

# The emergence and development of Disability Hate Crime policy and practice in England and Wales

A case of an unsettled and unsettling policy agenda

Seamus Taylor

A Thesis submitted in partial requirement for the degree of PhD in Applied Social Science  
(Law)

School of Law  
Lancaster University

2018

# Table of Contents

<b>Abstract</b> .....	<b>6</b>
<b>Abbreviations</b> .....	<b>8</b>
<b>Declaration</b> .....	<b>10</b>
<b>Chapter 1: Introduction</b> .....	<b>11</b>
1.1 Introduction .....	11
1.2 Origins and development of my research interest .....	13
1.3 Locating this research study's focus within the hate crime legal framework and legal policy domain in England and Wales.....	14
1.4 Overall Aim and Research Objectives .....	16
1.4.1 Research Objectives .....	16
1.5 Research Questions .....	16
1.6 Chapter Overviews .....	17
<b>Chapter 2: From Hate Crime to Disability Hate Crime</b> .....	<b>19</b>
2.1 Introduction .....	19
2.2 Wider context .....	19
2.3 Conceiving and Defining Hate Crime .....	21
2.4 Origins of the phenomenon of Hate Crime .....	21
2.4.1 Significance of post-World War II rights settlement .....	22
2.4.2 Emergence of contemporary concern with hate crime .....	22
2.5 Writing Hate Crime .....	23
2.6 Identity Politics and Disability Hate Crime .....	24
2.7 Disability, Societal, and Public Policy Responses .....	26
2.8 How Public Policy (including Criminal Justice Policy) constructs Disability and Disabled People .....	29
2.9 Competing ideologies and problematisations of Disability in Public Policy - Care versus Rights .....	30
2.10 Constructing Disabled People as Vulnerable.....	31
2.11 Policy Making and Developments on Hate Crime and on Equality including Disability Hate Crime .....	33
2.11.1 Policy Making on Hate Crime .....	33
2.12 Policy making on equality in England and Wales and issues raised for hate crime .....	35
2.12.1 Catalytic influence of the Lawrence Inquiry.....	35
2.12.2 The equality duties approach to advancing equality .....	35
2.12.3 Hate Crime, street level bureaucracy and the exercise of discretion .....	36
2.12.4 Policy contributions by Independent Bodies, the Community Sector, and others to the Disability Hate Crime Agenda ..	37
2.13 Conclusion .....	39
<b>Chapter 3: Research Design, Methodology and towards Research Methods</b> .....	<b>41</b>
3.1 Introduction .....	41
3.2 Research Design .....	41
3.2.1 Types of Case Study – Holistic Case Study with an extended unit of analysis.....	42
3.2.2 Boundaries of this Case Study.....	42
3.3 Grounded Theory Approach .....	43
3.4 Tentative Organising and Analytical Framework .....	45
3.5 From Research Design and Methodology and towards Research Methods.....	48
3.5.1 Research Method 1 - Key Informant Interviews – semi-structured.....	49
3.5.2 Research Method 2 - Documentary Analysis and Links to Literature Review.....	51
3.5.3 Research Method 3 - Analysis of Individual Cases of Disability Hate Crime .....	52
3.6 Researcher Issues – Professional and Personal .....	57
3.7 Ethical Issues.....	58

3.8 Addressing Validity, Reliability, and Trustworthiness in the Case Study .....	59
<b>Chapter 4: Agenda Triggering .....</b>	<b>60</b>
4.1 Introduction .....	60
4.2 Targeted Harassment and Hostility towards Disabled People – some background .....	60
4.2.1 Significant triggering role played by Values into Action NGO .....	60
4.3 Early Activism and Problematisation .....	61
4.3.1 Values into Action NGO- first to use the language of Disability Hate Crime .....	63
4.3.2 Early role of South London NGO and activists .....	64
4.3.3 Significant early role of NGO Campaigns Officer – policy entrepreneur .....	64
4.3.4 Significant role of the new Disability Rights Commission .....	65
4.4 Building Momentum – Activism, Problem Representation, Politics and a little Policy .....	66
4.4.1 A loose coalition helps trigger the agenda .....	67
4.4.2 Key role of senior cabinet minister in agenda triggering .....	68
4.5 Activism Gathers Further Pace – further building the evidence base, building a strategic alliance for parliamentary change ..	70
4.5.1 Time limited strategic alliance focused on parliamentary progress .....	71
4.5.2 Increasing Focus on the Political Stream .....	73
4.6 Conclusion .....	76
<b>Chapter 5: Agenda Setting.....</b>	<b>80</b>
5.1 Introduction .....	80
5.2 Working in the glow and shadow of the Lawrence Inquiry .....	80
5.3 The Policy Stream further activates the development of Disability Hate Crime policy and the Activist Stream engages .....	82
5.4 Arrival of Disability Equality Duty prompts “discovery” of both the Disability Hate Crime solution and problem .....	83
5.4.1 Considering the influence of the Disability Equality Duty .....	83
5.4.2 Disability Equality Duty enabled a coupling of Activist and Policy stream priorities and the policy ‘discovery’ of Disability Hate Crime .....	84
5.5 Policy stream maintains momentum with development of a common definition and policy statements; Activist stream highlights policy–practice gaps and case failures .....	87
5.5.1 Public Policy Statement developed on Disability Hate Crime .....	87
5.5.2 Development of a common definition of monitored hate crime – an incremental journey .....	90
5.6 Activist stream challenges Disability Hate Crime policy in practice and populates the Disability Hate Crime category .....	94
5.7 Increasing coupling of streams of activity and a focusing event propel agenda setting on Disability Hate Crime .....	98
5.8 Conclusion .....	102
<b>Chapter 6: Towards Agenda Institutionalisation? .....</b>	<b>105</b>
6.1 Introduction .....	105
6.2 Institutionalising the Disability Hate Crime agenda .....	105
6.3 Institutionalisation underway: from common definitions to common reporting .....	106
6.4 From common reporting to the dilemma of disability difference – a challenge to institutionalising the agenda .....	108
6.5 A call to institutional action or a challenge to institutional responses? The issues raised by the EHRC Inquiry .....	111
6.6 Institutions failing to institutionalise Disability Hate Crime? .....	116
6.7 Further institutionalisation or indicative of a need for an institutional review? .....	118
6.8 An institutionalisation process yet to commence – judicial engagement with Disability Hate Crime? .....	120
6.9 Conclusion .....	126
<b>Chapter 7: An Agenda Challenge – The Vulnerability Focus and Disability Hate Crime .....</b>	<b>130</b>
7.1 Introduction .....	130
7.2 Rise of a vulnerability focus in public policy, including in the CJS .....	130
7.3 Has a wider problem representation discourse on vulnerability impacted on the CJS? .....	132
7.3.1 Has the problem representation of vulnerability impacted the construction of Disability Hate Crime? If so, does a vulnerability focus matter? .....	133
7.4 Exploring individual cases of Disability Hate Crime – does vulnerability focus matter? .....	139
7.5 A shifting focus on vulnerability – from Disability Hate Crimes plus Vulnerability to Disability Hate Crime and other Crimes against Disabled People .....	142
7.6 Conclusion .....	148

<b>Chapter 8: An Agenda item yet to fully speak its name - Ableism, Disablism, and Disability Hate Crime .....</b>	<b>150</b>
8.1 Introduction .....	150
8.2 Disabled people’s varied experience within a profile of disadvantage and discrimination .....	151
8.3 Recognising disadvantage and discrimination experienced by disabled people, including institutional discrimination .....	153
8.4 From recognising institutional discrimination to non-recognition of disablism or ableism – a missing link? .....	155
8.5 Does a lack of recognition and focus on disability prejudice, disablism, or ableism matter in the delivery of justice in Disability Hate Crime cases? .....	159
8.6 Do competing paradigms and problematisations occlude recognition of disablism? What may be the impacts? .....	162
8.7 Emerging significant articulation of disablism, ableism, and their impacts .....	166
8.8 Conclusion .....	171
<b>Chapter 9: Conclusion – An Unsettled and Unsettling Agenda .....</b>	<b>173</b>
9.1 Introduction .....	173
9.2 Unsettled and unsettling agenda .....	174
9.3 Unsettled and unsettling features present from outset and in each stage of the policy process .....	174
9.4 Ongoing journey towards policy institutionalisation .....	176
9.5 Vulnerability and hostility to be interrogated together in order to settle this agenda.....	178
9.6 Identifying and naming the agenda appropriately is needed to settle the agenda effectively .....	178
9.7 Overall assessment – moving beyond dual problematisation to settle this agenda.....	178
9.8 Overall Contribution of this Study .....	179
9.9 Limitations.....	181
9.10 Recommendations .....	181
9.11.1 Future Research Recommendations .....	181
9.11.2 Legal and Policy Recommendations.....	182
9.12 Concluding Comments.....	182
<b>Bibliography.....</b>	<b>184</b>
<b>Appendix A: PhD Research Study, Information Sheet.....</b>	<b>212</b>
<b>Appendix B: Research Consent Form .....</b>	<b>214</b>
<b>Appendix C (1) Research Method 3: Policy documents analysed as part of this study .....</b>	<b>215</b>
<b>Appendix C (2) Code to key Informant Interviewees .....</b>	<b>215</b>
<b>Appendix D: Illustrative extract from NVivo data analysis Code Book .....</b>	<b>218</b>
Codebook\\Phase 1 - Generating Initial Codes (Open Coding).....	218
Codebook\\Phase 2 – Axial Coding (Developing Core Categories).....	219
Codebook\\Phase 3 – Focused Coding .....	221
<b>Appendix E: Sample Analytical Memo.....</b>	<b>222</b>
<b>Appendix F: Illustrative sample of Individual Hate Crime cases.....</b>	<b>223</b>
Case 4. Common assault on a disabled man and wheelchair user in Oldtown .....	223
Case 5. Attack on a learning-disabled man in a skate park in Midtown.....	223
Case 8. Enslavement of a young disabled woman in Manchester .....	224
Case 9. Sunset View Care Home – targeted ill-treatment of learning-disabled residents revealed through undercover reporter .....	226

## Acknowledgements

Researching and writing this thesis has been a solitary yet supported journey. Whilst writing this thesis, I never felt alone as so many people supported me throughout and now is the time to say thank you.

I primarily wish to thank Professor Paul Iganski. You are a shining star for the craft of supervising. I am forever in your debt.

I want to thank Joanna Perry, Paul Giannasi, Baljit Ubhey, Mick Conboy, Ken Macdonald QC, Keir Starmer QC, Peter Lewis, Siobhain Barber, Simon Cole, Katharine Quarmby, David Blunkett, Anne Novis, Ruth Bashall, Simon Green, Kirsten Hearne, Stephen Brookes, Mark Brookes, Jenny Offord, Neil Crowther, Conor Ryan, Caroline Ellis, Sinead Glancy, Deirdre O'Flynn, Ben Meehan and Mike Smith. Your advice and support has been invaluable.

I want to thank my research interviewees for your valuable insights and I hope this thesis does justice to your contributions.

I want to thank my friends, Julian, Breege, Maura, Anne, Roxanne, Valerie, Geoffrey, and Suresh for your encouragement. Roxanne, thank you for your IT support. All your support has kept me going. I also want to thank my wider Taylor family for your support.

I want to thank my Maynooth University colleagues, Maurice Devlin, Ciara Bradley, Brian Melaugh, Niamh Flanagan, and Tonye Benson Olatunde. A very special thank you to my colleague, Joe Larragy, who has given me invaluable advice. I also want to thank Maynooth University more widely for significant support over the years of this study.

I want to thank my Anam Cara, Kleber, for all the time I have spent 'being boring' with this research! We will travel and books and papers will disappear from the living-room table!

I dedicate this thesis to the memory of my parents, Eamon and Bridie Taylor, who taught me so much about the fundamental claim on respect and dignity that resides in all people.

Seamus Taylor

## Abstract

This study aimed to analyse the emergence and development of Disability Hate Crime as a policy area in the criminal justice system in England and Wales. It did this through building an understanding of the contributory factors including the challenges within the criminal justice system, wider government and politics, the independent statutory sector and disabled peoples organisations that led to the emergence and development of Disability Hate Crime policy and practice. This study contributes the first comprehensive analysis of the emergence and development of Disability Hate Crime in England and Wales to hate crime studies.

Using a case study approach the thesis triangulates evidence from interviews in activist, policy and political streams, from hate crime cases and analysis of policy documents to chart this policy journey. It analyses the journey from agenda invisibility through agenda triggering to significant institutionalised actions on Disability Hate Crime in the criminal justice system, showing the roles of activism, politics and policy making in shaping this policy process. It underscores the analysis of this policy journey with a key focus on problematisation in policy making on Disability Hate Crime.

This study found that Disability Hate Crime has faced challenges in its emergence and development as a policy area in the criminal justice system. It has faced challenges at each stage of the policy journey from initial agenda triggering, through agenda setting and onto agenda institutionalisation.

This study concludes that Disability Hate Crime is an unsettled and unsettling policy agenda with agenda institutionalisation, as an established predictable area of policy and practice, some way off, despite legislation in 2003.

The study found that:

- Disability Hate Crime remains an unsettled policy agenda in that it displays an unsettled discourse, varied ways of responding, a need for ongoing national strategic action, and limited transition into day-to-day routine business.
- Disability Hate Crime is an unsettling policy agenda in that it challenges understandings of hostility and prejudice beyond direct manifestations of hostility. It is also unsettling in that it raises a dual problematisation of targeted crimes against disabled people as either hostility targeting or vulnerability targeting. This reflects a wider dual problematisation of disability as either an issue of welfare or as an issue of rights.
- Current understandings of disability hostility reflect under recognition of disability discrimination and linked ideologies of ableism and disablism. This under recognition of disability hostility lead to justice failures in Disability Hate Crime cases.

Constructions of the targeting of disabled people in crime as based on vulnerability lacks recognition of such targeting as biased, hostile targeting of disabled people.

This study reconceptualises disability hostility as hostility *including* vulnerability targeting. Arising from these conclusions, on an optimistic note, this study recommends a change to hate crime law which recognises that disability hostility can be based on hostility demonstration, a hostility motivation or hostile targeting because of disability.

This study concludes that rather than institutionalisation of Disability Hate Crime as day-to-day hate crime business, it still remains unusual business.

This study contributes a reconceptualization of the concept of disability hostility to include targeting because of disability – ‘disability vulnerability’. It makes the case for varied legal provisions to reflect the protection requirements of different hate crime strands. It adds to the body of case studies on public policy making. Finally, it illuminates the influence of equality law on Disability Hate Crime policy making.

## Abbreviations

ABH	Actual bodily harm
ACPO	Association of Chief Police Officers
AGO	Attorney General's Office
CJA	Criminal Justice Act
CJS	Criminal justice system
CPS	Crown Prosecution Service
CRE	Commission for Racial Equality
CRPD	Convention on the Rights of Persons with Disabilities
DOH	Department of Health
DPP	Director of Public Prosecutions
DRC	Disability Rights Commission
EHRC	Equality and Human Rights Commission
EU	European Union
FRA	Fundamental Rights Agency
GT	Grounded Theory
HMCPSI	Her Majesty's Crown Prosecution Service Inspectorate
HMI	Her Majesty's Inspectorate
HMIC	Her Majesty's Inspectorate of Constabulary
HMIP	Her Majesty's Inspectorate of Probation
IAGs	Independent Advisory Groups
IPCC	Independent Police Complaints Commission
LGB	Lesbian, gay, bisexual
LGBT	Lesbian, gay, bisexual and transgender
MOJ	Ministry of Justice
NACRO	National Association for the Care and Resettlement of Offenders
NGO	Non-government organisation
OCJR	Office for Criminal Justice Reform
ONS	Office for National Statistics
OPM	Office for Public Management
OSCE	Organization for Security and Co-operation in Europe
RNIB	Royal National Institute of Blind People
SGC	Sentencing Guidelines Council
UN	United Nations
VIA	Values Into Action

WHO	World Health Organisation
WPR	What's the problem represented to be?
YJCEA	Youth Justice and Criminal Evidence Act

## **Declaration**

In submitting this PhD thesis, I confirm that it is my own work and does not contain any unacknowledged material from any source, published or unpublished.

Seamus Taylor

July 2018

# Chapter 1: Introduction

## 1.1 Introduction

The aim of this research study was to provide an analysis of the emergence and development of policy and practice on Disability Hate Crime in England and Wales. This introduction sets the scene for the study through an identification of the public milestones on this policy journey from invisibility to significant institutional actions on Disability Hate Crime, with these critically explored throughout the study. The topic is contextualised in relation to hate crime more widely and explores and raises questions about the journey from hate crime to Disability Hate Crime – and identifies the main lines of inquiry which the study addressed.

In 1997, the Labour Party General Election Manifesto contained a pledge to create new offences in the area of racist crime. This marked the initial step in the creation of, firstly, racial, and, secondly, religiously aggravated offences. A Labour government was duly elected and, although not the first hate-related legislation, it is then that hate crime began to be recognised as entering the criminal justice policy domain in England and Wales. For the next five years, hate crime was officially regarded as concerned with, firstly, racist and, latterly, racist and religious crimes. Although some advocated an extension to include disability and sexual orientation as strands within hate crime, there was no serious debate on these issues at this time (Labour Party, 1997; UK. Home Office, 1997a; UK. Home Office, 1997b; Law Commission, 2013). A catalysing event with far-reaching impacts was the publication in 1998 of the independent inquiry into the handling of the racist murder of Stephen Lawrence (Giannasi, 2015a; Hall, 2013).

In 2003, another significant, but less noted, development occurred. Baroness Scotland QC, then Home Office Minister, introduced an amendment in the House of Lords to the Criminal Justice Act (CJA) 2003, which was the Labour government's flagship legislation for criminal justice reform. Section 146 provided for sentencing enhancement in cases where hostility on the grounds of disability or sexual orientation (later amended to include transgender identity) was a factor in crime. In introducing Section 146, she indicated that the government was 'guided by the evidence' in relation to targeted crimes experienced by disabled people and gay people (Hansard (HL) 5 Nov 2003). Although not specific hate crime legislation and less than the racist and religious crimes provisions, Section 146 was constructed as government recognition of Disability Hate Crime and homophobic crime (Bacchi, 2009; Hall, 2013).

Section 146 was not enacted until 2005 and, even then, the policy domain on Disability Hate Crime in terms of police and prosecution policies and monitoring only became more fully active from 2007. Was this an issue before its time in 2003, and was this an issue whose time had come in 2007? Much policy, activist and independent sector activity took place in the years up to 2010 (ACPO, 2010; CPS, 2010a, 2010b, 2010c; UKHMG, 2009-10; Mind, 2007; Scope, 2008). These included:

- Early work of the Disability Rights Commission (DRC) followed by DRC agenda setting reports which flagged targeted disability harassment as an issue
- Implementation of the Disability Equality Duty from 2004, with disability equality schemes required from all public bodies in 2006
- Establishment of a Disability Hate Crime Network in the non-government organisation (NGO) sector in 2008
- Publication of NGO reports highlighting issues of deinstitutionalisation for disabled people and issues of harassment in the shift to community living (VIA, 1999)
- Promotion by the Association of Chief Police Officers (ACPO) and adoption of a common definition of monitored hate crime by the criminal justice system (CJS) in 2007 and ACPO hate crime manuals and guidance (2005, 2014)
- Publication of government hate crime action plans (2009-10, 2010, 2012a, 2016)
- Keynote speeches by the Attorney General in 2007 and the then Director of Public Prosecutions (DPP) in late-2008
- An NGO report which charted failures by the CJS to respond appropriately to Disability Hate Crimes, including murders (Scope, 2008)
- Report of an Independent Police Complaints Commission (IPCC) inquiry into the deaths of a mother and her disabled daughter in Leicestershire (IPCC, 2011)
- Research commissioned by the Equality and Human Rights Commission (EHRC) into targeted violence experienced by disabled people in 2009 (EHRC, 2009)
- Launch of a formal statutory inquiry by the EHRC into disability related harassment in 2010 (EHRC, 2011a).

In 2010, following the general election, the Conservative–Liberal Democrat coalition issued its Equality Strategy which contained a commitment to improve the recording of Disability Hate Crime (UK Government Equalities Office, 2010). Subsequently, the Labour Party pledged that a future Labour government would create specific disability aggravated offences (Liam Byrne MP, Labour Party, September 2013). This became the Labour Party position at the time of the 2015 general election.

Alongside these activist, policy, and political developments, the criminal justice inspectorates published critical inspection reports on the response of the CJS to Disability Hate Crime (HMCPSP, HMIC, HMIP, 2013, 2015). The Law Commission also published a report on the possibility of extending the racially aggravated offences provisions to cover Disability Hate Crime (Law Commission, 2013). More recently, the CPS reviewed its public policy statement on Disability Hate Crime, and published a revised policy statement (CPS, 2015–16, 2017).

These are some of the public milestones on a journey to increasing focus, if not quite parity of provision, on hate crime in England and Wales. In a sense, there has been a flurry of activity on the Disability Hate Crime agenda, reflective of the relative adolescence of the hate crime domain in Britain compared to its increasing maturation in the US (Iganski, 2010). In the space of 18 years approximately, Disability Hate Crime appeared to have journeyed from invisibility to significant institutional action within the CJS in England and Wales. I was interested in analysing the policy journey informing these public milestones. I was interested in understanding the emergence of the issue of Disability Hate Crime, its relationship to other forms of hate crime, the issues it raises, and the development of activist, political and, in particular, policy responses to this issue in England and Wales.

