made him call them sir and madam, and dragged him around his bedsit on his own dog's lead. These were dehumanising acts which showed utter contempt for Mr Hoskin, but the case was never treated as a hate crime. This case is now 14 years old, but such patterns of abuse are still rarely treated as hate crime.

Including contempt in the definition would not however cover all the forms of hate crime which disabled people and their organisations identify as hate crime.

## **7. ‘By reason of’**

**Stay Safe East argues strongly for a ‘by reason of’ limb to be included in a new hate Crime Law.**

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<sup>14</sup> <https://www.cps.gov.uk/legal-guidance/disability-hate-crime-and-other-crimes-against-disabled-people-prosecution-guidance> page 8

The Law Commission has recognised that there is another category of crime, mainly involving targeting disabled people (or older people, see above) for robberies, exploitation or other crime. We are disappointed that, having recognised these as specific crimes against disabled people, the Law Commission is rejecting the option of using 'by reason of' as the other leg of hate crime legislation.

For disabled people's organisations, the 'by reason' approach represents an alternative to the 'vulnerable adult' approach which currently hinders adequate identification and prosecution of hate crimes. Like other forms of hate crime, hate crime against disabled people happens because we have a specific identity (or presumed identity). Hate crime is an extension of and a consequence of discrimination and prejudice. The Equality Act, a civil law recognises that people with protected characteristics face discrimination and inequality. In the same way, criminal law must recognise that those same people face crimes which happen **because they belong to specific groups who are seen by some as 'other'** and whose right to inhabit public or private spaces (housing, streets, transport, work or social spaces, social media etc.) is questioned by those perpetrating hate crime, or **who are targeted for criminal behaviour because of who they are.**

As argued in the research by the University of Sussex, we are arguing that a 'by reason of' strand is **in addition** to the 'hostility, prejudice or contempt' strand, *not instead of it.*

The 'by reason of' approach is already in effect referred to in the CPS guidance on disability hate crime (developed in partnership with disabled advisors) cited above.

“Primary evidence, whether direct or circumstantial, from which it can be deduced or inferred that the offender has a hostility towards people (or one person) with a disability or a particular disability. The kind of evidence will vary from case to case but may well include [...] previous incidents of hostility, e.g. *targeting*

*only disabled persons as the victims of criminal attacks or forms of abuse, such as a disabled person's house for criminal damage but no other houses in the same street; and previous convictions for offences directed at similar victims” the guidance also mentions “Targeting only disabled persons' homes for crimes (e.g. criminal damage; burglary), which are sometimes identified by mobility aids, such as adapted parking spaces, ramps and other adaptations outside the properties.”*

Other examples might include the example we have given under the age strand, of disabled and ‘frail’ (i.e. disabled) older people being targeted for street robberies, when no one else is.

## **Cuckooing**

**Cuckooing must be recognised in law as a specific form of disability hate crime.**

Stay Safe East has been working with victims of cuckooing since 2017. During that time we have worked with 11 people, as part of a pilot funded by the London Mayor’s Office on Policing and Crime (MOPAC). We will shortly be engaging a consultant to evaluate this pilot. It is already clear to us that the people we have engaged with in the past 3 years are amongst many disabled people (mostly but not always people with learning disabilities or mental health issues, cognitive issues or neuro-diverse people, nearly always people who live alone and are isolated) who are targeted by people who exploit them and abuse them and take over their home. Some of the perpetrators are gang members engaged in drug dealing or prostitution, others are groups of young people or street drinkers who latch onto the disabled person as a source of food, shelter and in many cases entertainment when the person is abused. Most of the cases involving disabled women also involve sexual exploitation and in some cases prostituting the women to other group member or to outsiders for money.

We recognise that cuckooing is a complex crime that is part of a wider pattern of criminality and that not all cases involve hate crime. However, all the clients we have worked with have been targeted because they are disabled people. The contempt they experience, the

demeaning of their value as human beings and the disregard for their rights has long –term consequences an example of one of our clients:

A woman with learning disabilities was targeted by a group of street drinkers who took over her home. They first befriended her as she was lonely. At first only one man moved in, then he brought his friends. At first the first man offered to help with her care, but then neglected her to the point where her legs were suppurating and she could no longer transfer without help. The men were drinking in her home, spending her money, and then started abusing her verbally and mocking her. The care agency stopped coming as they were afraid of the men. Social services did not investigate, she was seen as non-cooperative and her case closed. The only police action was to serve an exclusion order on one of the men who had an aggressive dog. Our client was eventually evicted because of the men’s anti-social behaviour. She was made homeless and 2.5 years later is still in residential care, in spite of her advocate’s best efforts. She is blamed for the abuse she has experience which has hindered her being rehoused. The men exercised a large amount of psychological control over our client. The client suffered severe PTSD from this experience. She lost her self-confidence and independence as a disabled woman. It has taken her all this time to recognise the control that was exercises over her and that she was afraid of the men, and to understand that this was abuse, in large part because she is a disabled woman. Stay Safe East reported this abuse both as a disability hate crime and as neglect under the Care Act, but it was never investigated.