## **1.2 Origins and development of my research interest**

My research interest in this topic ignited when I was involved in the development of hate crime policy and practice through my then role as Director of Equality and Diversity at the CPS from 2004-2009. During this time, I contributed to a review of the CPS' racist and religious crimes policy, a review of the homophobic crimes policy to also include transphobic crime, a review of the violence against women strategy, the development of a CPS Disability Hate Crimes policy, and the development of a policy on crimes against older people. Whilst I had hunches about the origins of Disability Hate Crime agenda, I felt that my ideas did not represent the full picture. There was growing activism, political developments, and a sentencing uplift provision in place. I sensed that Disability Hate Crime might challenge how the CJS constructed hate crime overall. There was also a prevalent construction of disabled people as vulnerable. I did not quite know how this would sit with a focus on Disability Hate Crime.

My involvement with the Disability Hate Crime agenda prompted me to reflect on the processes of defining and constructing social issues as social problems, the problematisation and problem representation of social issues (Bacchi, 1999, 2009), how issues gain policy agenda status (Lister, 2010; Kingdon, 2011), and the contribution of different actors to policy making. It prompted me in particular to ponder again on the social construction of crime and how as Quinney so aptly reflected, "the social reality of crime is constantly being socially created" (Quinney, 1970 preface). I wondered if as Quinney postulated whether as with hate crime more widely, the social reality of Disability Hate Crime was being constructed by the formulation and application of new criminal definitions and conceptions of hate crime to what was previously neglected behaviour or behaviour previously constructed in other ways including as abuse, neglect or exploitation (Quinney 1970 pg23). I began to wonder if I was involved in a policy making process which was socially constructing a new crime category for what might be considered very old behaviour (Quinney 1970, Best, 1999; Hall, 2013). If so, how and why had this happened? This reflection led me to embark on this PhD research.

As I engaged with the topic and the literature on hate crime and Disability Hate Crime in particular, I realised that, whilst there were increasing accounts of aspects of Disability Hate Crime in England and Wales, there were very few which analysed policy development on Disability Hate Crime. Some accounts highlighted aspects of the contribution of the disability movement, some highlighted shortcomings in the CJS response to Disability Hate Crime (Quarmby, 2011; Scope, 2008). Others critiqued the construction of Disability Hate Crime and, in particular, the issues raised by a perceived conflation of issues of vulnerability and hostility (Roulstone and Sadique, 2013). There were accounts that began to profile the features of disability hostility and targeted violence experienced by disabled people (EHRC, 2009). More recent accounts covered aspects of the development of the CJS' response to Disability Hate Crime (Giannasi, 2015a) and other studies located the Disability Hate Crime issue in an international context (Sin, 2014).

The single most comprehensive account to date of the development of Disability Hate Crime policy was that of Mason-Bish (2009). She explored the development of a hate crime policy domain in Britain in terms of race and religion initially, its expansion in terms of sexual orientation and disability, and, finally, its exploration in terms of age and gender. It was the first attempt at a comprehensive account of hate crime policy development in Britain. However, as Mason-Bish pointed out, this was not "the definitive account of how hate crime policy developed but rather I have identified important areas for future research" (Mason-Bish, 2009, p. 63). Mason-Bish highlighted how she was not in a position to examine the full range of factors that may contribute to the development of hate crime policy. She identified her limited engagement with wider political and legal factors and that a lack of consideration of the role of discrimination legislation on the development of hate crime policy may be a limitation in her research. In a study focused on the establishment, expansion, and exploration of the hate crime policy domain overall, there was a constraint on what could be addressed in detail in relation to each hate crime strand. In recognising this, Mason-Bish identified the knowledge gap that this study sought to address by augmenting and building on her work. It "is difficult to examine the development of every area of hate crime policy because each victim group actually warrants a study on its own" (Mason-Bish, 2009, p. 62). This forms the starting point for this study.

### **1.3 Locating this research study's focus within the hate crime legal framework and legal policy domain in England and Wales**

In a review of hate crime legal provisions, the Law Commission (2014) provides an overview of the law on hate crime. They identify three main sets of legal provisions:

- (a) **Aggravated offences involving racial or religious hostility.** These are separate racially or religiously aggravated variants of what are existing base criminal offences. The base offences for which there are aggravated variants are: malicious wounding/grievous bodily harm; actual bodily harm; common assault; criminal damage; fear or provocation of violence; intentional harassment, alarm or distress; harassment, alarm or distress; harassment; stalking; putting people in fear of violence or serious alarm or distress.

An offence can be racially or religiously aggravated on the basis of either demonstration of hostility or based on a hostility motivation. The Law Commission says these offences were included because they were the most likely offences to involve racial hostility. These aggravated offences were introduced initially in terms of racial hostility in the Crime and Disorder Act 1998. Religiously aggravated offences were added to the Crime and Disorder Act through the Anti-Terrorism, Crime and Security Act, 2001, S.39. There are no aggravated offences in respect of disability hostility.

- (b) **Enhanced sentencing provision in certain areas of hate crime.** In the CJA 2003, one Section (Section 12) deals with the sentencing regime in England and Wales. Section 12 includes two sections - Section 145 and Section 146 - dealing with enhanced sentencing in respect of crimes aggravated by hostility or what is popularly termed 'hate crimes'. Section 145 deals with racial and religious hostility for any offences not covered by the list of aggravated offences mentioned above. It requires a sentencing court to take racial and religious hostility into account at the sentencing stage.
- (c) **Section 146 deals with hostility based on the grounds of gender identity, sexual orientation, or disability.** It requires the sentencing court to take into account hostility based on gender identity, sexual orientation, or disability at the sentencing stage. The sentence passed and the reasons for the sentence, including any enhanced sentence, must be stated in open court. In terms of this research study, it was firstly with an analysis of the emergence of this Section 146 provision of the CJA 2003 and, secondly, with the development of policy and practice in this area of what has become termed Disability Hate Crime that the research for this thesis was concerned.
- (d) **The stirring up offences.** The stirring up offences are also referred to as **Incitement to Hatred provisions**. They constitute a quite separate set of offences from the aggravated offences and from the sentencing enhancement provisions. Incitement to Hatred offences were first introduced in England and Wales in the Public Order Act (1986) in respect of racial hatred. Offences in respect of incitement to religious hatred and sexual orientation were added in 2007 and 2010 respectively. The Incitement to Hatred provisions are not the same across the protected characteristics. The provisions are 'stronger' in relation to racial hatred than in relation to religious hatred or sexual orientation hatred. They exist to address behaviour intended to or likely to cause others to hate entire protected groups (Law Commission, 2014).

Whilst these constitute the main elements in the hate crime legal provisions in England and Wales, there are others, including provisions to address 'racialist' chanting at football matches and murder tariffs in hate-related murders (Hall, 2013).

The above summary provides the legal architecture for the hate crime domain in England and Wales today. It is an uneven set of provisions constructed over time in response to events, activism, politics, and policy making. What is striking is that there is no reference to the term 'hate crime' within the legal provisions. It is equally striking that this patchwork of legal provisions has given rise to the construction of a very active

criminal justice policy domain entitled hate crime, such that it is accepted by activists, politicians, policy officials, and practitioners as a legitimate arena for engaging in policy and practice developments (Iganski, 2010).

It is within this legal architecture and policy domain and within one aspect of it, that the aims and objectives of this research study were framed.

## **1.4 Overall Aim and Research Objectives**

Using a case study approach, the aim of this research study was to provide an analysis of the emergence and development of policy and practice on Disability Hate Crime in England and Wales.

### **1.4.1 Research Objectives**

The overall objectives of this research study were:

- To build an understanding of the contributory factors within the criminal justice system, wider government and politics, disabled peoples organisations and other sectors including the independent statutory sector that led to the emergence and development of DHC policy and practice and
- To explore and build an understanding of how, given these contributory factors, DHC policy and practice emerged as and when it did in England and Wales.

Within these overall objectives the specific objectives were to:

- Conduct depth interviews with a range of key informants in activism, politics and policy making to identify contributory factors to this policy agenda.
- Undertake analysis of a range of key policy documents which codify this policy agenda.
- Undertake an analysis of a range of Disability Hate Crime cases which reflect the handling of individual cases within the CJS.

Through these objectives the aim was through the use of a triangulated case study approach to secure the fullest picture of the emergence and development of this policy agenda.

## **1.5 Research Questions**

Given the research aim and objectives identified above, the following research questions guide this study:

1. How did Disability Hate Crime emerge and develop as an area of policy and practice within the criminal justice system of England and Wales?

2. Why did Disability Hate Crime emerge and develop as an area of criminal justice policy and practice as and when it did?

## 1.6 Chapter Overviews

The chapters which follow address these research questions to build an understanding of the emergence and development of Disability Hate Crime Policy in England and Wales. The following are overviews for subsequent chapters:

**Chapter 2, From Hate Crime to Disability Hate Crime**, contextualises this research study within wider hate crime studies and disability studies, together with existing work on Disability Hate Crime. Through this and building on the research questions, it identifies the initial exploratory lines of inquiry which informed the study.

Chapter 3, Research Design, Methodology and towards Research Methods, outlines this research study's case study research design, its qualitative methodology, and headlines of its triangulated methods comprising key informant interviews, document analysis, and analysis of individual hate crime cases. This case study was informed by an inductive grounded theory approach - as the data emerged and was analysed, my analytical lens evolved to include a focus on problematisation, agenda triggering, and agenda setting adapted from the work of Kingdon and Bacchi.

**Chapter 4, Agenda Triggering**, analyses the first part of the overall research aim – namely how and why Disability Hate Crime emerged as and when it did in England and Wales. The focus is on issue emergence and agenda triggering, a concept coined in this research study to refer to that early point in the policy process where an issue is first initiated rather than when a substantive agenda is set and a domain becomes fully active.

**Chapter 5, Agenda Setting**, analyses the policy activity, activism, and problematisation processes that moved the Disability Hate Crime agenda from mere legal statute to a substantive active policy agenda, an issue firmly on the CJS policy agenda with much activity now driven by policy officials and activists and less so by politicians.

**Chapter 6, Towards Agenda Institutionalisation?** analyses the extent to which the Disability Hate Crime policy and practice agenda has become institutionalised within the CJS in terms of policy, and practice. The focus is on analysing the extent to which a Disability Hate Crime domain is operational with shared definitions, discourse and ways of responding existing across the CJS and the analysis points to limited institutionalisation having taken place.

**Chapter 7, An Agenda Challenge – the Vulnerability Focus and Disability Hate Crime**, analyses a challenge present in each stage of the policy journey. This chapter considers the challenges posed by vulnerability targeting in Disability Hate Crimes and indicates that they are central to the unsettled and unsettling agenda that is Disability Hate Crime today. It concludes that the current legal framework is limited in the range of Disability Hate Crimes it can address. Challenges lie not in the nature of disability hostility but in the limitations of the current legal framework.

**Chapter 8, An Agenda Item yet to fully speak its name – Ableism, Disablism and Disability Hate Crime**, focuses on the issues of non-recognition of disability prejudice, ableism, and disablism as they affect the development of Disability Hate Crime policy and practice in the CJS. This chapter explores whether the competing paradigmatic accounts of disabled people's experiences in terms of welfare or rights yet again impact and occlude recognition of wider disability prejudice, ableism, and disablism and, in turn, impacts the non-recognition of Disability Hate Crime and failures to deliver justice in Disability Hate Crime cases.

**Chapter 9, Conclusion, An Unsettled and Unsettling Agenda**, identifies conclusions along with the study's contribution to understanding. This chapter concludes that, rather than being institutionalised within the hate crime domain as day-to-day hate crime business, Disability Hate Crime remains unusual business to this day. This chapter elucidates my thesis that Disability Hate Crime is an unsettled and unsettling agenda within the hate crime domain, agenda features present in its entire policy journey.

The study concludes with an identification of its contributions to knowledge, namely through addressing a significant gap in hate crime studies. It does this by providing the first comprehensive analysis of policy emergence and development of Disability Hate Crime in England and Wales.

The study ends with a clear indication that recognising and responding to Disability Hate Crime is but one element in a wider strategy required to deliver social justice for disabled people in England and Wales.

## **Chapter 2: From Hate Crime to Disability Hate Crime**

### **2.1 Introduction**

This chapter traces the journey from hate crime to Disability Hate Crime through an analysis of the relevant literature including policy related documents which construct and reference Disability Hate Crime. It considers the origins and evolving conceptions of both hate crime and Disability Hate Crime. It considers the related issue of the construction of disability in public policy, including criminal justice policy, and, within this, considers the construction of disability within hate crime policy. Consequently, the chapter identifies the initial exploratory lines of inquiry which informed the study and which were kept under active review in subsequent chapters.

### **2.2 Wider context**

Whilst targeted harassment and violent discrimination towards minoritised groups has existed in almost all societies throughout history, the construction of such behaviour as hate crime is relatively recent (Iganski and Levin, 2015). Indeed, it might be argued that, strictly speaking, there is no legal category of hate crime in England and Wales. However, as indicated in Chapter 1, there are specific aggravated offences and sentencing uplift provisions which can be applied to cases involving targeted hostility; there are also Incitement to Hatred offences. This contrasts with the US where some federal and state statutes carry 'hate crime' in their title.

Notwithstanding this, there is an active policy domain on hate crime in England and Wales, developed initially in the early 2000s. Indeed, "hate crime' has been wholeheartedly adopted by the criminal justice system in the United Kingdom in the last decade" (Iganski, 2010, p. 351). Hate crime is now an established policy domain, an identifiable field in which ongoing policy developments take place (Mason-Bish, 2009). Hate crime has been appropriated by identity politics movements and criminal justice agencies as a policy domain within which claims for recognition are framed and responded to. There are varied views as to what forms of targeted hostility might be included in hate crime in terms of its adaptability (Iganski, 1999; Chakraborti and Garland, 2012; Dimock and Al-Hakim, 2012). There are also varied views as to what is meant by hate crime. At one reading, it is clear that hate crime is an ambiguous, contentious, and contested concept. At another level, it has proven to be an evolving, dynamic concept which is the basis of an active policy domain. Significant knowledge, policy, and practice developments are occurring in this context of ambiguity, adaptability, and contestation.

The concepts of disability and disabled people have also been ambiguous and contested over time. Evidence points to a range of debates and factors influencing how disability is addressed in public policy, including criminal justice policy, with the definition of disability a significant consideration. Is it conceived of in terms of a medically defined impairment – the so-called Medical Model of disability? Is it defined as a

social rights issue focused on tackling barriers to equality at various levels – aspects of which are termed the Social Model of disability (Mercer and Barnes, 2010; Barnes and Mercer, 2003). Or is it defined as some combination of functional impairments made more problematic by negative social attitudes and barriers (Shakespeare, 2017)? Evidence points to the historic dominance and legacy influence of the Medical and Welfare Model of disability which has led to the construction of disabled people as vulnerable and in need of care and protection. This has given rise to a ‘paternalist policy heritage’, focused on welfare, care, and protection (Roulstone and Prideaux, 2012; Borsay, 2005; Braddock and Parish, 2001; McDonnell, 2007) as opposed to an equality, rights, and justice focus which the Rights-Social Model of disability advocates, and with which Disability Hate Crime resonates with its focus on justice and equality. Evidence from this study and elsewhere shows that the prevalence of the medical, care, and protection approach has filtered into the CJS and that its influence may have hindered the fuller development of an equality, justice, and rights approach (EHRC, 2009; EHRC, 2011a; Mason-Bish, 2009). This is evidenced through the proliferation of CJS policies responding to vulnerable victims, alongside a single policy responding to Disability Hate Crime.

The experience of targeted hostility is but one continuing thread in the experience of disabled people throughout history (Sherry, 2010; Quarmby, 2011; Sobsey, 1994; Evans, 2004). Accounts point to varied, complex experiences in disabled people’s lives (Braddock and Parish, 2001; McDonnell, 2007) and chart hostile experiences from harassment to assaults, murder, and mass killings (Sherry, 2010; Quarmby, 2011; Evans, 2004; Sobsey, 1994). Recent systematic reviews found that disabled people are at a higher risk of violence than are non-disabled people (Hughes, Bellis, Jones, Wood, Bates, Eckley, McCoy, Mikton, Shakespeare, and Officer, 2012; Jones, Bellis, Wood, Hughes, McCoy, Eckley, Bates, McCoy, Mikton, Shakespeare, and Officer, 2012). This is borne out by the World Health Organisation (WHO), which identified disabled people as a group more at risk of violence than people without disabilities (WHO, 2011, p. 59). In the British context, analysis of the Crime Survey data for England and Wales for 2011-12 and 2012-13 estimates an average of 62,000 incidents of disability motivated crimes per year, significantly less than but second only to racist crime estimates (Home Office, ONS, MOJ, 2013). Alongside this, there were just 579 Disability Hate Crimes recorded by the CPS in 2012-13. Indeed, there is a significant gap between disabled people’s experience of targeted crime, and what is reported and responded to as Disability Hate Crime. This is the gap between targeted victimisation and the construction of targeted victimisation as Disability Hate Crime or not.

Responses to the experience of disability hostility have varied over time from condoning, ignoring, and facilitating such acts to expressions of concern and outrage. It is only recently that such hostility has begun to be recognised as potentially crime, and, much more recently, that it has begun to be recognised as Disability Hate Crime. As with hate crime, Disability Hate Crime is also a contested, contentious, and ambiguous concept. Nonetheless, it is now recognised as a ‘social fact’ with an active policy domain and set of policies and practices that this study analysed.

Taken together, Disability Hate Crime and hate crime meet as already ambiguous concepts in the contested terrain of hate crime theorising, policy, and practice. Indeed, it is remarkable how much policy and practice on Disability Hate Crime has taken place and is advancing in these contexts of ambiguity, and contestation.

Given the origins of the hate crime domain with its early focus on racist and religious crimes, its expansion to embrace Disability Hate Crime is at one level remarkable. Grattet and Jenness (2001b) analysed the development of hate crime provisions in terms of a 'core' and 'second tier' of protected statuses. They identified race, religion, and national origin as 'core' protected statuses, and disability, gender, and sexuality as 'second tier' protected statuses. They argue that civil rights advocacy "solidified a trio of statuses – race, religion and ethnicity as the anchoring provision of all hate crime law" (Ibid., p. 672). They argue that Disability Hate Crime, as a 'second tier' protected status, has been recognised more recently, with disability recognised as a 'legitimate axis' around which hate crime occurred (Ibid., p. 671).

This study now turns to a critical consideration of the journey from hate crime to Disability Hate Crime, with a view to locating this study within existing hate crime studies and identifying the lines of inquiry which informed the research underpinning this study.

### **2.3 Conceiving and Defining Hate Crime**

A feature of the hate crime literature is the attention given to defining hate crime (Lawrence, 1999; Jenness and Broad, 2005; Levin and McDevitt, 2002; Herek and Berill, 1992; Iganski, 2002; Perry, B., 2001, 2003, 2009; Hall, 2013). Hate crime has become a widely used term in western societies, including in academia, policy discourse, and the media. However, it has a varied level of shared meaning and, according to Iganski (2010), ambiguity. It has been noted that, perhaps arising from this ambiguity, many academic texts start with a chapter exploring and defining the concept of hate crime (Iganski, 2010, p. 353).

### **2.4 Origins of the phenomenon of Hate Crime**

Whilst many scholars recognise that hate crime is a recent social construct in response to the recognition of targeted violence based on identity and linked to the rise of identity politics (Jenness and Broad, 2005, 2007; Jacobs and Potter, 1998; Hall 2013), it is also recognised as a response to contemporary manifestations of a long history of targeted violence (Herek and Berill, 1992; Petrosino, 2009). It reflects a recent problematisation of long-standing violent discrimination (Bacchi, 1999, 2009). In a sense, it is the social construction or reconstruction of very old behaviour in a relatively new crime category (Quinney 1970, Best, 1999; Hall, 2013).

It is recognised in some scholarly literature that, in western societies, there is a continuum of discrimination for identity based social groups including disabled people (Young, 1990; Hollomotz, 2013). This continuum is seen to range from the 'softer' end of jokes, stigma, ridicule, through social exclusion, marginalisation, discrimination in employment and services to harassment and violence. This range of prejudicial discriminatory behaviour is also described in academic literature as a "pyramid of hate" (Levin, B., 2009, p. 5). This pyramid builds upwards from a base of prejudicial attitudes, through acts of prejudice and discrimination to acts of violence and, ultimately, genocide (Levin, B., 2009). The explanatory power of Levin's framework, itself informed by Alport's earlier work on prejudice (Alport, 1954), is evidenced in a range of contexts including the Holocaust in the 20<sup>th</sup> Century. It provides a framework for understanding the experience of disabled people during that period (Alport, 1954; Evans, 2004).

#### 2.4.1 Significance of post-World War II rights settlement

Evidence indicates that, post-World War II and in recognition of the magnitude of the issues raised by the Holocaust, a new human rights and equal opportunities architecture was gradually developed (McLaughlin, 2007). This found expression in the establishment of the United Nations (UN), the European Convention on Human Rights and, over time, their various conventions, institutions, and committees in areas of racial, religious, gender, age, and disability discrimination. Much of the contemporary western concern with issues of rights, equality, and diversity, including hate crime, owes its origins to this post-World War II rights-related architecture (Hanimaki, 2008; Clapham, 2007; Freeman, 2002; Donnelly, 2003; Neier, 2012). In the latter part of the 20<sup>th</sup> Century, these were supplemented with the increasing development of the European Union (EU) and the development of the Organization for Security and Co-operation in Europe (OSCE);(OSCE 2017). In each of these contexts, as well as domestically, activity on disability equality has lagged, sometimes by decades, behind activity on other equality strands, in particular race, religion, and gender (Roulstone and Prideaux, 2012).

#### 2.4.2 Emergence of contemporary concern with hate crime

As mentioned earlier in this chapter, contemporary concern with hate crime appears to have first emerged as a CJS challenge in the US in the 1980s, influenced by the earlier black civil rights movement in particular (Jacobs and Potter, 1998). Given a key part of its origins in the civil rights movements and its transition into the policy arena (Jenness and Broad, 2005), hate crime has been an area where activism and policy activity often preceded academic scholarship. That said, significant scholarship is underway, with some more recent scholarship considering Disability Hate Crime specifically and/or reconceptualising hate crime overall (Jenness and Broad, 2005; Levin and McDevitt, 2002; Lawrence, 1999; Herek and Berill, 1992; Levin, B., 2009; Iganski, 2002, 2008, 2010; Perry, B., 2001, 2003, 2009; Mason-Bish, 2009; Roulstone and Mason-Bish, 2013; Chakraborti and Garland, 2012; Sherry, 2010; Walters, 2011; Hall, 2013; Iganski and Levin, 2015; Schweppe and Waters, 2016; Ogden, 2016).

## 2.5 Writing Hate Crime

Broad strands of hate crime scholarship have emerged over time: a legal scholarship literature, a social problems literature, and a social movements literature. Much theorising today cuts across this broad-brush heuristic framework, and this study draws upon work within and across these areas of scholarship. Some recent scholarship appraises established theoretical perspectives (Walters, 2010; Hall, 2013). Others who seek to reconceptualise hate crime and its traditional focus on identity groups argue that it should operate within a framework that can encompass targeted crimes based on identity groups, difference, and vulnerability (Chakraborti and Garland, 2012).

Given its recent origins as a multidisciplinary area of scholarship, it is not surprising that defining and delineating hate crime has been a central preoccupation of much of the literature on hate crime in the 1990s and early 2000s. And, given a key origin in the early US civil rights movement, it is also not surprising that much of the early significant scholarship defined and delineated hate crime in terms of the features of racist crime and homophobic crime to a lesser extent. Significant definitions include those of Lawrence (1999) in the area of legal scholarship, Herek and Berill (1992) in terms of social movement scholarship, Perry in terms of public criminology sociological scholarship (2001), and Grattet and Jenness (2001) and Jenness and Broad (2005) in terms of social movement scholarship and policy studies scholarship. Levin and McDevitt's (2002) contribution in terms of the social problems literature on hate crime is also significant. Their approach finds an echo in the more recent work of Sherry on Disability Hate Crime (Levin and McDevitt, 2002; Sherry, 2010).

In earlier writings, Lawrence (1999), Herek and Berill (1992), and Perry (Perry, B., 2001, 2009) tended towards conceiving of hate crime in terms of stranger crime, public space crime, and crimes targeting people with a shared group identity/membership and reflecting significant societal divides/fissures. It is as if this literature is written from a 'classic' racist crime or homophobic crime perspective. Whilst the existence of Disability Hate Crime is not rejected, it is either not mentioned (Herek and Berill, 1992; Perry, B., 2001) or it is located at the margins of the hate crime phenomenon (Lawrence, 1999). There have been exceptions, notably Grattet and Jenness (2001) and Sherry (2000, 2003, 2004, 2010), the latter almost a lone academic voice on the subject for many years.

The earlier academic notion of hate crime as outlined above appears to be reflected and more prevalent in the early criminal justice sector policy and practice definitions and developments of hate crime in England and Wales. The first mention of Disability Hate Crime in police literature was in 2005, although it was 2007-08 before steps were taken to monitor it (ACPO, 2005; Home Office and ACPO, 2008). The CPS literature first mentions Disability Hate Crime in the 2006 CPS Single Equality Scheme, setting out a commitment to put in place the then 'Disability Crimes Policy' by 2007 (CPS, 2006). There is no mention of Disability Hate Crime in the Judiciary's Equal Treatment Bench Book (JSB, 2008). Yet, these publications emerged in a

context where a sentencing uplift provision had been put in place for crimes aggravated by disability hostility since 2003.

## **2.6 Identity Politics and Disability Hate Crime**

As indicated earlier in this chapter, the origins of the phenomenon of hate crime owes much to the early civil rights movement in the US, and its spawning of identity politics firstly in the US and latterly through movement diffusion and transfer its influence on identity politics in Britain. Identity politics is a term that has evolved over time but is broadly taken to refer to a social movement politics whereby people relate to others as members of social groups based upon identity characteristics such as ethnicity, religion, gender, sexuality, gender identity, disability. (Jacobs and Potter 1998). The identity based social movements arising from this politics are referred to as the race equality movement, the LGBT movement, the women's movement and in this instance, the disability movement. There are scholars who advocate for the acknowledgement of the contribution of identity politics and the specific equality movements to advancing specific strands of identity inequalities (Young 1990), and critics of these social movements contributions (Jacobs and Potter 1998). There also are more recent scholars who focus on reconsidering identity politics and its contributions (Alcoff 2006; Siebers 2006).

Critics argue that the hate crime movement owes its origins not to any significant prevalence of hate crime, but, rather to society's heightened sensitivity to prejudice and to society's emphasis on identity politics (Jacobs and Potter 1998, p.g 6). In this thesis I firstly identify the disability movement initiatives including agenda triggering and agenda setting publications that can be viewed as arising in this context of identity politics, and second, go on in the thesis to explore the contribution of these publications and this disability movement activism-identity politics in influencing disability hate crime emergence and development. ( Jacobs and Potter 1998 ; Hall 2013).In doing so I tend to use the language of disability movement rather than disability identity politics , as disability movement was the term used by disability activists interviewed as part of the research for this thesis. No respondents involved in disability activism in this study identified themselves as engaged in identity politics whilst many identified as engaged in a disability movement.

Some early community sector – disability movement publications dealt with targeted harassment and violence experienced by disabled people. These emerged at a time when hate crime was being defined academically and surfacing as a policy domain in England and Wales.

Some early reports, such as Mencap's 1999 report, 'Living in Fear', frame the experiences of disabled people in the UK in terms of 'bullying'. There is no mention of hate crime. However, crime, whilst scarcely mentioned, is a critical consideration of the experiences identified by respondents who indicated targeted crimes based on disability. This targeting includes reports of damage to property, assaults, and disablist verbal abuse. Most interviewees (88 per cent) reported an experience of bullying in the previous year, whilst

32 per cent reported weekly experience of bullying (Mencap, 1999). There is no evidence that this report informed policy debate on hate crime in the early years after publication. However, it was referenced by the government some 12 years later in the Government 'Hate Crime Action Plan' (UK. Home Office, 2010). From 2007 onwards, however, Mencap increasingly adopted the language of hate crime in its literature (Mencap, 2007).

Another early community sector report was 'Opening the Gateways' by the Values into Action (VIA) charity in 2002. This is the first community sector publication pinpointed by this study as identifying hate crime as an experience of disabled people. Uniquely, it also recommended that hate crime legislation address disabled people's experiences (VIA, 2002). It built on earlier VIA reports from the mid-1990s through to the early 2000s which addressed the closure of residential institutions for learning disabled people and the shift to increased community living. In charting this shift, as a result of which over 60,000 learning disabled adults moved to live in community settings, VIA identified community based disability harassment as a risk in managing this transition. Over time, VIA's representation of the problem evolved to describe the issue as hate crime (Ibid.). However, these ground-breaking reports were not acknowledged in the early academic or policy debates and developments on hate crime.

With the exceptions of a few scholars in the US - Grattet and Jenness and, in particular, Mark Sherry and Barbara Faye Waxman - the literature in academia, the policy domain and, indeed, the community sector in the mid-1990s and early 2000s was silent on the issue of Disability Hate Crime.

Indeed, Sherry, whose work dates back to 2000 (Sherry, 2000, 2003, 2004, 2010), said that, for a significant period of time, the prevalent response to his research was one of disbelief, the view being that people tend to be sympathetic and show pity towards disabled people. It was only with the later emergence of Disability Hate Crime as a policy concern in Britain that his work has gained wider acknowledgement (Sherry, 2010).

Faye Waxman highlighted, as far back as 1991, how hostility and hatred were the unacknowledged dimension in disabled people's experiences in the US, when she proposed that disability be included as a monitored characteristic in the US Hate Crime Statistics (Faye Waxman, 1991). Both Sherry and Faye Waxman question whether the early framing of hate crime overall and of disabled people's experience as an issue of vulnerability have posed challenges for the recognition of Disability Hate Crime. In a British context, Mason-Bish (2012) questions whether Disability Hate Crime per se has posed particular challenges for how we conceive of hate crime overall, in terms of dominant definitions of 'classic' racist crime and homophobic crime.

In this context, the Law Commission's 2013 consultation paper, 'Hate Crime: the case for extending existing offences', was a significant consideration of the issues (Law Commission, June 2013). It questioned whether there should, in the future, be disability aggravated offences akin to racially aggravated offences. However,

the document could only consult on a replication of the existing racially aggravated offences regardless of their appropriateness to Disability Hate Crime. This again raised a question as to the prevalence of a particular conception of hate crime and its implications for Disability Hate Crime.

Given these indications of a possible prevalent view of hate crime which has informed early academic and policy work, I was intrigued as to how and why Disability Hate Crime emerged as an area of policy and practice in this context. Indeed, the silence in the early criminal justice policy material on the issue led me to the overall research questions cited earlier:

- How did Disability Hate Crime emerge as an area of policy and practice within the criminal justice system of England and Wales?
- Why did Disability Hate Crime emerge and develop as an area of criminal justice policy and practice when it did?

Review of the early hate crime writings, particularly the absence of Disability Hate Crime in the early criminal justice policy domain publications, highlighted a gap in understanding and led me to identify a line of inquiry explored in this research, namely:

Has there existed historically a prevalent view of hate crime amongst criminal justice agencies which did not include Disability Hate Crime? If such a prevalent view has existed, might it contribute to non-recognition and under-reporting of Disability Hate Crime?

## **2.7 Disability, Societal, and Public Policy Responses**

Just as there is a body of writing on conceiving and defining hate crime, there is likewise a body of literature on defining disability. Some literature includes historical analyses of disability and societal responses (Braddock and Parish, 2001; McDonnell, 2007; Foucault, 1997; Quarmby, 2011). Others focus on contemporary attempts to define disability (Barnes and Mercer, 2003; Oliver and Barnes, 2012; Shakespeare, 2006, 2017). What almost all these accounts point to is that, over time, disability in Britain and the US has “existed at the intersection between the particular demands of a given impairment, society’s interpretation of that impairment and the larger political and economic context of disability” (Braddock and Parish, 2001, p. 11). Whilst acknowledging the stubborn fact of impairment, much of the literature acknowledges the significant social basis of disability.

Consideration of the literature indicates both a complex varied set of experiences by disabled people, and the existence of targeted hostility as one continuing thread within these experiences (Sobsey, 1994; McDonnell, 2007; Evans, 2004; Braddock and Parish, 2001; Quarmby, 2011). This continuing thread of violence was evidenced in ancient Greece and Rome, in banishment and torture in the Middle Ages, in

institutional abuse in the 19<sup>th</sup> Century, in mass killings in the mid-20<sup>th</sup> Century in Nazi Germany, in ongoing institutional abuse, and in what is now described as Disability Hate Crime (Quarmby, 2011; Mason-Bish, 2013; Evans, 2004; Faye Waxman, 1991; Sobsey, 1994).

The literature also highlights a 'marking out' of disability over time (Braddock and Parish, 2001; Borsay, 2005; McDonnell, 2007). Authors highlight a close link between disability and poverty, social exclusion, and marginalisation (Roulstone and Prideaux, 2012; Oliver and Barnes, 2012; Quinn and Redmond, 2007). This can be traced back to the Elizabethan Poor Law and before (Roulstone and Prideaux, 2012; Borsay, 2005).

Elsewhere, there are bodies of work on various aspects of disabled people's experiences in relation to public policy. These include works on disability and poverty (Palmer, 2011), disability and the labour market (Blackabay, Leslie and Murphy, 1999; Grewal, Joy, Lewis, Swales, and Woodfield, 2002), disability and education (Haines and Ruebain, 2011), and disability and healthcare (DRC, 2006). These studies tend to convey a profile of disadvantage and discrimination in discrete aspects of disabled people's lives.

There are some broader studies, but fewer which looked at disabled people's experience in terms of disability related oppression, disablism, or ableism (Iganski and Levin, 2015; Watermeyer, 2013; Kumari Campbell, 2008; Abberley, 1987a, 1987b, 1999; Koppelman and Lee, 2010; Miller, Parker, and Gillinson, 2004). Disabled people's experiences seemed to be considered in a more fragmentary way (Faye Waxman, 1991).

Disablism features in just a small body of literature (Miller et al., 2004; Demos, 2004; Kumari Campbell, 2008; Abberley, 1987a, 1987b, 1999; Koppelman and Lee, 2010; Godley and Runswick-Cole, 2011; Watermeyer, 2013); ableism even less so (Kumari Campbell, 2009; Godley, 2014a). Some definitions place the emphasis on ableism, some emphasise disablism, whilst others recognise the significance of 'the background cultures' of both disablism and ableism (Iganski and Levin, 2015, p. 26). There are varying views as to whether the emphasis should be placed on ableism, which values and elevates ability and views it as being "fully human", whereas disability is viewed as less fully human (Campbell, 2008, p. 153) or whether the emphasis should be placed on disablism. The latter highlights disabling attitudes and practices, which diminish and negate impairment, and lead to undervaluing and discrimination experienced by disabled people (Godley and Runswick Cole, 2011). For this study, I find it helpful to conceive of ableism as a prejudicial set of ideas, an ideology which has existed over time and which privileges abledness and inferiorises disabled people and provides a rationale for ongoing prejudicial attitudes, and mistreatment at various levels. In this regard, ableism is perceived as akin to racism and heterosexism. It provides an ideological backdrop to the oppression of disabled people which may manifest itself in various ways including through violent discrimination - hate crime.

In the early years of the disability movement in Britain, ground-breaking academic work, mainly by Abberley (1987a, 1987b), was undertaken on social oppression of disabled people. Influenced by earlier work on black people's oppression and racism, it gave way in time to the Social Model of disability which has its basis in an oppression-based conceptualisation of disability. The Social Model, however, is seen to focus more on the liberation of disabled people from oppressive barriers than on a consistent developed analysis of ableism and disablism and its manifestations at all levels which holds these barriers in place (Watermeyer, 2013).

Watermeyer (2013) has provided one of the more recent comprehensive accounts of disablism and its effects on disabled people's lives. He acknowledges social model adherents whilst being somewhat critical of them. Indeed, he is somewhat critical of all theoretical perspectives on the experiences of disabled people: "no single theoretical narrative is able to mirror disability adequately" (Watermeyer, 2013, p. 2).

On Disability Hate Crimes specifically, Watermeyer wonders if they may depict a "high water mark" of disablism, reflecting our "ongoing, unconscious aggressive impulses towards the disabled minority, existing on a continuum with both everyday prejudice and eugenic fantasies" (Watermeyer, 2013, p. 103). He links Disability Hate Crime to disablism, as do Godley and Runswick-Cole (2011) who identify the manifestations of the violence of disablism as real, psycho-emotional, cultural, and systemic. They conclude that the violence experienced by disabled people is more reflective of a dominant culture of disablism than of the "acts of a few irrational, unreasonable, mean or violent individuals" (Godley and Runswick-Cole, 2011, p. 602). This has echoes in Joanna Perry's application of Galtung's concepts of structural and cultural violence to the experience of disabled people (Perry, J., 2013). However, such writings are still relatively rare in the literature on disability and disablism in Britain.

In 2004, a think tank report on disablism endeavoured to set an agenda on what it termed as the "need to tackle the last prejudice" (Miller et al., 2004, p. 1). However, its influence on policy debate remains unclear. More recently, literature from within the disability community has begun to reference and highlight disablism (Scope, 2007). Mason-Bish points to a tendency not to connect Disability Hate Crime to the linked prejudices of disablism or ableism in the way that we link racist crime to racism or homophobic crime to homophobia. This raises a question as to whether this may lead to a failure to identify the issue as hate crime (Mason-Bish, 2013).

In the context of this study, it is striking that, until 2017, there were no CJS publications which mentioned disablism or ableism, are entitled or cover the subjects of Disablist Crime or indeed Ableist Crime. There are publications on Disability Hate Crime (ACPO, 2005, 2014; CPS, 2007, 2010; and references to Disability Crimes (CPS, 2006). However, there have been CJS publications on racist crime and homophobic and transphobic crime (ACPO, 2005; CPS, 2002, 2007). Thus, I was interested in exploring the recognition and

potential non-recognition of disablism and ableism amongst criminal justice agencies and I identified a line of inquiry as follows:

- Might a failure to recognise institutional disablism as a potential challenge for the public sector, akin to institutional racism, have acted as a barrier to recognising Disability Hate Crime, leading to conceptual, policy, and practice ambiguity and confusion on this issue?
- In race hate crime, there is a tendency to link the hate crime to the wider prejudice, racism, and we talk of racist crime and have racist crimes policies. In lesbian, gay, bisexual (LGB) hate crime, there is a tendency to link the hate crime to the wider prejudice, homophobia, and to speak of homophobic crime. In Disability Hate Crime, there does not appear to be this tendency to link to a wider prejudice of disablism. Why might this be, and is it significant?

## **2.8 How Public Policy (including Criminal Justice Policy) constructs Disability and Disabled People**

Consideration of the writings on equality issues in Britain and the US indicates contributory factors to equality policy development, and varied development pathways for different equality strands (Thane, 2010; Bagihole, 2009). Activist, policy, political, and research-academic developments, together with focusing events separately and in interaction, appear to have paved the way for domestic civil law protections in the areas of race and gender equality initially (Bagihole, 2009; Thane, 2010; Fredman, 2000), which extended, albeit more slowly, into the area of disability (Millar, 2010; Bagihole, 2009). The literature indicates that, in time, these civil law protections were followed by legal protections in the form of criminal law provisions to address hate crime, namely racist crime, religious crime and, latterly, homophobic and transphobic crime and Disability Hate Crime (Jenness and Broad, 2005; Grattet and Jenness, 2001; Mason-Bish, 2009).

Scholars indicate that whilst disability is provided for in equality based legal protections, there is usually a time lag in relation to other protected statuses (Mason-Bish, 2009, 2013); it is “last on the list” (Roulstone and Prideaux, 2012, p. 25). The literature indicates that, in the US, the Americans with Disabilities Act came later than the civil rights legislation and the sex discrimination legislation. Equally, in criminal law, disability was included in US hate crime monitoring some time after race, religion, and sexuality (Faye Waxman, 1991). In Britain, the Race Relations Act and the Sex Discrimination Act preceded the Disability Discrimination Act by almost two decades. Again, in criminal law, disability hostility was included as an aggravating factor in crime some time after race and religion and at the same time as sexual orientation. Why has a non-discrimination and rights focus for disabled people lagged behind other protected grounds? Why is this so given a history that points to disability discrimination, including violent discrimination?

## 2.9 Competing ideologies and problematisations of Disability in Public Policy - Care versus Rights

Whilst a rights-based problematisation of identity inequalities influenced by identity politics and a linked discourse gained a gradual foothold in social policy after World War II and extended through the group-based inequalities over time (Thane, 2010), it did not emerge in the area of disability until later (Millar, 2010; Bagihole, 2009; Driedger, 1989). Scholars point out it was not the only problem representation, discourse, and ideology in a competing battleground of ideas, problematisations, and responses impacting disabled people's lives (McDonnell, 2007; Bacchi, 2009).

Scholars indicate that the Medical Model of disability continued to prevail after World War II, with its emphasis on disability as a functional impairment in the individual best managed by medical and associated professionals responding to personal and often tragic situations. It was reinforced with the rise of ideologies and problem representations of care and normalisation in the area of disability (Barnes and Mercier, 2003; Oliver and Barnes, 2012; McDonnell, 2007; Bacchi, 2009). Authors also indicate that, since World War II, there remained a prioritisation of addressing poverty and securing an adequate income for disabled people. This focus on basic survival supports for disabled people dominated the British welfare state's early decades. It was a quantity of life focus, rather than a quality of life focus on recognition and respect (Roulstone and Prideaux, 2012; Borsay, 2005; Millar, 2010).

The literature indicates that the developing ideologies and problem representations of care and normalisation were posited as progressive policy perspectives which accepted that social attitudes posed a challenge in addressing the experience of disabled people. However, the answer was seen to lie in 'normalising' disabled people's experiences, through seeking to make their experiences comparable to 'normal' people. This led to programmes of significant deinstitutionalisation from special schools and residential homes, in a number of which violent abuse had been identified (Collins, 1993; Mason-Bish, 2013; Giannasi, 2015a; Roulstone, 2013). It led to the growth of community care and mainstreaming in wider schools (McDonnell, 2007; Oliver and Barnes, 2012; Roulstone and Prideaux, 2012). In this context, key policy representations and themes are care, community, independence, independent living, protection, vulnerability, and mainstreaming (McDonnell, 2007). These are not always compatible with tensions between a focus on care and independence, and between independence and vulnerability. This caring and normalisation ideology, and its close alliance with the Medical Model, continues to influence policy responses to disabled people. Even in the context of a policy of supporting people through enabling independent living (Beresford, Fleming, Glynn, Bewley, Croft, Branfield, and Postle, 2011), a rights-based representation of disability still competes with the powerful ideological influences of care, normalisation, and medicalisation in various policy contexts including that of violence against disabled people (Faye Waxman, 1991; EHRC, 2011a).

## 2.10 Constructing Disabled People as Vulnerable

Faye Waxman (1991) analysed the ideas underpinning social policy in relation to disabled people in the US. She argued that disabled people's position at the margins of the hate crime policy domain is the result of two competing paradigms or problem representations: a Medical Model and a Socio-Political model. She argued that, in US social policy, the ascendant Medical Model largely constructed disabled people as vulnerable and powerless. She argued that, viewed through a lens of care and vulnerability, abuse can be the resulting experience, with dependent-adult legislation and practices the ensuing social policy responses. She argued that, viewed through a lens of social rights, discrimination and hate crime can be the resulting experience, with hate crime laws, policies, and practices then part of the social policy response.