This client would not have been targeted had she been a non-disabled woman. She was targeted ‘by reason’ of her disability. The neglect perpetrated by the men and the exclusion of her care agency allowed them to control her further. In addition, the hostility and mockery she experienced would be covered by the ‘hostility’ leg of current hate crime law, and by the ‘contempt’ leg we are proposing should be added.

On the basis of our casework, Stay Safe East would argue that including a ‘by reason of’ clause into hate crime law would help ensure that hate crimes against disabled people were treated with the necessary priority, that the impact on victims was understood and robust action was taken at an earlier stage. Such a change in the law would help save lives.

## **8. Incitement offences and hate speech**

### **We welcome the proposal to introduce parity for incitement offences.**

Incitement to hostility and hatred against disabled people is more hidden but it exists. Whilst a Malthusian racist and disablist ideology is not as common as it was (Winston Churchill and Marie Stopes were both advocates for the ‘purity of the race’ and saw disabled people as threatening that purity), many extreme right groups continue to espouse an ideology which has contempt for ‘weak’ members of society including disabled people<sup>15</sup>. The murder of a man with autism, Shaun Rossington<sup>16</sup> in Lincoln in 2010 by a group of 5 people who included two members of the English Defence League and linked to organised football hooliganism shows the direct link between extremist groups and hate crime against disabled people. Hostility to disabled migrants and refugees is much more overt and widespread and directly impacts on the lives of people seeking asylum, as shown by the murder of Kamil Ahmad and Bijan Ebrahimi in Bristol.

In recent years, as outlined in a previous Inclusion London report to the Parliamentary Enquiry into on-line hate crime, some parts of the media and a number of politicians have referred to disabled people who claim benefits and cannot work as ‘shirkers’ who are avoiding work and are a burden on the rest of society. This in our view would constitute incitement to hatred: disabled people’s organisations have argued that there is direct correlation between this use of language and the rise in

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<sup>15</sup> <https://www.sv.uio.no/c-rex/english/groups/compendium/what-are-the-psychological-characteristics-of-people-holding-far-right-beliefs.html>

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hate crime against disabled people. This correlation would of course have to be proven in law as with any other hate crime.

## **9. Football offences**

We have no particular expertise in this matter but we are told by other disabled people that disablist chanting and hate crime at football matches is not unusual, it is just that it is not recognised as hate crime. Mocking of disabled supporters sitting in the safe reserved spaces, use of disablist insults against players are common<sup>17</sup>, as are homophobic insults. These are hate crimes. Stay Safe East would like to see parity across all strands so that football (the male and female games) is safe for spectators and players.

## **10. Hate Crime Commissioner**

Stay Safe East very much welcomes the proposal for the introduction of a Hate Crime Commissioner role. Having worked with both the Victim's Commissioner and the Domestic Abuse Commissioner, who have brokered dialogue between the two organisations working with Deaf and disabled survivors and key authorities (Home Office, ADSS, MoJ etc.), we find that an independent commissioner on hate crime would be a great asset.

The role must be independent, and be seen to be so in order for communities to have confidence in the post holder and their team (for example at present the DA Commissioner has an e-mail at the Home Office; this is a substantial barrier to trust for BAME and particularly migrant women).

The role should enable challenging of Government and its departments. The role must have powers to research, investigates over gaps and failures in services. It should be properly resourced. It should have a duty to engage with communities, victims and organisations working with victims, and do engage accessibly and appropriately.

We also support the Equally Ours calls for:

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<sup>17</sup> <https://www.disabilitynewsservice.com/mps-online-abuse-report-concern-over-links-between-abuse-and-football-fans/>

- the role to include a requirement for involvement of affected groups in determining the strategic priorities and ways of working of the Commissioner
- Memoranda of Understanding to be established with other agencies, such as the Equality and Human Rights Commission and the Victims Commissioner, to ensure that in avoiding duplication no-one slips through the cracks.

### **11. Repeat victimisation, harassment and hate crime**

Numerous enquiries into the deaths of disabled people, including that of Francessca Hardwick and her mother Fiona Pilkington and that of Bijan Ibrahimi have shown that disabled people experience repeated and prolonged hate crime whilst in their own homes from neighbours, groups of young people or adults who taunt, abuse, harass and threaten their victims. Police and other authorities responses to these crimes remain woefully inadequate, as evidence by our growing casework involving cases which have continued for 2 or 3 years or longer with no action, in one case culminating with the victim being arrested when they finally responded to the abuse.

**Stay Safe East would like to see the recommendations of the various enquires implemented. In particular we would argue for:**

- **a strengthened statutory duty for multi-agency working**
- **a strengthened statutory duty placed on local authorities, landlords and the police to fully investigate repeat harassment and to assess whether it is a hate crime and to respond promptly**
- **flagging of patterns of incidents as hate crime until fully investigated**

### **12. A statutory duty to work with and fund independent and specialist hate crime advocacy**

Access to an advocate is critical for victims traumatised by hate crime, particularly those facing ongoing, protracted hate crime, so they can find safety, resolution and justice. Existing services across England and Wales are patchy, underfunded and overstretched. Even in London,

with local services in a small number of boroughs and a London wide CATCH service, existing providers are struggling to meet demand. Hate crime advocate's role is rarely recognised by statutory services, except in a small number of areas where there is a long- standing relationship between independent organisations and statutory services.