Faye Waxman was concerned at this construction of disabled people as vulnerable in public policy, including criminal justice policy. She pointed to a climate in the US where disabled people were viewed as inherently vulnerable and where the law protected disabled people but mainly when "construed as vulnerable" (Faye Waxman, 1991, p. 190). She argued that an over-emphasis on vulnerability in seeking to account for disability related violence was "too superficial" - "people who are respected and considered equal are not generally abused" (Ibid., p. 191).

Faye Waxman's perspective found an echo 20 years later in the findings of the first-ever official inquiry into disability related harassment (EHRC, 2011a) in Britain in 2010-2011. The EHRC report, 'Hidden in Plain Sight', noted the existence of two problem representations and policy approaches to the experience of violence in the lives of disabled people in Britain: firstly, the Safeguarding-Vulnerable adult approach, and, secondly, the Justice approach focused on Disability Hate Crime. The EHRC noted the prevalence of the Safeguarding approach and recommended that this be counterbalanced with a Social Model of disability in order to deliver justice for disabled people: "the focus on help and protection within the adult safeguarding system can be at the expense of ensuring justice and redress" (EHRC, 2011a, p. 135).

The focus on vulnerability in public policy in relation to disability and, in particular, criminal justice policy has been raised in a British context by a number of authors (Roulstone, Thomas, and Balderston, 2011; Roulstone and Sadique, 2013; Sherry, 2010; Quarmby, 2011; Scope, 2007). Roulstone, Thomas, and Balderstone. (2011) argue that the construction of disabled people as vulnerable has worked against disabled people getting the full protection of the law, particularly hate crime law, and that there may be something inherently paternalistic in designating other people as vulnerable. It has been highlighted by Roulstone and others (Quarmby, 2011) that this entrenched focus on vulnerability may have influenced the handling of a number of murders of disabled people as problems appropriate for a safeguarding review rather than for a criminal prosecution.

As mentioned earlier in this chapter, there has been a call for the reconceptualisation of hate crime victimisation in recent academic literature. This calls for a shift away from a focus on victimisation based on identity alone to encompass perceived vulnerability and difference (Chakraborti and Garland, 2012). This is significant, particularly in the area of Disability Hate Crime where vulnerability is a problematic construct. Chakraborti and Garland (2012) argue that the 'vulnerable' concept encapsulates how many hate crime perpetrators view their target. They argue that a conceptual focus on perceived vulnerability should not be read as indicating there is an inevitability of inherent passivity in hate crime victims. Whilst recognising the significance of this contribution, and its constructive aims, there is a question - can such a focus appropriately address the specificities of vulnerability in the context of disability which this study considered?

Scholarly and disability movement debates on disability and vulnerability raise questions for the consideration of policy developments in relation to Disability Hate Crime. The original CPS Disability Hate Crimes public policy statement (CPS, 2007), which guided prosecution practice for 10 years, placed a significant emphasis on vulnerability and referred to some crimes based on vulnerability rather than hostility. This focus was seen to have contributed to ambiguity and confusion in prosecution practice. The CPS sought to address ensuing community criticisms through issuing guidance distinguishing between vulnerability and hostility (CPS, 2010b). Though welcomed by disability activists, challenges continued, and the CPS later embarked on an overall review and update of its Disability Hate Crime policy (2015-16). A revised Disability Hate Crime policy published in 2017 sought to outline a more nuanced understanding of vulnerability.

However, I noted that I was able to identify far fewer publications from the police, the CPS, the Sentencing Guidelines Council, and government more widely on Disability Hate Crime than publications on and references to disabled people and vulnerability. In fact, the core policy and practice document within the CPS, 'The Code for Crown Prosecutors', historically conceived of disability in terms of vulnerability (CPS, 2013 and earlier editions) as indeed does the Sentencing Guidelines Council's overarching principles (SGC, 2004) and the Judicial Studies Board's Equal Treatment Bench Book (JSB, 2008). Some of these are reflective of legislative definitions such as those of vulnerable persons in the Youth Justice and Criminal Evidence Act 1999. Given these potential pointers to a prevalent vulnerability perspective on disability in the CJS, I identified and explored in this study the following lines of inquiry:

- Did the naming of aspects of the problem of hate crime begin to shift the criminal justice focus to issues of rights and justice?
- Did a focus on disabled people's perceived 'intrinsic' vulnerability contribute to masking issues of hostility? Might this contribute to the non-recognition of what is now recognised as Disability Hate Crime?

- Was targeted hostility and hatred towards disabled people identified and responded to by criminal justice agencies, until recently, in a range of ways including occasional non-recognition and, at times, as crimes aggravated by vulnerability?

## **2.11 Policy Making and Developments on Hate Crime and on Equality including Disability Hate Crime**

### 2.11.1 Policy Making on Hate Crime

Whilst there are growing bodies of academic literature on hate crime and on disability, and a growing body of literature on the construction of disability in public policy debates, there is much less on the specifics of policy making on equality issues and on hate crime, including Disability Hate Crime. However, there has been a surge in governmental publications and literature from the independent statutory and NGO sectors on Disability Hate Crime.

One of the exceptions to this overall absence of an academic literature on policy making on hate crime is Best (2009). He traces the rise of issues as social problems, including key stages in the social construction of hate crimes in the US in particular (Best, 2009, p. 215). This may have some resonance in the recent construction of Disability Hate Crime as a social problem in Britain. Best talks about how the social construction of hate crime brings “new” public policy attention to “old” violence, and in this he echoes in part the earlier work of Quinney (Quinney 1970). “Watchdog organisations” (Ibid., p.126) secure this attention through documenting cases, identifying and publicising the significant harm associated with such violence, making policy reform proposals, and calling on the law to intervene. These organisations engage in activism that both ‘discovers’ hate crime and promotes the interest of specific groups by “demanding changes in public policy” (Ibid., p. 217).

Best traces how hate crime first became identified as a social problem, secondly as a policy problem, and thirdly as a problem requiring a legal response. This arose, according to Best, because hate crime was increasingly debated by activists, bureaucrats, politicians, and academics with significant material produced on the causes, manifestations, and consequences of hate crime and the need for a legal response.

Best highlights how the recognition of the first hate crime categories - race, religion and ethnicity – meant that “the stage was effectively set for discussions” (Best, 2009, p. 222) on the recognition of other categories including sexual orientation and disability. He argues that the “law has played a major role in defining hate crimes as a social problem” (Ibid., p. 124) and that hate crime became a “meaningful term” only with the adoption of legislation, which led to the victimisation associated with it becoming properly apparent and officially and “clearly defined” (Ibid., p. 224). He identifies the law as that “highly visible form of public policy” (Ibid., p. 225) which significantly “demarcates specific forms of bias – motivated intimidation and assault as hate crimes, thereby creating new policy categories of violent crime and new categories of crime victims”

(Ibid., p. 224). In doing this, he argues, the law has articulated “what will and what will not ‘count’ as hate crime and by extension who does and also does not qualify as a victim of hate crime” (Ibid., p. 225).

Grattet and Jenness (2001) emphasise the contribution of social movements to policy making in a US context, and argue that hate crime is best viewed as a policy domain, a broad area of policy activity. They draw on ideas from Burstein (1991) in applying the concept of a policy domain to hate crime and use the linked concepts of domain establishment, expansion, and exploration to explain the differential development of hate crime policies in the US. Similar to Best, Grattet and Jenness analyse the establishment of the first hate crime categories in the US (race, religion and ethnicity) and their expansion to include sexuality and disability. They present the process of domain expansion as relatively unproblematic. Grattet and Jenness’ insights on hate crime policy making informed some of the lines of inquiry set out below.

Mason-Bish (2009) applied the Grattet and Jenness policy domain template in a British context. In doing so, she produced the first academic study to address hate crime policy development strand by strand including its expansion to include Disability Hate Crime. She highlighted the role of social movement actors and criminal justice policy makers in shaping hate crime policy at a macro level in Britain. She concluded that it is a policy domain marked by a relatively small number of contributors. She also highlighted how, in contrast to the US and Grattet and Jenness’ insights, hate crime policy domain expansion in Britain to include disability has taken greater effort and time to establish. She pointed out that, although the legal provision recognising disability aggravation in crime was introduced apparently relatively unproblematically in 2003, Disability Hate Crime policy as an active policy agenda did not emerge until four years later in 2007. This study explored these issues further.

In this context, I was interested in understanding how this legal provision emerged in 2003 and, in particular, how it apparently took another four years for Disability Hate Crime to emerge as an active policy and practice agenda. Thus, I was interested in exploring the following lines of inquiry:

- What contributed to the emergence of a disability aggravation provision in the CJA 2003, known now as Section 146?
- Did the introduction of a disability aggravation provision in the CJA 2003 (enacted in 2005) provide an impetus for criminal justice agencies to prioritise Disability Hate Crime?
- Why was it that, although a disability aggravation provision was enacted in 2005, it was not until 2006-07 that criminal justice policy and practice emerged on the issue of Disability Hate Crime?
- Was the disability aggravation provision, when legislated for in 2003, a provision before its time?
- By 2006-07, was the disability aggravation provision a provision whose time had come?

## **2.12 Policy making on equality in England and Wales and issues raised for hate crime**

### 2.12.1 Catalytic influence of the Lawrence Inquiry

There are a number of academic and other references to the catalytic influence of the Stephen Lawrence Inquiry on policy making on equality in Britain (Hall, 2013; Shah and Giannasi, 2015; Mason-Bish, 2009; Rollock, 2010). These contributions emphasise how the government response to the Lawrence Inquiry marked a step change in how public institutions were to consider and respond to issues of race equality in the first instance and other equality strands in due course. Some identify how the Lawrence Inquiry led to the emergence of the mainstreaming of the equality agenda in British public-sector policy making – with public sector bodies required to proactively consider and promote equality in their daily functions. As mentioned in the Introductory chapter, this found legal expression in, firstly, the public sector duty to promote race equality, then extended to gender equality and disability equality, and was latterly refined into a general equality duty across a range of protected strands (Giannasi, 2015a).

### 2.12.2 The equality duties approach to advancing equality

The Lawrence Inquiry and the subsequent equality duties have been identified with a significant agenda-setting impact on public authorities, including criminal justice agencies, in terms of advancing equality. The Race Equality Duty was unprecedented in equality legislation in Britain. It required criminal justice agencies as public authorities to establish the race equality priorities of communities and to take these into account in the mainstream policy making, planning, and delivery work of the authority. It was based on recognition of the challenge of institutional discrimination facing public authorities. It was an attempt using the law as a lever to institutionalise anti-discrimination into the daily work of public authorities (Ollereanshaw, Schneider, Jackson, and Iqbal, 2003; Nathwani, Schneider, Ollereanshaw, Angoy, McLellan and Walmsley, 2007; Fredman, 2000, 2008). Criminal justice agencies were required to ‘discover’ the ‘problems’ impacting on minority communities through consultation and to work to address these in mainstream policy making and daily service delivery.

When the Disability Equality Duty was introduced (2005), criminal justice agencies were required to become proactive in promoting disability equality. It required the ‘involvement’ of disabled people in furthering disability equality and that steps be taken to eliminate harassment of disabled people. However, some disability scholars question the Disability Equality Duty (Oliver and Barnes, 2012; Pearson, Watson, Stabler, Lerpiniere, Patersen, Ferree, 2011) in the incorporation of disability critique in the public sector, and the bureaucratisation of disability equality. Some scholars question the capacity of ‘positive’ equality duties to deliver substantive equality, given their focus on process more than content of equality decision making, their perceived superficial consultation with those affected, their thin approach to compliance (McLaughlin, 2007). Some are critical of the response in the CJS where a systemic challenge in addressing institutional discrimination was originally identified but changed over time to a focus on hate crime (McVeigh 2017).

Scholarly opinions vary on this issue. Other authors point to the significance of the public sector equality duties in leading to increased actions to advance equality (Nathwani, Schneider, Ollereanshaw, Angoy, McLellan, and Walmsley, 2007; Hall, 2013; Giannasi, 2015). Fredman (2000) identifies the equality duties approach as heralding a new generation of discrimination law.

A number of governmental publications situate their actions on disability equality, including Disability Hate Crime, within a context of their work to implement the Disability Equality Duty. This includes the first Government Hate Crime Action Plan (2010), the CPS Single Equality Scheme (CPS, 2006), and the recent police work on hate crime (Giannasi, 2015). There was nonetheless a gap in our understanding of the significance of the Disability Equality Duty in criminal justice agencies deciding to prioritise Disability Hate Crime. Indeed, Mason-Bish identified this as a gap in her study in 2009. In this context, I identified the following lines of inquiry which this study explored:

- The government's response to the Stephen Lawrence Inquiry, including the official acceptance of institutional discrimination, and the subsequent introduction of a public duty to promote race equality set a far-reaching agenda for institutional actions on equality.  
-Did these responses create the space within which other equality agendas, including disability equality, could be advocated and advanced? Did disability community organisations and individuals avail of this opportunity and space?
- Did the introduction of a wider legal duty on public bodies in England and Wales to promote disability equality in their daily work provide an impetus for criminal justice agencies to 'discover' and prioritise Disability Hate Crime?
- Did the emergence of a focus on Disability Hate Crime allow criminal justice agencies to state their commitment to disability issues, and to be seen to do so in their mainstream service?

### 2.12.3 Hate Crime, street level bureaucracy and the exercise of discretion

Much of the hate crime literature, as noted above focuses on defining and conceptualising the phenomenon. Less of the literature with notable exceptions focuses on hate crime policy making (Mason-Bish 2009; Hall 2013). Even less still focuses on hate crime policy implementation in routine practice (Bowling 1999; Hall 2013). Informed by the ground breaking work of Lipsky on street level bureaucracy and the exercise of discretion by street level workers, such as individual police officers, Hall critically applies this concept to the policing of hate crime and explores how this may help to better understand challenges in securing an appropriate response to hate crime across the police (Lipsky 2010). In doing so, Hall helps build an understanding in particular of policing responses to hate crime that go beyond the individual or the institutional accounts to a fuller account of both in practice. In a study focused primarily on the emergence and development of Disability Hate Crime policy and practice I had some interest in exploring insights on street level bureaucracy and the exercise of discretion in Disability Hate Crime cases. I was interested in

exploring to what extent police and prosecutors as evidenced through a sample of analysed cases implemented agency policy clearly, without ambiguity and consistently. I was interested in exploring any significant gap between agency policy on Disability Hate Crime and agency practice as evidenced in individual cases. I was interested in exploring whether there existed any evidence of routinised practices amongst police and prosecutors in the handling of Disability Hate Crime cases in practice. I raise these issues here in the context of the wider literature, and consider the analysis of these issues in terms of this study's analysis of cases in Chapter 7 on the vulnerability challenge in Disability Hate Crime and in Chapter 8 on Ableism, Disablism and Disability Hate Crime.

#### 2.12.4 Policy contributions by Independent Bodies, the Community Sector, and others to the Disability Hate Crime Agenda

A small body of literature which touches on or is directly focused on the theme of Disability Hate Crime has been produced by the independent statutory sector, the community sector, and by individual authors.

As mentioned earlier, between 2005 and 2007, the previous DRC produced documents on the themes of The Disability Debate and The Disability Agenda. The focus was on stimulating a debate regarding the main concerns of disabled people in Britain regarding the realisation of disability equality, and to set out an agenda of top priorities for disability equality to be handed over to the then newly emerging EHRC in 2007. There are three documents in this policy agenda setting series, namely 'Shaping the future of equality' (DRC, 2005), 'Creating an alternative future' (DRC, 2007a), and 'Changing Britain for good-putting disability at the heart of public policy' (DRC, 2007b). These documents were informed by earlier research (DRC Scotland and Capability Scotland, 2004).

'Shaping the future of equality' positively acknowledges the recognition of hate crime against disabled people through the provision of Section 146 of the CJA 2003 (DRC, 2005). 'Creating an alternative future' referred to the "significant numbers of disabled people who feel the sharp end of discrimination in the form of abuse or harassment, either in the community or in institutional settings" (DRC, 2007a, p. 11). Referring to Section 146 of the CJA 2003, it states that, "despite laws to tackle such abuse, there is little proactive work by criminal justice agencies to prevent it and ensure fair redress" (Ibid.). Clearly, this DRC publication sought to link the issue of abuse and harassment of disabled people with the CJS' performance on the agenda.

Later that same year, in its document, 'Changing Britain for good – putting disability at the heart of public policy' (DRC, 2007b), the DRC identified 10 priorities for future action by the pending EHRC. One of the priorities was "Creating safe communities – tackling hate crime, harassment, bullying and negative stereotyping" (Ibid., p. 18). This document flagged targeted harassment and disproportionate violence as

one of the top 10 priorities to deliver equality for disabled people in Britain. These appeared significant and informed the lines of inquiry explored in this study.

As mentioned in the Introductory chapter, in the mid-2000s, a number of publications emerged from disability community sector organisations on harassment, targeted abuse, and violence and hate crime themes. These included a Disability Now magazine publication, *The Hate Crime Dossier* (Disability Now, 2007), and 'Getting Away with Murder' (Scope, 2008). Both fit within the tradition of social movement research identified earlier (Best, 2009). The publications highlighted serious cases including targeted murders of disabled people where the issue of disability aggravation was not recognised or considered. Some were considered for serious case reviews in terms of adult safeguarding. These reports were designed to spotlight policy-practice gaps even after formal policies on hate crime were adopted with the aim of galvanising action to address perceived serious underperformance on Disability Hate Crime cases by the CJS. They seemed concerned with activating the policy agenda and embedding the issue (Kingdon, 2011) and their significance was noted, in particular 'Getting Away with Murder' (Sherry, 2010). These and other related reports also informed the lines of inquiry explored in this study.

An additional report, 'Another Assault' (Mind, 2007) outlined the results of a survey distributed to 5,100 people with mental health problems and another 1,100 to mental health workers. Surveys were completed by 304 people with mental health problems and 86 mental health support workers. Notwithstanding the low level of response, the surveys did portray "a prevalence of abuse" (Giannasi, 2015). And, in the absence of 'official data', the report echoed what the disability community sector as saying. Interestingly, it was referenced in official publications on hate crime, including the Government's Hate Crime Action Plan (UK. HM Government HO, 2010).

The EHRC research report conducted by the Office for Public Management (OPM) on 'Disabled people's experiences of targeted violence and hostility' (EHRC, 2009) and the IPCC report (2011) into the contact between Fiona Pilkington and Leicestershire Constabulary 2004-2007 appeared to be significant publications related to Disability Hate Crime. The EHRC-OPM report was amongst the first substantial research studies on the issue of disability harassment and hate crime in Britain. Evidenced rigorously and nuanced, it highlights issues such as the 'clash of paradigms' in public policy and criminal justice responses to disability between protection and rights/justice. It queried the term 'hate crime' given the terms disabled people used in their research. Nonetheless, it highlighted a significant issue of targeted harassment and hostility and delineated the issue.

The 2011 IPCC report arose due to Fiona Pilkington's actions to kill her daughter, Frankie Hardwick, and to commit suicide herself due to the stress and anxiety regarding her daughter's future and ongoing anti-social behaviour and lack of agency response. The IPCC report does identify, acknowledge, and profile the issue of Disability Hate Crime and how there was a failure to recognise the disability based hostility in this family's

experiences over a number of years. Giannasi (2015) points out that this case happened before disability had been included in the CJS's common monitoring definition of hate crime. The police were less alert to a disability dimension than they should be now. The case was referred to as potentially a Stephen Lawrence moment for Disability Hate Crime. This identification merited exploration: the report made no reference to institutional discrimination impacting disabled people, but it did highlight and emphasise vulnerability whilst also highlighting Disability Hate Crime. However, it merited analysis whether this report, combined with the independent reports reviewed above, could, cumulatively, have had a Lawrence-type effect.

Following the earlier OPM research and the deaths of Fiona Pilkington and Francesca Hardwick, the EHRC launched a formal inquiry into disability related harassment in 2009. The inquiry drew upon evidence from public sector agencies, community sector organisations, linked research, and profiling of serious cases of targeted violence involving disabled people. It was the first time that such a formal inquiry into disability related harassment including hate crime had been undertaken in any jurisdiction. This ensuing report, *Hidden in Plain Sight: Inquiry into Disability Related Harassment* (EHRC, 2011b), was hailed as a landmark report and again as a Stephen Lawrence moment for Disability Hate Crime.

Having considered these independent sector reports, I was interested in better understanding and exploring the following lines of inquiry:

- Did the publication of a number of research reports, debates, inquiry reports and agenda-setting documents on disabled people's experiences contribute to the emergence and development of the Disability Hate Crime agenda?
- Did disability community sector organisations and individuals avail of the opportunities created, firstly, by the legal duty on public bodies to promote equality and, secondly, by the disability aggravation legal provisions to campaign for policies and practices which focused on Disability Hate Crime?
- Did the criminal justice agencies prioritise Disability Hate Crime policy as a policy and practice concern in response to the Disability Equality Duty, the CJA 2003, and the activities of disabled people's organisations and individuals supported by available evidence?
- Did these activities merge, leading to the criminal justice agencies opening a policy window and enabling an agenda to be set on Disability Hate Crime?
- Did the disability community sector and individuals then avail of the opening of this policy window, identify cases that fitted the 'new' crime category of Disability Hate Crime, identify CJS shortcomings, and secure an increased policy focus on this crime area?