It is helpful to consider the picture with Domestic Violence and Sexual Violence Advocates/Advisers (IDVAs and ISVAs) whose roles and right to intervene on behalf of victims is recognised and mostly welcomed by the police and local authorities. This helps ensure that victims are supported and that agencies work together to keep victims as safe as possible.

Stay Safe East would like to see hate Crime Advocacy placed on the same footing as IDVAs and ISVAs vis-a-vis the right to advocate for clients, have access to shared information and to intervene/ challenge authorities.

Funding of generic domestic and sexual violence services (or at least the more generic services) is through statutory commissioning by local authorities funded by Central Government. VAWG organisations are calling for funding for specialist services of and for BAME, disabled and LGBT survivors happens on the same basis and is part of statutory duties of government.

A new Hate Crime Law should include a statutory duty on Government to fund hate crime advocacy services alongside other victim's services. At present the Victim's Fund funds some services, but it is not on a statutory basis, and it is up to crime commissioners to decide if hate crime is a priority.

Given the nature and need for specialist services run by and for communities affected by hate crime, in some cases on a national basis in England or Wales, we would suggest that this not done entirely through regional crime commissioners but through a national fund, with a statutory duty to consider the needs of minoritised communities including BAME, Faith, LGBTQ and Deaf/disabled communities.

### **13. Other support for victims**

Research has established the added impact of hate crime, even of single incidents on all victims. Whilst many victims of hate crime may move with their lives, a significant minority will be profoundly traumatised by their experiences and need further support. Current access to specialist counselling is limited. Whilst domestic abuse survivors have some access to counselling (although usually short term and involving a wait), hate crime victims have to wait to access NHS services and may still find themselves ineligible. Trauma based therapy is rationed and has long waiting lists. Many counselling services present barriers for disabled victims - having to attend weekly sessions and being excluded if they miss more than three sessions, BSL counselling provided only via a few hard pressed charities, psychology services for victim with learning disabilities are not confidential or adept at dealing with trauma, and after the Covid pandemic ends, many services will remain physically inaccessible. Stay Safe East has had to set up its own pilot counselling services for all our clients, including victims/survivors of hate crime and domestic abuse, but we were only able to do this thanks to a specialist Covid fund which is time limited.

**We would ask whether Hate Crime law might place a duty on government to fund post trauma services for victims of hate crime.**

### **14. Restorative Justice**

The approach has some considerable merits, especially in instances involving young people or low level hate incidents. However, Stay Safe East has reservations regarding the use of restorative justice for victims of hate crime, and especially for disabled victims to whom the process may not be accessible. We would like to see safeguards. Disabled people who have been taught a lifetime of compliance, particularly if they live or have lived in institutional care, are at risk of being persuaded to engage with restorative justice. RJ can also put victims of hate crime at risk by people who know them (neighbours, carers etc.) at risk of further abuse when they disclose information their impairments, sexuality, faith or other personal details. RJ should never be used in cases of domestic abuse or for hate crime in institutional settings.

## **15. Links to Victims' Law**

The current government has pledged to introduced a new Victims' Law. Stay Safe East has already engaged in pre-consultation with the Victims' Commissioner. The rights of disabled victims are regularly sidelined by whole parts of the criminal justice system.

The New Hate Crime law should make a clear link to the rights of victims to safety, inclusive access and reasonable adjustments, ad to be accompanied by an advocate (informal or formal) when speaking to the police or attending court as a witness.

## **16. Placing hate crime casework/scrutiny panels on a statutory basis**

In the past few years, the majority of local panels dealing with hate crime and anti-social behaviour have been lost to cuts in local government funding. Yet where they still exist, sometimes as Community MARACs, a term we find causes confusion), such as in Waltham Forest or Tower Hamlets, they play a similar role to MARACs, enabling multi agency working and allowing advocates to liaise more effectively with statutory agencies and problem solve for their clients. Stay Safe East has been part of the local ASBRAC (Anti-Social Behaviour Risk Assessment Conference) in Waltham Forest since 2014 when it was set up. We are a trusted partner, and our involvement has enabled engagement with victims of hate crime (and in particular of cuckooing) who do not trust and would not engage with statutory services. This has helped victims to be safer and to recover from their experiences.

In past years, the areas of London where there was an effective local partnership were those with the highest levels of reported hate crime and of community confidence. In some areas there are still hate crime scrutiny panels. Such panels also play a critical role in promoting dialogue between police, local authority and communities, identifying hotspots and areas of tension as well as possible repeat victimisation, it is however essential that such panels are separate from any Prevent initiatives, as many communities do not have confidence in Prevent.

Local Independent Advisory Groups are another mechanism but have a wider remit and rarely include disabled people.

Stay Safe East would like to see Hate Crime Law include a duty on local Crime and Safety partnerships to engage with local communities and their organisations both at a strategic and casework level through Community MARACs (by another name), Hate Crime Scrutiny panels or local Independent Advisory Groups.

*Stay Safe East. January 2021*