## **2.13 Conclusion**

The remainder of this study explored the overall research questions and the lines of inquiry identified in this chapter through an in-depth case study approach involving key informant interviews, documentary analysis,

and analysis of individual cases. The rationale for these methods flowed from the research questions and lines of inquiry as identified in this chapter and as set out in the research methodology which follows. Mason–Bish (2009), as indicated in the Introduction, identified a clear gap in understanding the specifics for each hate crime strand in terms of hate crime policy development. This study aimed to close that gap in respect of Disability Hate Crime. Indeed, more recently, Roulstone and Mason-Bish indicate that, notwithstanding the recent flurry of activity on Disability Hate Crime, “it remains under-researched and an understanding is only in its infancy” (Roulstone and Mason-Bish, 2013, p. 4). Through using an overall case study approach, I considered it possible to gain a depth of understanding of how and why Disability Hate Crime policy emerged as and when it did in England and Wales.

The above review confirmed the appropriateness of the overall research questions which guided this research study. These questions focused respectively on the processes through which and **how** Disability Hate Crime policy and practice emerged and developed and equally on seeking to explain **why** it emerged as and when it did. This review further confirmed the appropriateness of the identified lines of inquiry which were kept under review and, together with the research questions, informed the research methodology (see Chapter 3).

## **Chapter 3: Research Design, Methodology and towards Research Methods**

### **3.1 Introduction**

The need for research on the emergence and development of Disability Hate Crime policy and practice in England and Wales is evident from the gaps in understanding identified in the previous chapter. The research for this thesis was based on a qualitative methodology located within an interpretivist epistemology and informed by a grounded theory approach (Charmaz, 2014). It was based on a case study design with an extended unit of analysis covering CJS, political and community sector activity. The design was underpinned by mixed research methods comprising key informant interviews, document analysis, and analysis of individual hate crime cases.

### **3.2 Research Design**

My choice of research design was guided by my research aim to find out how and why Disability Hate Crime policy and practice emerged and developed as and when it did. The aim of building a comprehensive understanding of the topic led me to a case study design given my interest in: studying specifically how Disability Hate Crime policy emerged and developed; studying Disability Hate Crime as interesting and potentially different within the hate crime policy domain; and looking at the fullest range of contributory factors and challenges to the development of Disability Hate Crime policy and practice (Thomas, 2011; Swinbourn, 2010).

Case study design was particularly suited to this research topic because it fitted well with this research study's focus on process tracing, the exploration of the policy process, in this case between criminal justice agencies, other parts of government, and the activist-community sector leading to the emergence and development of Disability Hate Crime policy:

- Boundaries of a social system or a few social systems, in this case the CJS, wider government, and the activist-community sector
- Monitoring the phenomenon over a defined period which this study did in relation to Disability Hate Crime
- Initial broad research questions of 'how' and 'why' Disability Hate Crime emerged when and how it did
- Using a range of data sources, including interviews, interrogation of policy documents, and analysis of hate crime cases (Swinbourn, 2010)

Fundamentally, a case study design was chosen for this research thesis because it simultaneously provided a means for depth of study of the topic and the possibility of a frame in which to contextualise and understand Disability Hate Crime policy development. Thomas (2011) captures these core features of a case study design when he identifies it as comprising:

A subject e.g. Disability Hate Crime policy emergence and development.

An analytical frame i.e. the case is potentially a case of something that the case study allows you to explore. Thomas outlines how we need to develop a means of exploring a case, interpreting it and placing it in context. In this research study, having applied a case study design, I concluded as my analysis progressed that Disability Hate Crime policy development is a case of an unsettled and unsettling policy agenda.

### 3.2.1 Types of Case Study – Holistic Case Study with an extended unit of analysis

The next questions to be addressed were which type of case study this research would use and why? Yin (2003) identified a range of case study designs. Informed by consideration of the case study literature, this research used an approach based on exploration, description, interpretation, and the building of understanding in the main retrospectively. It comprised a holistic case study involving a single extended unit of analysis comprising the CJS, political and activist–community sector activity (Thomas, 2011; Yin, 2003).

In order to address how and why Disability Hate Crime emerged, this study focused on studying the actions and interactions of actors within the CJS and linked community sector as a whole, seeking to explore, describe, and analyse their contributions to the emergence and development of Disability Hate Crime policy and practice. The study sought to capture multiple perspectives and the complexity and completeness of the development of this policy area (Thomas, 2011).

For this study, the wider context was changes in the area of equality and discrimination law and policy initiated following the election of the New Labour government in 1997 which led to changes in both civil and criminal law provisions. This provides the broad context within which this case study was researched.

### 3.2.2 Boundaries of this Case Study

Time is a significant boundary in many case studies, with research often focused on why a case occurred when it did (Thomas, 2011). This case study spans 1997–2017: 1997 marks the election of the first New Labour government in Britain, and 1998 marked the introduction of criminal law provisions on hate crime in England and Wales. It considered developments in the 20-year period up to 2017 when a significant update of Disability Hate Crime policy occurred (CPS, 2017).

This case study focuses on England and Wales as they form a unified CJS, with shared Ministerial leadership, a single prosecution service, linked police services, and a unified courts system. There is a single criminal law system, which is different from Scotland and Northern Ireland. The same criminal law provision on Disability Hate Crime exists in England and Wales. The research for this thesis considered the Wales dimension in each aspect of the research including key informant interviews, documentary research,

and case analyses. The research found no substantive difference in policy and practice between England and Wales. This is not surprising given that it forms an integral part of a unified legal policy domain.

### **3.3 Grounded Theory Approach**

Classic Grounded Theory (GT) (Glaser and Strauss, 1967) is a systematic methodology involving the discovery of theory through the analysis of data (Martin and Turner, 1986). Classic GT required the analysis to be directed towards theory development (Holloway and Todres, 2003) in a 'bottom up' approach. It was later broadened by other contributors to include three paradigms, Classic, Straussian (Strauss and Corbin, 1998) and Constructivist GT (Thornberg, 2012). The essential differences in these three schools is rooted in philosophical underpinnings concerning reality and how knowledge is constructed. Classic GT leans towards the positivist paradigm concerning the nature of reality; meaning reality is single, tangible and breakable into independent variables and processes, any of which can be studied independently of the others; inquiry can converge onto that reality until, finally, it can be predicted and controlled, leading to theory discovery as opposed to theory development.

Strauss moved away from Glaser's approach over differences about the degree to which researchers should embed literature reviews into their research design and data collection instruments, positing that it is impossible to free oneself of preconceptions in the collection and analysis of data as outlined by Glaser (Thomas and James, 2006).

More recently, Charmaz's Constructivist GT moved considerably further than Strauss by arguing that there are multiple realities. These realities are social constructions forming an inter-connected whole. Knowledge is co-constructed, and these realities can only be studied holistically. Given the multi-dimensionality of these realities, prediction and control are unlikely outcomes of inquiry, although some level of understanding can be achieved. Charmaz's approach is rooted in pragmatism and relativist epistemology, and assumes theories are not discovered but constructed by the researcher as a result of interactions with participants in the field. I considered Charmaz's school of GT as optimal for this study.

Distinguishing features of this research study are its exploratory nature and its inductive approach. The study explored, from multiple perspectives, how and why Disability Hate Crime emerged as and when it did. It began without prior hypotheses although it was informed by an initial literature review, pre-fieldwork engagement with key contacts, and initial lines of inquiry (Charmaz, 2014). At each stage of the research process – research planning, the literature review - lines of inquiry guided each of the subsequent steps in the study. I engaged in an ongoing process of “refinement, involvement and interpretation” (Charmaz, 2006, preface X1).

This research study has not been generated in isolation from existing theoretical debates on hate crime, policy making, and disability. I undertook an early literature review which guided the research planning phase. I conducted this research study appraised of existing theoretical contributions in relevant areas but not in a way that seeks to simply test these theories. The initial literature review, together with pre-fieldwork planning, did inform my initial lines of inquiry (Charmaz, 2014). In refined format, these informed the research interviews undertaken. As the research study progressed, the literature review was dissipated into the wider body of this thesis. This was kept under continuous review and finalised at the conclusion of the study, in keeping with the more recent GT developments evidenced in Charmaz (2014).

Like Charmaz, I believe that data and theories are not discovered in pure form separate from the researcher. I agree that researchers tend “to construct our grounded theories through our past and present involvements and interactions with people, perspectives and research practices” (Charmaz, 2006, p.10). I was aware of my earlier work in the CJS hate crime policy domain and in the wider equality and diversity domain in Britain. I am aware that these involvements shape the construction of this research. Adopting a reflexive approach required me to be continuously alert to and to acknowledge my own perspectives and views. For example, in my initial pre-fieldwork planning and identification of tentative lines of inquiry, I had not identified the potential significance of the contribution of some independent work from outside of the CJS, such as reports from the DRC on the future shape of the disability agenda in Britain. I was not alert to the DRC work which identified targeted hostility as a future issue. I became aware of the potential significance of the DRC’s reports further into my engagement with the topic. I reflected on this issue and refined the lines of inquiry. I sought to maintain this reflexive approach as the research progressed.

In drawing upon core elements of the GT approach, I have used a process of simultaneous data collection and analysis, which began with the analysis of my interviews. Prompt interview analysis aided the framing of questions for subsequent interviews and interviewees sought. I compared findings between key informant responses by interviewee roles in activism, policy, or politics, drawing on the constant comparative method. Crucially, I built the study and its findings up from a series of analytical memos, starting with a series of memos produced at the conclusion of the fieldwork interviews on my sense of emerging themes. I continued to produce analytical memos on emerging ideas as the analysis was undertaken. I found memo writing to be valuable in exploring emerging ideas and, whilst always checked by reverting to the data, it has been invaluable in building the study from the bottom up (Charmaz, 2014) (see Appendix E for a sample analytical memo used in this study). Aligned with the GT approach, I undertook one-to-one training in the NVivo software package and uploaded my 55 fieldwork interviews to NVivo.

I proceeded to undertake open coding of the interviews, which resulted in the identification of approximately 170 open codes. My initial open codes were reduced to approximately 30 categories (including categories and sub-categories) and then to six themes derived from the data itself through these three cycles of coding.

These six themes formed the basis of this study's thematic chapters outside of the Introduction, Methodology, and Concluding chapters.

### **3.4 Tentative Organising and Analytical Framework**

Given the focus of this research study on the emergence and development of policy on Disability Hate Crime, this study used an adapted version of US public policy academic John Kingdon's Policy Streams Approach (2001, 2011) as an organising framework and analytical tool as the study developed.

As cited earlier, Thomas (2011) refers to a case study comprising the subject, in this instance, Disability Hate Crime, and an object, a framework for considering the case. In this study, an adapted version of Kingdon's framework was used in a tentative, critical, and reflective way to inform the study's development and to explore whether it provided a valuable analytical framework in this case. Consistent with Charmaz's philosophy of knowledge co-creation, the elements of Kingdon's framework became ever more evident through the three cycles of encoding which moved me as the researcher from the descriptive (open coding) to the interpretive (developing core categories) to the abstract (focused/theoretical coding). Throughout this process, it became increasingly apparent that the primary data gathered in this research persistently revealed categories of codes consistent with an adapted version of Kingdon's model as an analytical lens. Glaser and Strauss (1967) and Lincoln and Guba (1985) offer the 'constant comparative method' as a means of identifying and analysing categories and their relatedness, a process that facilitates the researcher to constantly compare recurring phenomena across and between participant interviews. As Taylor and Bogdan (1984) reflect when drawing on the constant comparative method, you are both coding and analysing data simultaneously in order to develop concepts and through comparing occurrences in the data, you hone these concepts and identify their relationships to one another. As interviews were constantly compared against each other, categories arising from the data repeatedly led towards my own adapted version of Kingdon's model to organise emergent cross-case categories.

Kingdon's ground-breaking model of public policy identifies three streams in the public policy environment. These are:

A Problems Stream – a stream in which a range of issues exist. Some of these issues are defined as problems to be addressed. For issues to be addressed by public policy, they need to go beyond being conditions and become problems meriting agenda status. They need to be regarded as legitimate problems warranting the attention of public policy and lending themselves to a policy response. Factors which can influence whether problems succeed in securing policy attention include the results of monitoring of indicators, feedback to government, the place of values in problem definition, and 'focusing events' such as a crisis which can have a significant impact, particularly if they fit with pre-existing views of a problem (Kingdon, 2011).

A Policy Stream – a stream in which policy development is undertaken by key actors including, on occasion, ‘policy entrepreneurs’. Kingdon suggests that, in public policy, the policy solution can already exist in terms of a policy approach and a problem is more likely to secure agenda status if it can fit with this policy solution. It is in this context he talks of solutions seeking problems as well as problems seeking solutions, with policy entrepreneurs, on occasion, playing key roles. Policy entrepreneurs can be civil servants, activists/pressure groups, or politicians. They are keen to progress their issues on the policy agenda. These actors may seek opportunities which combine problem and policy concerns and political interest in addressing the issue. Factors that may influence whether an issue becomes a policy issue include judgments about ‘technical feasibility’ or ‘fit’ with a wider policy approach and values, efficiency, and equity.

A Politics Stream – a stream in which politicians champion a particular policy issue, programme, or approach which can be informed in part by earlier developments in the policy and problems streams, including ‘feedback’ and ‘spill overs’ from earlier policies. Influential factors may include election results, public mood, opinion polls, changes in political administration, or ideological shifts.

Kingdon uses the three streams’ metaphor to convey how problems, policies, and politics can exist, flow fairly independently and in parallel for much of the time. At critical junctures, the three streams can flow closer together, converge and, in converging, create a ‘window of opportunity’ through which a new policy can emerge through a coupling of problems and politics and a new policy agenda is set and institutionalisation progresses.

Kingdon’s Policy Streams model of policy making has been applied over the past 30 years to numerous case studies and to both small-scale studies and large-scale policy shifts. It has been applied to an analysis of the development of American disability policy in the late 20th Century (Switzer Vaughn, 2003) and in criminal justice studies in both British and US contexts (Jones and Newburn, 2002, 2007).

Engagement with this research study and reflection on Kingdon’s policy streams model has confirmed the value of aspects of his model as both an organising and analytical framework for understanding the emergence and development of Disability Hate Crime policy. However, this critical engagement led me to reflect on some of its less developed dimensions - this led me to adapt Kingdon’s model. Much of Kingdon’s work on the concept of the problem stream is very insightful, particularly his emphasis on the influence of factors such as key indicators, focusing events, feedback to government, and value congruence in issues moving from being a condition amongst many to a problem meriting policy attention. However, based on my engagement with this topic, there is a sense where he may under-expose a key element in the problem stream: the process of problematisation, i.e. the process through which an issue becomes problematised as something requiring policy attention and how that problematised issue becomes represented as this particular problem and not another representation of the same issue. Kingdon does acknowledge that policy problems go through a process of problem definition, but sometimes in ways that do not render them

sufficiently critical. He can neglect the critical construction of problems in his model of policy making. For these reasons, I have devised my adapted version of Kingdon's model of policy making informed by the ground-breaking analysis of policy making by critical social constructionist Carol Bacchi (1999, 2009).

Bacchi has developed a framework for analysis of public policy, theoretically underpinned by critical social constructionism, known as "What's the problem represented to be?" (WPR). It involves asking the following questions of any public policy:

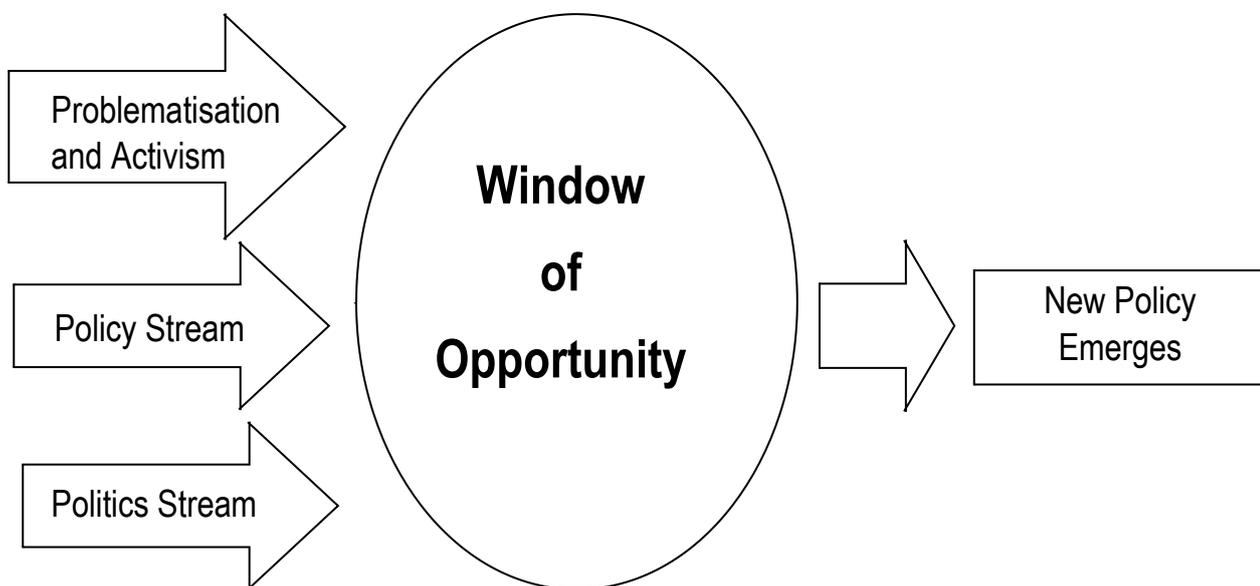
- What's the problem represented to be in a specific problem?
- What assumptions underlie this representation of the problem?
- How has this representation of the 'problem' come about?
- What is left unproblematic in this problem representation? Where are the problem and the policy silences? Can the problem be thought of and represented differently?
- What effects are produced by this representation of the problem?
- How/where has this representation of the problem been produced, disseminated, and defended? How might it be questioned, disrupted, and replaced? (Bacchi, 2009)

Central concepts in Bacchi's WPR approach are those of problematisation, problem representation, policy and problem silences, and competing policy and problem representations, disruptions, and replacements. For Bacchi, problematisation and problem representation are the overarching concepts which ground the analysis and to which her other concepts relate. She defines problematisation as referring to how something is put forward as a problem, an issue to be addressed. Problematisations of issues contain "implicit representations of the character and causes of problems" (Bacchi, 2009, p. 277). Inextricably linked to this is the concept of problem representations - these are the implied "problems" that sit within how an issue is problematised linked to public policy (Bacchi, 2009). Applying Bacchi's analytical framework to this study, targeted hostility based on disability has existed throughout history. It has been variously named, if at all, as abuse, a motiveless crime, neglect, a failure of care, and crimes against vulnerable people. However, more recently, it has been problematised in a new way and has acquired a problem representation as hate crime, a particular form of hate crime based on disability prejudice, now labelled Disability Hate Crime.

Bacchi also addresses the issues of policy-problem silences, what goes unrecognised in problem representations, and the issue of competing problem representations, how one issue may be represented in different ways and as competing policy issues. In the context of engaging with the emerging data from this research study on Disability Hate Crime, I have found Bacchi's emphasis on a critical approach to

problematization to be of real value and, in my view, it augments Kingdon's less critical perspective on the problem stream.

Taking Kingdon's policy streams model (Kingdon, 2011) together with Bacchi's WPR approach (Bacchi, 2009), I devised an adapted organisational and analytical framework that better fits this research study. I have replaced Kingdon's problem stream with an activism and problematization stream which I think has particular value in analysing social policy formation. Diagrammatically, this adapted organisational and analytical framework would be represented as follows:



This adapted Policy Streams Approach was used as appropriate, was kept under review, and provided a good fit for analysing the emerging data, an analytical lens rather than using a complete conceptual framework.

This adapted framework of problematization and agenda setting and my concept of agenda triggering was influenced by Charmaz (2014) whose constructivist GT approach informed my bringing some a priori knowledge to the analysis and enabled the development and use of such an adapted analytical framework.

### **3.5 From Research Design and Methodology and towards Research Methods**

The research questions informed the inductive approach based on a GT analysis which underpinned all stages of the research process. The research questions informed not only the choice of a case study design,

but also the choice of research methods. This study involved a triangulation of research methods: key informant interviews; documentary analysis and links to literature review; and analysis of individual hate crime cases.

A case study design almost always involves a triangulation of methods (Thomas, 2011). This is driven by the importance of multiple perspectives in the case study and the completeness of the picture being sought. The following is a diagrammatic summary of this study's key research methods:

### **Summary of Research Methods**

Key Informant Interviews	55 key informant interviews Interviews focus on emergence and development of Disability Hate Crime policies and practice Interviews in activism, politics, and policy making streams Depth interviews, digitally recorded, NVivo analysis, 171 open codes, six focused codes
Documentary Analysis and Literature Review	Exploration of overall hate crime concepts, constructions, and domain Exploration of Disability Hate Crime and relationship to wider hate crime concepts, constructions, domains Analysis of Disability Hate Crime and linked concepts in policy
Analysis of Cases of Disability Hate Crime	Outline of 15 cases of Disability Hate Crime Analysis of cases linked to emerging themes from key informant interviews and documentary analysis

#### 3.5.1 Research Method 1 - Key Informant Interviews – semi-structured

This is the main research method used in this study, consistent with much inductive research based on a GT approach (Charmaz, 2014). It was proposed to undertake up to 40 key informant interviews using a semi-structured interview format. As the interviews were underway, each key informant was asked if they considered there were others that should be interviewed. These suggestions were appraised and an additional 15 interviewees were added. In total, 55 interviews were undertaken. The key informants' details, identified by role, are outlined in Appendix C (ii).

Given my previous work involvement, I had contact with key informants in each stream. However, that work involvement ceased in mid-2009. In order to assist in fieldwork planning and ensure ongoing access to key informants, I made a research planning visit to London in mid-2013. I had meetings with key contacts in the

police, an independent research organisation, the CPS, an involved academic, and a former cabinet level Ministerial political adviser. In advance of these meetings, I forwarded my Research Proposal. I received constructive feedback from all contacts. The meetings confirmed the appropriateness of the overall approach. Crucially, I obtained agreement from the CPS and the police to engagement with this research. I also renewed contact and met with a key gateway contact in the disability community. I refined my tentative data collection question topics following on this pre-fieldwork planning.

Given the number of key informants interviewed in this study and their location across England and Wales, and the researcher’s base outside of Britain, the fieldwork interviews were conducted over a five-month period in the second half of 2014 and early 2015. It was not possible to conduct second interviews with key informants and this was factored in from the outset. As a result, issues raised in early interviews were probed further in subsequent interviews with others. In this way, the research study mitigated for the challenge of being unable to undertake second interviews in line with the GT approach (Charmaz, 2014). For instance, in early interviews, the failure to link Disability Hate Crime to a wider ideology of disablism was raised. This had not featured prominently in the initial data collection topics, but took on greater prominence as the study progressed. Exploration of this topic in subsequent interviews has influenced analysis and identification of the wider under-articulation of disability discrimination, prejudice, and disablism as a context in which to better understand this topic.

All interviews were digitally recorded following discussion and signing of consent forms by all participants. Interviews lasted between 35 minutes and two hours approximately, with the majority lasting approximately 70 minutes. The transcripts were listened to upon returning home or as soon as practical thereafter. The transcripts were then sent to a professional transcription service and returned within three working days. Initial analysis was undertaken following transcription and alongside the conduct of the interviews. This enabled issues to be taken into account in subsequent interviews. The broad interview topics are outlined below:

Headlines of Topics Discussed in Key Informant Interviews
What is hate crime and how it is conceived?
Disability Hate Crime and how it relates to hate crime
Contributory factors to the emergence and development of the Disability Hate Crime agenda
Challenges to the emergence and development of the Disability Hate Crime agenda
Vulnerability and hostility in relation to the Disability Hate Crime agenda
Activism, politics, and policy activity in the emergence and development of the Disability Hate Crime agenda
Role of wider legislative context on Disability Hate Crime policy agenda
Discussion of disability discrimination and relationship to Disability Hate Crime

### 3.5.2 Research Method 2 - Documentary Analysis and Links to Literature Review

As mentioned earlier, I conducted an initial literature review in the early stages of this research study. This involved analysis of the academic, official, and grey literature relevant to framing the research questions and informing the lines of inquiry. That initial literature review was itself kept under review as the study progressed and linked to my second research method, namely documentary analysis. In this thesis, the initial literature review as previously mentioned has been dissipated into the body of the thesis and, in part, integrated with the findings of the documentary analysis. The literature review findings and those arising from documentary research, in particular, inform the chapters on the themes of From Hate Crime to Disability Hate Crime, the Challenge of Vulnerability in Disability Hate Crime, and the chapter on wider Disability Discrimination, Ableism and Disablism. Such integration of the literature review and documentary analysis together with wider dissipation of the literature review is consistent with more recent writings within GT analysis (Charmaz, 2014).

Whilst much classical social science research was based on documentary analysis and remains widely used, there is less written about documentary research than other research methods (Scott, 1990). Documentary analysis involves the critical analysis of written texts, situating them in context, and analysing them in terms of themes and meaning (Flick, 2009).

Documentary research can add value both in terms of researching a new area and adding further insights to existing topics. Documentary research crucially contributes triangulation to projects based on other data collection methods (Macdonald, 2008, p. 301, in Gilbert, 2008). I chose to use it in this study because of its appropriateness to this topic, given the existence of key documents on Disability Hate Crime, and as a method of triangulation.

A range of documents have been produced on Disability Hate Crime from 1997 to 2017. In this study, I analysed key documents in terms of their genesis in the Activist-Problem Stream, the Policy Stream, and the Politics Stream. This was informed by the GT approach to analysis of documents which “can address form as well as content, audience as well as authors, and production of the text as well as presentation of it” (Charmaz, 2014, p. 45).

Each selected document was considered under three overall headings: Context, Thematic Analysis, and Critique. Context is very significant in obtaining a critical understanding of documents. Documents are not free-standing neutral texts, free from wider organisational and political assumptions. They can be better understood when the context in which they emerge is considered and understood (Scott, 1990, 2006; May, 2001).

Selected documents were appraised in terms of the following questions:

- What are the key themes in the document? Are there implicit themes?
- Does the document relate to a genre of documents and, if so, what genre and how?
- How does the document conceive of and problematise disability and disabled people?
- Does the document address and problematise the issue of vulnerability? If so, how?
- How does the document conceive of and problematise hate crime? And Disability Hate Crime?
- What are the silences in the document, if any?
- Are there other ways of conceiving of the issues addressed in the document and, if so, what are they?

The titles of the documents analysed are set out in Appendix C (1).

Having undertaken analysis of key documents, the data was summarised and related to the literature review, to the data obtained from the key informant interviews, together with the analysis of individual cases. This supported findings from the other dimensions of the research and provided further information (Scott, 2006). Overall, the documentary analysis aided understanding of the social reality of the production of Disability Hate Crime policy in institutional contexts (Flick, 2009, p. 262).

### 3.5.3 Research Method 3 - Analysis of Individual Cases of Disability Hate Crime

Analysis of individual cases and case histories is a well-established research method in the Social Sciences (Yin, 2009). Individual case histories in this study provide another rich form of research data. If a strength of the key informant interviews lies in building understanding through the perspective of living experts, and that of documentary analysis lies in building understanding of codified representations of the issue in policy etc., then a key strength of individual cases lies in advancing understanding through an analysis of the empirical material contained in a diversity of individual cases perceived as Disability Hate Crimes. In a study focused on policy and practice, it enabled a critical consideration of issues in practice.

A number of studies on disability harassment and Disability Hate Crime, mainly from grey literature, used individual cases (Disability Now, 2007; Quarmby, 2011; EHRC, 2011b). These accounts use individual case histories that were either murders or other serious crimes. They fit, in part, within the tradition of agenda setting on social problems identified by authors such as Best (1999) and Gratett and Jenness (2001). The most comprehensive analysis of case histories to date is that undertaken by the EHRC, in its formal inquiry report, *Hidden in Plain Sight* (EHRC, 2011b). In this, the EHRC analyses issues raised from 10 very serious

cases, mainly targeted murders of disabled people, all of which highlighted policy failures. That EHRC report is analysed later in Chapter 6.

In this study, I went beyond a consideration of very serious cases. Such incidents are regarded as ‘the tip of the iceberg’ (EHRC, 2011b). Available evidence indicates that the majority of recorded cases are ‘lower to mid-level’ in terms of seriousness although clearly not in terms of impact (CPS, 2008, 2009a, 2010c; EHRC, 2011b). I negotiated access to the CPS computerised case management system of prosecution cases. I had access to the case files for the cases chosen and no restrictions due to security issues arose.

As part of the research for this thesis, I analysed 15 cases (12 from CPS system) in which disabled people had been victims of targeted incidents or crimes, all of which could be regarded as hate related. The table which follows provides a headline description for each of these cases, together with a brief indication of the case outcomes in terms of whether they were successfully prosecuted as Disability Hate Crimes. It also contains Illustrative Case Profiles. All cases were anonymised in terms of personal details. All 15 cases involved targeted victimisation of disabled people.

Some further supporting information is set out in Appendix F in terms of illustrative detail from 4 of the cases analysed.

#### **Headline details of Disability Hate Crimes cases analysed**

CASE NUMBER	CASE DESCRIPTION	OUTCOME
1.	Ongoing neighbour harassment of disabled man on social housing estate in Bolton involving abusive language.	Disability Hate Crime recognised by court and uplift given and recorded.
2.	Ongoing harassment of two learning-disabled men in supported housing scheme in Salisbury by local youth.	Disability Hate Crime recognised by court and uplift given and recorded.
3.	Abusive behaviour towards learning-disabled man in Wales by neighbour involving abusive language.	Disability Hate Crime recognised by court and uplift given and recorded.
4.	Common assault on disabled wheelchair user in Oldtown. Involved abusive language.	Disability Hate Crime recognised by court and uplift given and recorded.
5.	Attack on a learning-disabled man in a skate part in Middletown involving abusive language.	Disability Hate Crime recognised by CPS. Disability Hate Crime rejected by Judge and verdict was ‘an attack on a vulnerable victim’. No uplift.

6	Harassment and abuse of disabled man in his flat and on street by able-bodied associate. Involved use of abusive language.	Disability Hate Crime recognised by court and uplift given and recorded
7.	Common assault of disabled man in a homeless hostel in East town. Involved abusive language.	Disability Hate Crime recognised and uplift given and recorded.
8.	Enslavement of young disabled woman in Manchester. Involved targeted enslavement and exploitation over many years of young disabled woman.	Disability Hate Crime aspects not recognised. Identified as vulnerable victim case only. No hate crime dimension in sentence.
9.	Sunset View Care Home – targeted ill-treatment of learning-disabled residents revealed by undercover reporter.	Disability Hate Crime aspects recognised by CPS and police, rejected by Judge in favour of Mental Health Act offences.
10.	Husband abuses wife with vascular dementia.	Disability Hate Crime aspects initially identified. Case had multiple identifications as domestic violence, vulnerable victim. Disability hostility not raised in court.
11.	Church warden and targeted abuse of two disabled church-goers. Targeted abuse of disabled victims, no stated evidence of abusive language.	Disability Hate Crime identified initially but not raised at sentencing stage. Focus on victim vulnerability.
12.	Neighbours' dispute which evolved into targeted disability hostility.	A non-crime case. Did not enter CJS. Resolved through advocacy and liaison.
13.	A case categorised as noise nuisance.	Non-crime case of noise nuisance, later recognised as disability hostility.
14.	Learning-disabled man with mental health difficulties murdered in Northtown.	A case categorised as involving extremely vulnerable victim. No Disability Hate Crime aspect recognised.
15.	Sustained harassment of family with disabled children culminates in murder-suicide, Pilkington-Hardwick case.	A series of incidents that were reported to police but non-crime. Classed as series of anti-social behaviour incidents.

In analysing these 15 cases, the aim was to explore the range of cases that feature in Disability Hate Crimes in officially recorded and non-crime cases. I wanted to consider cases that were different in relation to the base offence and spread across the range of offences. I wanted to explore cases that were different enough

to provide a rich source of case material. I was keen to take account of this evidence and to complement it, if possible, with non-crime cases.

The cases secured via the CPS were accessed in the following way: The CPS provided a table (replicated below) which showed all Disability Hate Crime-flagged defendant prosecutions for 2013-14 set out by principal offence category, court centre, and mode of trial. It should be noted that, as the CPS indicated, prosecution data such as that cited here is drawn from a case management system – this is an administrative data set which is not primarily designed for statistical purposes but as an operational recording system. Nonetheless, this information is the best available and provides an indication of the level of seriousness of the offence.

#### **Disability Hate Crime Prosecutions 2013-14**

	Magistrates' Court			Crown Court	
	Indictable-Only	Either-Way	Summary	Indictable-Only	Either-Way
A. Homicide	0	0	0	1	0
B. Offences Against the Person	3	51	136	21	43
C. Sexual Offences	0	1	0	9	10
D. Burglary	0	10	0	7	20
E. Robbery	4	1	0	42	1
F. Theft and Handling	5	37	1	12	17
G. Fraud and Forgery	0	5	0	3	11
H. Criminal Damage	0	14	0	3	1
I. Drugs Offences	0	1	1	0	3
J. Public Order Offences	0	12	34	2	6
K. All Other Offences (excluding Motoring)	0	1	7	2	8

L. Motoring Offences	0	1	1	0	0
Total Categories	12	134	180	102	120

(Source: CPS, 2014)

This shows 548 Disability Hate Crime-flagged defendant prosecutions during the 2013-14 reporting period. Considering the data in the above table, I initially chose the categories listed below as of most exploratory interest. The guiding criteria were those categories which featured in the CPS Annual Hate Crime Report with greater volumes and a spread across magistrates' and crown courts in the previous year. Thus, I chose initially to look at the following flagged Disability Hate Crime case categories:

### Disability Hate Crime categories

Offence	Court Centre	Volume
Homicide	Crown Court	1
Offences Against Person	Magistrates	136 (summary)
Sexual Offences	Crown Court	10 (either-way)
Burglary	Crown Court	20 (either-way)
Robbery	Crown Court	42 (indictable only)
Theft and Handling	Magistrates	37 (either-way)
Fraud and Forgery	Crown Court	11 (either-way)
Criminal Damage	Magistrates	14 (either-way)
Public Order Offences	Magistrates	24 (summary)

This provided for an initial selection of 405 Disability Hate Crime-flagged defendant prosecutions to be explored and considered out of 548 in 2013-14.

While exploring the above 405 cases, guided by my broad GT approach based on consideration of emerging data, I decided to extend the exercise and to explore every successful case for that year. This was prompted by my finding very few successful cases and by an emerging similarity in the first three successful cases discovered. 'Successful' in this instance meant cases where disability hostility was taken into account by the court at the sentencing stage, reflected in the penalty handed down and recorded on the Hearing Record Sheet. This criterion had limitations as completion of Hearing Record Sheets was very patchy in 2013-14 and it is only in more recent years (from 2014-15 onwards) that their completion has been prioritised and significantly improved (Hamilton and Trickett, 2015). These improvements were made following CJS inspection reports and the introduction of a Hate Crime Assurance system for checking live cases within the CPS (Walters, Wioldlitzka, Sand Owusu-Bempah, 2017).

In deciding to consider every successful case, I had to revisit the selection of cases quite early in the process. This led to me undertaking an initial consideration of all 548 Disability Hate Crime cases for 2013-14, and not just the 405 originally selected. This resulted in an identification of 6 successful Disability Hate Crime cases where sentence uplift was secured and which were recorded on a Hearing Record Sheet. As a result of this refined approach to case selection, the population of recorded successful Disability Hate Crime cases for 2013-14 was considered. This gives this research a significant insight into the features of successful Disability Hate Crime cases at that time.

Of the 15 cases explored, 12 were accessed in a purposive manner via the CPS, six of which were successful cases, six were failed cases, and the final three were accessed via NGOs and the independent statutory sector which was a purposeful extension to the sample to secure non-crimed cases. Notwithstanding the current limitations of Disability Hate Crime data, this was an early and significant analysis of Disability Hate Crime cases. It represented, in a sense, the best that could be done in the then data context.

The analysis of individual cases also allowed for integration with the emerging findings from other research methods. The individual cases were analysed against approaches set out in key policy documents. This analysis was informed by themes emerging from the key informant interviews. The individual cases also illuminated the features of Disability Hate Crime, helping to advance our understanding of its commonalities with wider hate crimes and its specificities.

Having analysed the findings from each method, I sought to triangulate the analysis. I worked to secure a depth of understanding of Disability Hate Crime policy and practice through considering the issue in three different dimensions. This allowed me to check for possible limitations in any one method and it enabled the fullest account to be secured which was the overall aim of this research study.

### **3.6 Researcher Issues – Professional and Personal**

Access to documentation and key informants needed to be negotiated prior to fieldwork. Significant progress was possible and achieved in this area. As indicated, I previously worked as Director of Equality and Diversity at the CPS for England and Wales. Agreement to access CPS documents and cases was obtained together with agreement to participate in key informant interviews. Agreement was also secured from the relevant ACPO lead. Contact was made and engagement agreed with key disability community sector leads. Contacts were made with a number of politicians involved, including the lead minister who contributed to this agenda.

The effects of the author's five-year employment in the CPS, some directly relating to hate crime, are difficult to gauge. The aim was to use the insights obtained positively. The researcher contributed to and witnessed

the community engagement process informing hate crime policy development, and the challenges in implementation including recording and reporting on cases. I also witnessed the community sector campaigning on the issue. It is difficult to ascertain the impact of such close involvement in terms of potential bias. However, there is little doubt that it was valuable experience in understanding the policy making and institutionalisation process, and the contribution of various actors to these processes. To an extent, the identification of the tentative lines of inquiry could be viewed as somewhat subjective. However, my identification of lines of inquiry and research questions have a validity as they arise out of my substantial active engagement with the issues in this research.

A further issue to be considered is that I am a non-disabled researcher researching a concern for many disabled people. I was alert to this issue and to debates within the disability movement regarding this phenomenon. In some instances, “rejection of non-disabled researchers occurred at the beginning of the British disability movement” (Shakespeare, 2000, p. 195). This earlier rejection has been revisited recently. It is increasingly acknowledged that, because someone is disabled, they do not have “automatic insight into the lives of other disabled people” (Shakespeare, 2006, p. 195). There is also a recognition that the rejectionist stance risks adopting an essentialist position where only disabled people can contribute to disability issues. The social progressive perspective on disability acknowledges the role that non-disabled researchers can play and views ways forward in terms of alliances between disabled and non-disabled people. There is recognition that non-disabled researchers can make a positive contribution to the social situation of disabled people (Shakespeare, 2000, p. 196). This is the committed and critically reflexive position from which I, as a researcher, approached this topic.

### **3.7 Ethical Issues**

Ethical considerations were mainstreamed throughout all stages of the research for this thesis. In this section I draw out and summarise the ethical issues and processes associated with this research study.

From the outset I was aware that the research topic could be regarded in some aspects, as a sensitive topic. However I was equally clear that my research focus within this topic was specific and was focused on the policy process and not on victims. Thus any interviews were with activists, policy officials, practitioners or politicians and not with an ‘at risk’ population of respondents. Prior to undertaking my research fieldwork I secured ethical approval from Lancaster University and the Research Consent and Research Information sheets reflect the Lancaster University ethical guidance. As part of the research process I secured access to the CPS case management system and analysed 12 cases (and 3 from other sources) that involved targeted crimes against disabled people. I only analysed cases that has been through the prosecution process or that were otherwise in the public domain. As part of this exercise I signed a research undertaking with the CPS and agreed to anonymise the cases which I accessed through their case management system. Cases accessed through CPS have been fully anonymised in terms of location and names of those involved.

I have safeguarded identities throughout. As part of this research undertaking I shared the research study with the CPS upon completion and drew their attention to the anonymisation of cases, and no concerns were raised.

At various stages in this study, and in this chapter and in chapter 1 I have reflected on the potential sensitivity – ethical issues raised by my insider – outsider status within the topic studied. At all times I have focused solely on using this insider – outsider status constructively and ethically to help secure the most comprehensive account of the emergence and development of DHC as a policy agenda.

Throughout this research for this thesis no ethical issues arose that had not been anticipated and planned through the steps summarised above. The infusion of ethical considerations throughout the research process assisted significantly in this regard.

### **3.8 Addressing Validity, Reliability, and Trustworthiness in the Case Study**

Issues of validity and reliability pose challenges in all qualitative research (Torrance, 2008). In this research, validity, reliability, and wider trustworthiness were addressed through maximising transparency at every key stage of the research process. This was addressed through:

1. Providing clear detail on each stage of the research process as set out in this chapter and others so that external readers can assess validity and reliability
2. Ensuring clear research questions as set out in Chapter 1
3. Ensuring clear research lines of inquiry, albeit tentative given the exploratory nature of this study as set out in Chapter 2
4. Ensuring explicit and appropriate sampling of key informants interviewed in this study as set out in this Chapter 3 and in Appendix C
5. Ensuring data collection was explicit and systematic and making available the data collection templates used as set out in Chapter 3
6. Ensuring data was analysed appropriately and making available data analysis frameworks. A data analysis code book is available for this research study with an illustrative extract set out in Appendix D
7. Continuous use of critical reflection to help enhance validity and reliability

## **Chapter 4: Agenda Triggering**

### **4.1 Introduction**

An established view in hate crime studies, noted in Chapter 2, is that this subject area is marked by the early influence of social movements and identity politics in policy making, particularly in the US context (Grattet and Jenness, 2001; Jacobs and Potter, 1998). Grattet and Jenness argue that hate crime is best viewed as a policy domain which has been established, expanded, and explored over time. Drawing on Burstein (1991), they used those concepts to explain the differential development of hate crime policies in the US. Grattet and Jenness (2001) analyse the establishment of the first hate crime categories in the US (race, religion, and ethnicity) and their expansion to include sexuality and disability, the latter process presented as relatively unproblematic.

In this chapter, I analyse the range of contributions to securing Section 146 of the CJA 2003, through a consideration of the parts played by problematisation, activism, politics, and policy making in this earliest stage (Bacchi, 2009; Kingdon, 2011). Whilst concurring with Mason-Bish (2009) that the expansion of the hate crime policy domain to include disability hostility appeared relatively unproblematic, I show that it was, in reality, quite problematic. Indeed, but for significant problematisation efforts by activists and critical interventions by some political actors, expansion to include disability hostility would not have occurred. It was not simply a matter of a domain adding another to the list of protected characteristics (Grattet and Jenness, 2001). This account significantly augments existing understanding on this issue.

### **4.2 Targeted Harassment and Hostility towards Disabled People – some background**

As noted in Chapter 2, available evidence points to targeted hostility and violence as one continuing thread in disabled people's experiences over time. That said, this disproportionate experience of violence and targeted harassment, hostility, and abuse has been variously named and responded to - or not - over time (Quarmby, 2011; Sherry, 2010; Sobsey, 1994). It has a varied genealogy as social problems and policy issues (Bacchi, 2009). It is only very recently that this targeted hostility, harassment, and violence has begun to be problematised, constructed, and considered as crime, and as hate crime in particular. Indeed, Disability Hate Crime is a peculiarly early 21<sup>st</sup> Century policy construct in response to centuries' old behaviour.

#### **4.2.1 Significant triggering role played by Values into Action NGO**

From the mid-1990s onwards, VIA, an NGO originally established to campaign for the closure of 'mental handicap' hospitals in England and Wales, highlighted the challenges faced by learning disabled people in transitioning from institutional to community living. One such issue was the experience of what was then termed 'disability related bullying and harassment'. In the words of a former director of a disability NGO,

VIA were concerned with “identifying the factors which make resettlement better for people and what were the factors holding it back” (R1).<sup>1</sup>

They found that

“the more we did that work, the more we started hearing stories, mainly from people with learning difficulties, about how they were frightened to do things because they got picked on and they got bullied. And the language we used ... at the time was bullying” (R1).

Furthermore, VIA found that criminal acts were being perpetrated against learning disabled people. However, they found a reluctance to take such cases seriously or to even consider that such cases could be taken seriously. It was as if, with the increasing move from institutional to community living,

“... people with learning difficulties finally had been recognised as having the right to live in the community, but they still were not recognised as being equal before the law” (R1).

It was also as if, in the increasing move from institutional living to community living, disabled people were to add increased outdoor hostility to a known experience of indoor abuse, a phenomenon over looked in academic and policy literature (Sunkiene 2017). According to one disability activist respondent,

“Disability Hate Crime is now part of what disabled people experience as we struggle to inhabit the world” (R2) (Collins, 1992, 1993, 1994).

This chapter considers how, as part of the movement towards securing equality before the law for disabled people, hate crime emerged initially as a problem, but with a linked policy construct and the promise of criminal law protection.

### **4.3 Early Activism and Problematisation**

It is difficult to pinpoint a single moment when Disability Hate Crime first entered the policy domain in England and Wales. This study found that some policy related actors began to use the term and to construct the issue as hate crime at around the same time in 2001-2002. I share Kingdon’s view, that whilst specific origins may matter, ideas can come from anywhere and, indeed, numerous places. What matters in terms of policy emergence and change is that “the key to understanding policy change is not where the idea comes from but what made it take hold and grow. It is critical that an idea starts somewhere, and that it becomes diffused in the community of people who deal with a given policy domain” (Kingdon, 2011, p. 72). Based on analyses of numerous case studies, Kingdon argues that, in terms of policy emergence, “a combination of

---

<sup>1</sup> R1 etc is a notation to indicate a respondent number. See Appendix C (II) for respondent profile information.

sources is virtually always responsible ... a combination of people is required to bring an idea to policy fruition and some actors bring to the process their political popularity, others, their expertise. Some bring their pragmatic sense of the possible; others their ability to attract attention" (Ibid., p. 77). This analysis indicated that a combination of sources has indeed contributed to the emergence of the Disability Hate Crime policy agenda. Of most significance is that it secured the sought-after problem representation as a legitimate policy agenda (Kingdon, 2011; Bacchi, 2009).

In the late 1990s and early 2000s, there was very little debate about the need to address Disability Hate Crime in England and Wales. As mentioned in Chapter 2, in Mencap's 1999 study, 'Living in Fear', based on a survey of 900 learning disabled people, respondents revealed high levels of regular bullying, whilst making no reference to hate crime. The report did not elicit any significant response from criminal justice agencies or government more widely until four years later when an amendment to the CJA (2003), known as Section 146, was being considered. The study was then cited by activists, independent statutory bodies, and politicians/ministers as evidence of the need to legislate to address Disability Hate Crime. In the intervening period, the issue of targeted harassment of disabled people had been, firstly, problematised as targeted crime based on disability hostility and, secondly, represented as a problem of Disability Hate Crime. To help secure policy agenda status, 'key indicators' of the problem were needed (Kingdon, 2011). In this context, the Mencap report was drawn upon by both independent statutory bodies, such as the DRC in making the case for Disability Hate Crime and by a CJS minister tabling an amendment in the House of Lords providing for a form of recognition of Disability Hate Crime and LGB hate crime (Hansard HL, Deb 5 Nov 2003). Thus, a report that received limited attention on publication underwent a process of 'transformation' and legitimation that scholars indicate can occur in the policy making process. While data such as in the Mencap report does not speak for itself (Kingdon, 2011), its use and selected "interpretations of the data transform them from statements of conditions to statements of policy problems" (Ibid.). Mencap's report secured a place in the 'evidence base' not because of depth of social science insight but because it 'chimed' with a wider trend around hate crime policy. This was to occur with some studies in subsequent years in the emergence and development of Disability Hate Crime policy and practice (Giannasi, 2015a).

In a separate report produced by the National Schizophrenia Fellowship in 2001, 168 people experiencing mental health difficulties reported significant harassment in their lives. Again, this report did not refer to hate crime and did not elicit any significant response from criminal justice agencies or government more widely upon publication. However, it was again referenced in 2003 when the case was being made for the need to legislate for disability hostility. As with the Mencap report, it underwent a 'transformation' from a limited statement of conditions to an accepted and legitimised element in the evidence base for recognising a policy problem (Kingdon, 2011; Bacchi, 2009). In this way, it was deployed to contribute to the problematisation of targeted harassment of disabled people (Bacchi, 2009), and, in time, to its construction as Disability Hate Crime.

The problematisation of targeted harassment and hostility experienced by disabled people as a crime problem and its representation as specifically a problem of hate crime began to emerge and become articulated by a small number of activists, including some 'policy entrepreneurs' and NGOs in the late 1990s–early 2000s. Parallel to this, there was a gradual coalescing around a shared focus problematising targeted harassment and hostility towards disabled people as hate crime akin to other forms of hate crime. It is as if a form of concept diffusion was occurring and beginning to influence activism but was not named as such (Jones and Newburn, 2007; Bacchi, 2009).

#### 4.3.1 Values into Action NGO- first to use the language of Disability Hate Crime

In this context, and given its earlier identification of targeted harassment and crimes as an issue in effecting successful community transition, VIA now produced policy research reports focused on equal access for disabled people to the justice system. These included 'Just Gateways' (VIA, 2001) and 'Opening the Gateways' (VIA, 2002). The former considered the role of the police as a gateway to the CJS for learning disabled people; the latter looked at violence targeted against learning disabled people. 'Opening the Gateways' (2002) is the first publication in England and Wales which this study identifies as using the term 'Disability Hate Crime'. A respondent involved with producing this report was clear about the rationale for framing disabled people's experiences as hate crime:

"The more we talked to people with learning difficulties and the more research we did on how this type of targeted violence was being dealt with in other areas such as racist crime, homophobic crime, it just became so obvious that the type of hostility and targeted violence disabled people were experiencing was the same as other types of hate crime. And, so, it became a natural thing to argue for and to advocate for. It was also connected to our general advocacy position which was dismantling the barriers to an ordinary life for people with learning difficulties specifically. And a key barrier to an ordinary life was this constant daily harassment that they were experiencing and that could often escalate to violence and what was clearly hate crime ... it was saying, 'If we have these types of laws to address and recognise racist crime, homophobic crime, religious crime, why not have a parity for disabled people?'" (R3).

This response illustrated recognised arguments for the expansion of the hate crime domain, with the emphasis placed on the similarities between the experiences of disabled people and other hate crime victims, the call for parity of protection, and references to the daily occurrence of targeted harassment and how it constitutes a barrier to an ordinary life (Grattet and Jenness, 2001). These were to become arguments marshalled by others in seeking a legal–policy response to Disability Hate Crime, including the newly established DRC, to the neglect of a focus on differences in disabled people's experiences of hate crime. Emphasising commonality with established hate crime strands was considered more important than

acknowledging differences in this early phase when the overriding focus was on securing a home in the hate crime domain for Disability Hate Crime.

Whilst 'Opening the Gateways' used the language of and called for hate crime legislation to address disabled people's experiences, there are no indications of a response to this report from government. It appears to have been used in seeking to have disability issues addressed in a then-developing agenda on Community Safety and Crime and Disorder Reduction mainly at local level (Nacro, 2002). It was shared amongst an NGO alliance making the case for Disability Hate Crime recognition. It did, however, undergo a certain 'transformation' later when parliament was lobbied around Section 146 of the CJA 2003. Its messages 'chimed' with the direction of policy development and it formed part of the evidence base for legal change. It contributed both to the problematisation of targeted harassment and hostility experienced by disabled people, and to its problem representation as hate crime (Bacchi, 2009).

#### 4.3.2 Early role of South London NGO and activists

Other notable policy activists also framed disabled people's experiences as hate crime in the early 2000s. From 2001-02 onwards, in south London, a local disability action group began to articulate the experiences of disabled people in terms of harassment, hostility, and hate crime. This occurred mainly through the campaigning activity of a key staff member. Both the action group and staff member were based close to the home borough of Stephen Lawrence and were acutely attuned to the agenda emerging from the Lawrence Inquiry, both in terms of hate crime and institutional discrimination. The staff member indicated that she borrowed from the Lawrence Inquiry agenda to read across to the disability experience because it resonated so much and it acted as her bedrock source to have disabled people's experience of harassment recognised (R37). This resonates with wider literature on later hate crime strands borrowing from more established strands and seeking to state similarities in experience (Grattet and Jenness, 2001; Jenness and Broad, 2005). It also supports the finding of this study and earlier studies on the catalytic impact of the Lawrence Inquiry on all hate crime strands (Tyson, Giannasi, and Hall, 2014; Tyson and Hall, 2015; Giannasi, 2015).

#### 4.3.3 Significant early role of NGO Campaigns Officer – policy entrepreneur

Another key activist contribution was a Campaigns Officer working with one of the national disability charities. He had previous experience working in the campaigns teams of national charities and was a Labour Party activist on disability equality and, latterly, a Labour Councillor. His name featured in interviews for this research thesis as one of the first people to articulate disabled people's experience in terms of hate

crime. My research found that he was articulating disabled people's experience of harassment as early as 2001–02 within his organisation and with partner organisations and the need for this to be addressed through hate crime legislation.

Numerous respondents spontaneously identified this Campaigns Officer as a "policy entrepreneur" in enabling the emergence of Disability Hate Crime into the policy domain. Policy entrepreneurs are identified as occasionally playing a significant role in the emergence and development of policy agendas. They can do this by enabling coalitions of interests to form around a problem, to help identify policy solutions (that often already exist and which they know), and to occasionally enable a coupling to take place between activist and political-policy interests, facilitating a policy window to open and a new policy to emerge (Kingdon, 2011).

Indeed, this Campaigns Officer – and policy entrepreneur - carefully constructed the narrative of a case he 'discovered' in 2001 involving an attack on a disabled woman and her guide dog on a train. The woman with a visual impairment and her guide dog were confronted by a group of young people sitting opposite her. They set off firelighters in front of her dog and seriously disturbed both her and the dog. The young people sprayed the dog and the woman with the contents of a fire extinguisher, which appeared to escalate the dog's and the woman's distress.

The Campaigns Officer turned this signal case (Kingdon, 2011) into an early compelling argument for the need for Disability Hate Crime legislation and the case was widely cited by many other activists. It was also recalled by key informants in the research for this thesis including a senior cabinet minister involved at that time (R4; R5).

I consider this Campaigns Officer's contribution to securing legal provision to address Disability Hate Crime later in this chapter. Here, the focus is on acknowledging his very early problematisation of targeted harassment of disabled people and his increasingly successful representation of the issue as a problem of hate crime (Bacchi, 2009). In this problematisation and problem representation, he trod a well-established path in social movement policy activism, through his use of a particularly emotive signal case, his building of a coalition with LGB and other groups, and his strategic identification of a legislative 'window of opportunity' through the CJA 2003 to push for hate crime protection (Kingdon, 2011; Bacchi, 2009; Grattet and Jenness, 2001; Jenness and Broad, 1997; Best, 1999).

#### 4.3.4 Significant role of the new Disability Rights Commission

At broadly the same time, the recently established independent statutory DRC was embarking on its first legislative review. It had a power to undertake a review of the legislative landscape to identify issues of relevance to advancing disability equality. In its first legislative review, the DRC asked whether consultees

felt the DRC should seek legislative provision to address disability hostility. Given its statutory role, the Commission's naming of aspects of disabled people's experience in terms of hostility was significant. In addition, given its responsibility for advancing disability equality, its action moved the issue of Disability Hate Crime closer to the legal-policy domain. Entering the legal-policy domain is a key moment in the construction of hate crime. The moment it becomes law is, in some respects, the moment it becomes real (Best, 1999; Grattet and Jenness, 2001). This study found that the DRC's interventions from 2000 to 2007 were influential in moving the Disability Hate Crime agenda forward. Its role has been under-recognised - and unacknowledged - to date in the academic literature. This influential role was evidenced by key informant interviews, through parliamentary references, and through documentary evidence.

One then senior NGO disability charity manager highlighted the significance of the DRC including consultation on disability harassment and hostility in its first legislative review and how charities, such as that where the Campaigns Officer-policy entrepreneur worked, availed of the opportunity to articulate the need for Disability Hate Crime provision. Indeed, a senior cabinet minister in HM Government in the early 2000s interviewed for this study stated that the creation of the DRC brought a "focus which had not been there before to Disability Hate Crime for the first time" (R5). This study has found that the DRC brought a successful straddling of insider-outsider status to advancing the agenda of Disability Hate Crime. It was staffed by a mix of peoples, with backgrounds in senior roles in NGOs in the disability movement, other social movements, and within government. It was as if a form of institutionalised activism entered the statutory sector. The DRC was to play effective dual roles of activist and policy adviser, less hermetically sealed into separate streams than Kingdon's model might suggest. This study found that the role played by such insider-outsider actors in advancing equality agendas is not to be underestimated. It echoes findings of others such as Outshoorn's (2004) analysis of the contribution of the femocracy to advancing gender equality and sex work policy in The Netherlands. This study acknowledges the DRC's significant role in these early stages of issue emergence and later in agenda development.

#### **4.4 Building Momentum – Activism, Problem Representation, Politics and a little Policy**

Between 2002 and late-2003, the issue of the problematisation of harassment and hostility experienced by disabled people began to gather pace. A series of activities and interventions developed mainly in the activism, independent statutory, and political domains. Some overlapped, some were discrete but, considered together, impacted the securing of Section 146 of the CJA 2003. Activity on this issue was still, at this relatively early stage, confined to the activist and political domains, with the policy domain largely dormant on the issue.

#### 4.4.1 A loose coalition helps trigger the agenda

In 2002, a loose coalition of groups emerged. It met with the support of the social justice charity, National Association for the Care and Resettlement of Offenders (Nacro), to develop and articulate the case and lobby for extensions to hate crime legislation. It included the Royal National Institute of Blind People (RNIB), Guide Dogs for the Blind, Mencap, Nacro, VIA, DRC and, at times, lesbian, gay, bisexual and transgender (LGBT) rights charity Stonewall. As the literature indicates that hate crime social movements in other contexts have tended to do, this coalition focused on collating elements of an evidence base, particularly compelling cases of disability hostility (Best, 1999; Grattet and Jenness, 2001; Jenness and Broad, 1997). The group also submitted briefings to parliament and met with parliamentarians (R3). Respondents in this study identified the Campaigns Officer identified earlier as the key person coordinating this loose coalition (R4).

This Campaigns Officer was also simultaneously working closely with the DRC and Stonewall in forging a time-limited strategic alliance that proved significant in securing Section 146 of the CJA 2003. As a policy entrepreneur, he was enabling and forging coalitions of interests, identifying a strategic parliamentary opportunity in the form of the CJA 2003 and, in time, he was to advance the coupling of politicians' and activists' agendas through seeking an amendment to the CJA 2003 which became known as Section 146 (Kingdon, 2011).

As mentioned earlier, the DRC had identified disability hostility as a potential priority in its first legislative review. By mid-2002, it was a confirmed priority of the DRC. Mindful of the legislative 'window of opportunity' (Ibid.) offered by the Criminal Justice Bill, and encouraged and aided by the Campaigns Officer—policy entrepreneur, the DRC prepared for the Labour Party conference in early autumn 2002. They had identified an open forum question-and-answer session with the relevant Cabinet Minister and ministerial team which was to focus on criminal justice reform and the developing CJA. Based on a joint NGO–DRC briefing, a DRC officer asked the Cabinet Minister about the issue of disabled people being targeted on the basis of hostility as victims of crime. The example cited was the signal case of the attack on the visually impaired woman on the train with her guide dog. The questioner asked if the Ministers were aware of this form of crime and what were they going to do about it in the context of their reforming criminal justice legislation. A former senior DRC official stated:

“All the ministerial team were there. The question was kind of directed at the Cabinet Minister and he was the one who picked it up first. He sort of looked a bit perplexed really and said, ‘You know, what you have told me is a bit shocking and I wasn’t aware of the scale of this but now that I am, obviously, it is an issue that I want to look at’” (R6).

The DRC and RNIB regarded this as an important first stage in prising open the policy window to get Disability Hate Crime through and onto the legislative agenda. This was to become a first window of opportunity for the Disability Hate Crime agenda (Kingdon, 2011). Following the Labour Party Conference, the RNIB and DRC reminded the Cabinet Minister of what they had raised in relation to disability hostility and hate crime and provided further contextual information. They pointed to the opportunity offered through the reforming CJA and requested that the issue be addressed in the developing legislation (R6). The coupling of activist interests and politicians' priorities emphasised in the literature was beginning to occur. However, unlike some case studies analysed in the policy literature, the policy window in this case did not swing open for just a short time. Here, the policy window had to be prised open, and it remained ajar as opposed to fully open for a considerable time before the Disability Hate Crime policy fully emerged (Ibid.). It is as if the Disability Hate Crime agenda emerged in stages, rather than in the form of a single breakthrough window of opportunity as highlighted by Kingdon (2011).

#### 4.4.2 Key role of senior cabinet minister in agenda triggering

Reflecting on this issue's emergence, the former senior cabinet member involved confirmed the account provided by former DRC staff. He reflected on the CJA 2003 as New Labour's "flagship CJS reform legislation" and one of his own "proudest achievements" (R5). The context for him was one of modernisation and reform. He described the CJA 2003 as a flagship Act and went on to state:

"It was becoming clear that hate crime in relation to disability was more identifiable and visible, perhaps on the back of the creation and expansion of the Disability Discrimination Act and the creation of the Disability Rights Commission. So there actually was a focus which had not been there before, and I think the creation of the Disability Rights Commission obviously was fundamental to that construction. But, also, because I think there had been a real, as opposed to perceived, increase in hate crime on people with, what is now called, learning difficulties" (R5).

The range of contextual factors identified here are informative and instructive in understanding the emergence of Disability Hate Crime policy. There was not only a coupling of activism and political initiatives through possible inclusion of Disability Hate Crime in the reforming CJA 2003, but there was a particular coupling that was a good 'fit' with New Labour's blend of policy approaches. New Labour was keen to be seen as 'tough on crime' and 'new' forms of crime, but it was also keen to be reforming on identity inequalities, including disability equality. Enacting Disability Hate Crime legal provision enabled New Labour to offer criminal law protection in this new civil rights era for disabled people. It was a coupling strategically played to by disability activists in the early 2000s. Indeed, it reflects an approach to policy advocacy on hate crime whereby "advocates for hate crime laws were able to achieve considerable traction by framing their calls for law reform within popular 'tough on crime' discourses of crime control" (Mason, 2015, p. 59).

Referring to the specific raising of the issue of disability hostility - including the signal case of the woman and the guide dog attack - at the Labour Party Conference in 2002, the senior cabinet minister stated:

“That is how politics should work. Politicians are neither full of all wisdom, nor should we expect them to be. What we should expect them to be is amenable and responsive to the genuine concerns of people who are closer to it, who are campaigning on behalf of or with or have experienced themselves a particular problem, in this case, an obvious one. And I was not aware of the scale of the issue and they did have it because you always need examples and they had” (R5).

This comment is instructive in considering the respective roles played by activists and politicians in the earliest emergence of the Disability Hate Crime agenda. Even though it was the activists-DRC that posed the initial question, without this senior cabinet minister’s willingness to allow a coupling of activists’ demands (for hate crime provisions) and his own political initiative (the CJA 2003), Disability Hate Crime would not have emerged as and when it did in 2003.

The senior cabinet minister recalls that coalescing factors were influential in his support for legislation to address Disability Hate Crime and also Homophobic Crime. These included issues related to parity across hate crime strands given that Section 145 of the CJA 2003 existed to enhance sentencing in areas of racial or religious aggravation.

“To begin with, people rightly said, ‘If we’re going to deal with hate crime in respect of race or ethnicity or faith, then we ought to be having a comprehensive approach’. And, quite rightly, organisations, whether they were Stonewall and others in relation to sexual orientation or organisations with, of and for people with disabilities said, ‘And what about this?’” (R5).

For him, legislating for Disability Hate Crime and Homophobic Crime was about:

“Making sure [that] where there are inequalities, they’re dealt with fairly and on the same basis ... you can see that this has a synergy, it fits in. A parity of protection and an overall approach which is fair” (R5).

His comments reflected the calls of activist respondents in this study. There was an emerging congruence of rationales for legislating on this issue, framed around parity of protection with other hate crime strands. These claims for parity of protection are identified in the hate crime literature as amongst the most common arguments articulated by equality movements making the case for hate crime domain expansion (Mason-Bish, 2009; Grattet and Jenness, 2001; Jenness and Broad, 1997). Indeed, a theme in some hate crime literature is that once an equality issue has been legislated for as a protected characteristic in civil law on equality, it makes the pathway to hate crime criminal law protection easier though not inevitable (Grattet and

Jenness, 2001). In this context, disability equality had been prioritised by the New Labour government: one former senior manager at the DRC in this study talked about New Labour's initiatives on disability equality heralding the start of "the civil rights era for disabled people in Britain" (R7).

Linked to this is the significant emphasis placed by this cabinet minister on the issue of Disability Hate Crime having a synergy with established hate crime. I consider the issue of the nature, extent and challenges posed by the 'fit' of Disability Hate Crime in Chapters 6 and 7. The senior cabinet minister's emphasis on the perceived and accepted 'fit' echoes a significant theme in the public policy literature, where Kingdon and others identify an issue as much more likely to be taken on as a policy issue by government if it can be shown to have a synergy, a feasibility and a values 'fit' with an already established policy approach (Kingdon, 2011). In a sense, a solution already existed on the policy shelf called 'hate crime', and Disability Hate Crime was presented as fitting that existing policy solution. The extent to which this one-size-fits-all approach to hate crime was appropriate was challenged with the further development of Disability Hate Crime policy. That fit and the early emphasis on commonality with existing hate crime strands is what activists argued successfully in relation to Disability Hate Crime and what politicians accepted. It can be argued that it led to an early neglect of legitimate differences between the strands of hate crime. This was to prove problematic in practice, an issue that is considered in later chapters.

This cabinet member also identified challenges raised in defining Disability Hate Crime, namely the issue raised by attacks on guide dogs or a disabled person's other aids, effectively as hostile attacks on a disabled person, and cases like the enslavement of disabled people which he clearly viewed as motivated by a disability hostility. He reflected that these varied and perhaps more complex manifestations of disability hostility posed the need to get the definition right:

"The only thing that was in doubt was the definition. How do you get this right so that in practice, the prosecution can deal with it, the judiciary have a basis on which to deal with it, and the signals you send, which is why the enhanced penalty was so important at this point of sentencing" (R5).

This senior cabinet minister held a broad view of what disability hostility is and the range of offending behaviour which should be covered by this legislative provision. As is evident in Chapter 5, it is questionable whether, over 15 years later, day-to-day institutionalisation matches the broad ministerial vision of disability hostility.

#### **4.5 Activism Gathers Further Pace – further building the evidence base, building a strategic alliance for parliamentary change**

Whilst some time was to elapse between the DRC, RNIB, and Guide Dogs for the Blind raising the issue with the relevant senior cabinet minister and the introduction of a government amendment introducing Section 146, the activists-independent statutory sector did not lose time in the intervening period. The DRC,

RNIB, Stonewall, VIA and others continued to build the evidence base and to lobby for Section 146. This focus on securing “key indicators” of the problem is significant in many cases in the literature on securing policy agenda status - Kingdon (2011) points out that what matters more is that the “key indicators” are accepted by all as valid, and crucially by politicians and policy officials deciding on the issue, rather than on the evidential rigour of the key indicators. Senior politicians referenced in this study stated that they needed evidence to act; in their view, the evidence was provided by the activists—independent statutory sector (R5; R9).

A former senior DRC official who was also involved in preparing parliamentary briefings on the evidence base concluded that, to secure Section 146:

“There had to be evidence, so there was some pretty good evidence, and not just from one organisation. There was enough strong evidence of the problem and that something needed to be done and without that, obviously, forget it .... But there was a kind of base, an evidence base obviously” (R6).

It is clear that both the DRC and NGOs involved, including Stonewall, were aware that the available evidence was limited and that they were, in a sense, constructing and playing an ‘evidence game’ as part of constructing the policy problems of Disability Hate Crime and Homophobic Hate Crime. Reflecting recognised themes in the policy making literature, they were alert to two issues. They were acutely aware that one of the rules of the game was having acceptable evidence to move this policy agenda forward, so they played their limited evidence base to best effect. They were also acutely aware that robustness and rigour mattered less than resonance and acceptability of evidence to politicians—policy makers (Kingdon, 2011). In the absence of sufficiently robust data, they occasionally resorted to profiling shocking-emotive cases, a well-established social movement tactic to gain a response. This was a tactic deployed many times by the Disability Hate Crime movement over the coming years (R14). Later in this chapter, we see how activists’ playing of the evidence game and construction of the evidence base was largely accepted by politicians when it suited their own political-policy priorities (Ibid.).

#### 4.5.1 Time limited strategic alliance focused on parliamentary progress

Another key element in the efforts to secure Section 146, as evidenced in this study, was a time-limited strategic parliamentary alliance forged between disability groups, the DRC, and Stonewall. This was a strategic alliance formed within the wider coalition seeking change. Central to forging this alliance was another coupling strategy deployed by the Campaigns Officer mentioned earlier (Kingdon, 2011). Disability groups, the DRC, and LGB groups campaigned to secure hate crime legal provisions on the respective grounds of disability and sexual orientation. The Campaigns Officer queried whether they should continue to campaign separately or seek to “travel together” through parliament (R4). It was decided, with the active

encouragement of the Campaigns Officer, that they should seek to “travel together”, particularly through the House of Lords. A former senior staff member at an LGB NGO said:

“Stonewall was a very opportunistic organisation in trying to sort of do legislative change. This opportunity came up and, from Stonewall’s perspective, making sure that disability and sexual orientation travelled together was a way of trying to get that through because, in disability terms, the Conservatives were actually quite pro-disability. I think, before this parliament, the only piece of equalities legislation that the Tories had ever introduced was a Disability Discrimination Act, which I think was in 1995. So, all the race stuff and everything else had always been done under Labour. So, from Stonewall’s perspective, the strategy of ‘let’s get sexual orientation and disability together so they can’t be separated, they’ve got to travel together’ was a way of trying to ensure that the sexual orientation bits went through ... It was opportunistic travelling together” (R4).

However, there were also advantages, attractions, and affinities for the disability organisations involved to “travelling together” with the LGB lobby for Section 146. There was recognition that Stonewall were adept at parliamentary lobbying but, in the early 2000s, getting legislation through the House of Lords on LGB equality was “tricky”. On the contrary, disability issues found a more favourable airing in the House of Lords and across political parties, including the Conservative Party. A former senior official at the DRC reflected:

“Once a bill was in the Lords that was easier for us because that’s where all our great people are. We have got fantastic people there. We have advocates in the Commons as well but the House of Lords was just playtime central, it was fantastic” (R6).

A former senior staff member at an LGB NGO summed this up as:

“So that’s the quid pro quo then, isn’t it? We’ll join together so sexual orientation won’t get dumped out, but actually we’ll make sure that Stonewall does the kind of parliamentary lobbying. That made a lot of sense. And I think that was successful” (R4).

This strategic alliance was not solely opportunistic. There was also a shared sense of affinity evident in interviews with activists from both disability and LGB sectors. This seemed to spring in part from both being ‘newer’ equality strands (R4; R6).

The time-limited strategic and opportunistic nature of this alliance was brought home in this study through the dissolution of the alliance once Section 146 was secured.

#### 4.5.2 Increasing Focus on the Political Stream

During its existence, this strategic alliance between disability and LGB organisations increasingly turned its attention to parliament and to developments in the political stream, in particular, the development of and opportunities offered by the CJA 2003. The interaction between the various sets of actors and activities, not least the direct intervention of politicians themselves, also contributed to this legislative activity.

Policies vary in the extent to which they involve significant political intervention and the extent to which policy activity takes place at official levels. This study found, and a key respondent noted, that the hate crime policy domain in Britain is marked by a relatively low level of political intervention and significant involvement at the level of policy officials within criminal justice agencies (R8). This study has found that there are limited, but critical interventions by politicians at key policy defining moments in the hate crime domain, particularly in the framing of overall policy direction. The development of policy detail and ongoing policy development and institutionalisation is overwhelmingly driven by policy officials in interaction with activists. That said, regarding Disability Hate Crime policy, politicians at cabinet, other ministerial and peer levels made a number of strategic interventions, without which Disability Hate Crime would not have entered the policy domain when and as it did.

All the campaigning-related activities described above were designed to influence an amendment to the CJA 2003 as it went through its later stages in parliament. The outcomes of these activities were reflected in briefings to and meetings between campaigning interests and parliamentarians. As well as linking directly with government ministers, the campaigning groups also linked with a range of peers across political parties. Two particularly active peers in support of such an amendment were Lord Navnit Dholakia (Liberal Democrat) and Lord Waheed Alli (Labour). Lord Dholakia had been associated with social liberal causes and was a former senior staff member at the then Commission for Racial Equality (CRE) and predecessor bodies and had been instrumental in the first consideration of racial harassment and violence nationally. Lord Alli was strongly identified with the LGB equality agenda and was close to Stonewall while Lord Dholakia was supportive of the DRC's work. Both peers, although from different parties, were close and, more pertinently, were close to Minister Baroness Scotland QC, who led on the CJA in the House of Lords in 2003 (R9; R4).

In the second half of 2003, whilst the CJA was going through the Lords, Lord Dholakia, supported by Liberal Democrat colleagues, indicated his intention to propose an amendment to the Act which would introduce both sentencing enhancement for crimes aggravated by hostility on the basis of disability or sexual orientation and also, interestingly, would provide for mandatory monitoring of the implementation of these provisions by the police and the reporting of same. In a House of Lords address, he drew upon and expressly commended the briefing and evidence base provided by the DRC (Hansard HL, Deb 5 Nov 2003). In the aftermath, Baroness Scotland introduced a government amendment known as Section 146 providing for

sentencing enhancement in cases where hostility on the grounds of disability or sexual orientation was a factor in crime. In introducing Section 146, she indicated the government was “guided by the evidence” in relation to targeted crimes experienced by disabled people and gay people and referred to some of the evidence collated and placed in the policy arena by DRC, Stonewall and other groups (Ibid.). However, she rejected Lord Dholakia’s specific calls for statutory monitoring and reporting on the implementation of such legal provisions. Instead, she indicated that the government would ask the then ACPO to address the issue of implementation monitoring through its guidance to and links with local police forces. In subsequent years, this was to develop into the first and subsequent ACPO Hate Crime Manuals (ACPO, 2005, 2010, 2014) and ultimately was reflected in the CJS’ adoption of a common definition of monitored hate crime in 2007.

The question arises as to what were the political factors and interventions influencing the government’s introduction of the Section 146 amendment? Alongside and in part overlapping with the strategic alliance lobbying activity of the DRC and Stonewall and the wider loose coalition was specific work with parliamentarians by VIA based on their earlier and ongoing research. Following the publication of ‘Opening the Gateways’ in 2002, VIA staff contacted a Liberal Democrat MP and met with a Liberal Democrat Party adviser to discuss the issues raised by their recent report and, in particular, their recommendation that Disability Hate Crime be legislated for. The adviser undertook to review the report and that the Liberal Democrats would consider this in terms of their House of Lords’ contribution. Subsequently, Lord Colville spoke in the Lords in favour of Section 146 indicating that it did not make sense not to include disability, as all these other grounds were included (Hansard [HL], 5 Nov 2003).

Clearly, there was some time gap between the DRC-RNIB’s raising of the issue with the senior Cabinet Minister and Ministerial colleagues at the Labour Party Conference in 2002 and the introduction of the government’s amendment in November 2003. This did not surprise a former senior official at the DRC:

“There would have been a bit of a gap, because there would have been a bit of toing and froing ... and it would have been during the passage of the bill, when the bill had already been going through because that’s when there’s a sort of onus to act, you know” (R6)

The former senior DRC official recalls being contacted by the Ministerial Bill Team who requested a meeting to discuss a potential amendment to the CJA 2003 under instruction from the Minister:

“They said very specifically to me, very very clearly, ‘The Minister, he said this comes from Secretary of State, this has to be done, go off and do it’, and you know, so they were under marching orders” ... “it was basically very clear in the meeting. They said, ‘Secretary of State has told us to do something about this and the Bill is going through so we’re going to do it. We’re going to do something’. And I was like, ‘Ok’. So, we just talked through what it is we wanted. So, I just relayed the party line as it were, talked around it a bit so they kind of understood it a bit” (R6).

However, the drafting of Section 146 was not to prove so simple in the weeks after this meeting, with interaction between the Ministerial Bill Team and the DRC on possible draft wording for an amendment to address disability hostility. However, and not without significance, the initial draft produced by the Bill Team focused on targeting disabled people on the basis of vulnerability rather than hostility. This was of serious concern to the DRC. The former senior official at the DRC involved recalled:

“I remember receiving their draft wording and thinking, ‘You’ve got the wrong end of the stick’ ... It was obvious to me that they were going down the sort of route of people being targeted because they were vulnerable ... so I remember typing back saying, ‘No specifically, this should be about somebody being targeted because of their disability. It’s because of hatred, prejudice, all the rest of it, hostility’. So, I remember that, thinking, ‘Thank God they didn’t just stick that down because otherwise we’d have had to brief against it’ and I told them that. I said, ‘If you put that down, that’s not what we’re having” (R6).

She went on to say that this potential focus on vulnerability posed the single biggest risk to securing Disability Hate Crime legal provision. And for the DRC:

“... for any proper disability activist, the whole vulnerability sort of strand of argument ... that would not have been helpful, that was a risk. Actually, that was the biggest risk, that they got the wrong end of the stick and refused to let go of the sodding stick and then we ended up having to brief against something. So that would have been a big risk, but it was averted and that didn’t happen. The wording averted it, otherwise that would have been a horrible mess to sort out” (R6).

It is very interesting that, notwithstanding the clear focus on hostility in what emerged as Section 146 with no mention of vulnerability, in the years since its enactment, the issue of vulnerability continued to feature and a persistent pull towards vulnerability continued to “cloud the issue of disability hostility” (Macdonald, 2008).

It is as if the policy conception of disability as equating with vulnerability was already prevalent in 2003, if not embedded as a default position, at least for policy officials. The competing problem representations of disability targeting as an issue of vulnerability rather than hostility was present for policy officials from the outset. However, the activist stream was momentarily in the ascendancy alongside the political stream. In this context, the activists–DRC successfully secured a policy silence of the issue of vulnerability. A sufficient albeit temporary problematisation as hate crime prevailed to get Section 146 on the statute books. This was to prove a passing policy silence. Vulnerability loomed large if silent in the construction of Disability Hate Crime from the outset and was to prove problematic in achieving institutionalisation in the years that followed (Bacchi, 1999, 2009). In fact, a focus on vulnerability was to constitute a unique challenge to effective settlement of the Disability Hate Crime agenda, given that it reflected a competing problematisation of the

issue of targeted hostility and was linked to a different set of policy and service responses. This study considers this unique challenge in Chapter 7.

Reviewing the securing of Section 146, the former senior official at the DRC felt that the political intervention by the senior Cabinet Minister was key:

“He cared a lot about the work we were doing because obviously he got it ... we were obviously incredibly lucky that we had him in government. I don't remember another time where he'd used his position in that way ... I think he thought, 'Oh hang on, I can make this happen, there's an issue here'. And he did” (R6).

And the activists and key organisations also made it happen, with their evidence base, time-limited strategic alliance and parliamentary lobbying. It seems that at this early stage in the emergence of Disability Hate Crime policy, the key contributions were made by activists and politicians. Policy officials did play a role, complying with instructions from politicians informed by activists' concerns. This contrasts with subsequent stages of this policy agenda's development when policy officials assumed a more significant role and politicians less of a role. This is not unexpected (Kingdon, 2011). It is also striking that, following the securing of Section 146 in late 2003, the loose coalition which played a role in securing the provision seemed to dissipate. There followed a time lapse between securing legal provision and the policy domain becoming active. Other policy actors were to emerge in the intervening years, with some of the same contributors as the earlier phase but many different policy actors also involved. Notably, the DRC continued to play a significant role in subsequent stages of policy development and implementation.

#### **4.6 Conclusion**

In this earliest stage of the emergence of Disability Hate Crime policy into the CJS in England and Wales in 2003, significant problematisation and activism occurred to socially construct disability hostility as a problem worthy of political–policy attention from the late 1990s–early 2000s onwards. It is also clear that critical political interventions by ministers and other politicians occurred without which no legal provision to address Disability Hate Crime would have been enacted as and when it was in the early 2000s. It is furthermore clear that a strategic coupling occurred between activism and the political arenas enabled by policy entrepreneurs. These policy entrepreneurs identified a policy window of opportunity in the form of the development of the CJA 2003, and successfully pushed on that window to secure entry into the hate crime policy domain for Disability Hate Crime. In doing so, they homogenised Disability Hate Crime as simply another strand in the hate crime domain. They successfully problematised the issue, identified an existing solution, and politicians bought its 'fit' with the hate crime domain. In doing so, they emphasised its commonalities (to the neglect of its specificities) with existing hate crime strands. They also argued for parity of protection. It can be argued that activists may have overstated the commonalities and understated the

specific features of Disability Hate Crime. They did this to secure their overarching aim of a home in hate crime for disability hostility. Politicians took their arguments on board and the CJA 2003 had the appeal of a ready-made solution with the minimum of policy disruption for politicians and policy officials, a recognised feature in the literature on securing policy adoption (Kingdon, 2011).

In successfully securing the emergence of Disability Hate Crime via an amendment to the CJA 2003, activists–DRC engaged in a series of understandable policy compromises and policy silences that were to prove challenging in subsequent stages of policy development and implementation. A former CJS leader interviewed in this study reflected that, in a sense, when taking Disability Hate Crime into the hate crime legal provisions, no one stood back and questioned whether the same approach as existed for established hate crime strands would apply, and whether there were differences in disabled victims' experiences of targeted hostility that may require a differentiated legal approach (R19).

Linked to this, activists and politicians settled for a sentencing uplift provision in a domain previously marked by specific aggravated offences in the areas of racist and religious crimes. In doing so, it can be argued that, contrary to the rhetoric of parity of protection, a disparity in protections became institutionalised in the CJS in 2003. This too has proven problematic in subsequent years (see Chapter 5). Key activists–DRC staff involved were fully aware of this compromise. They were also aware that they pursued what was feasible and what they thought would work.

A former senior official at the DRC recollected:

“We went for what we could get then, to get it on the map in a meaningful way ... you know you can do all the kind of hard work later, because obviously the legislative thing, you got it there” (R6).

It is interesting that these enacted legal protections for the Disability Hate Crime strand were to prove challenging in the years that followed and led to a Law Commission review in 2013 on potential extension of aggravated offences.

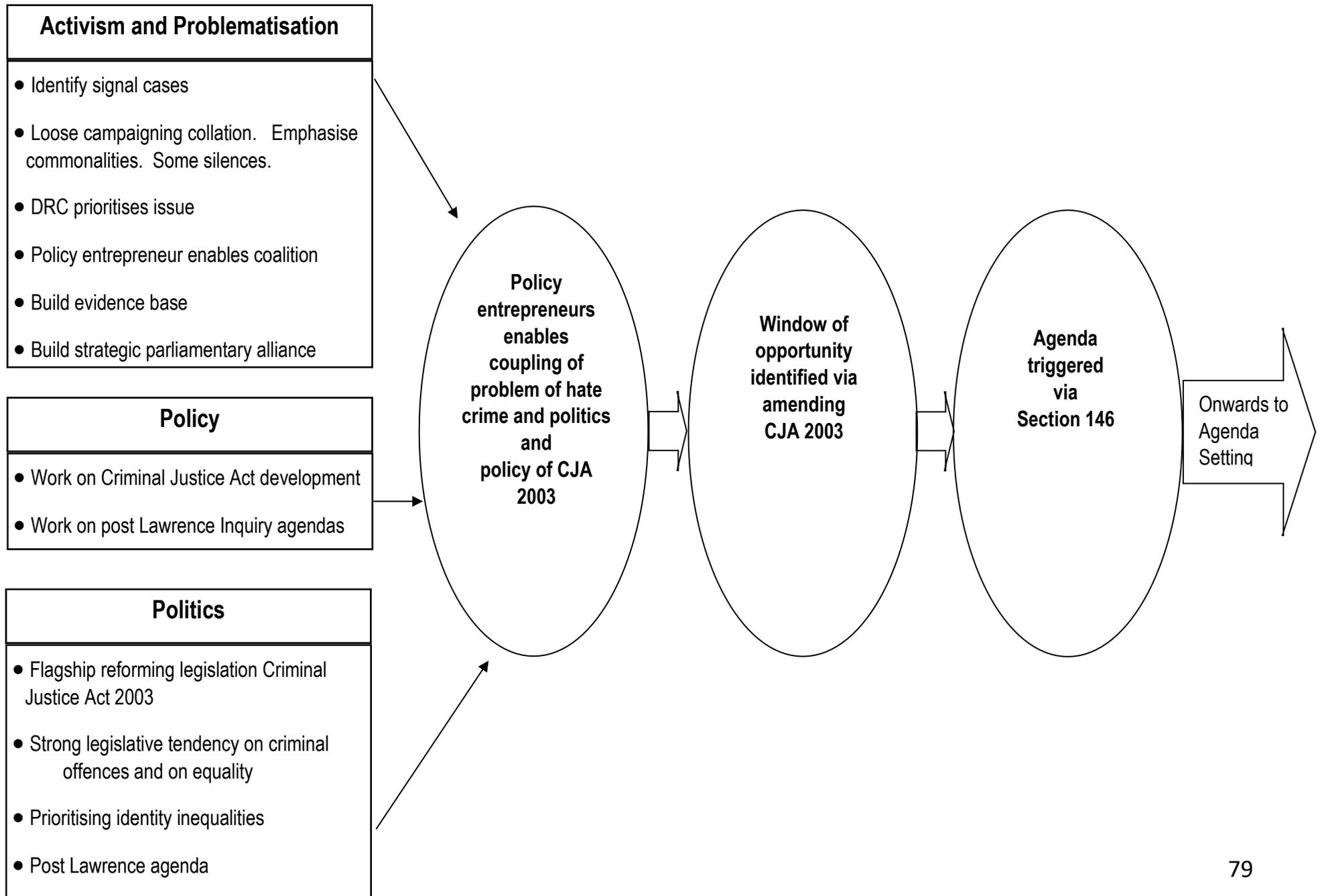
Policy silences as mentioned earlier were also evident in this earliest stage of Disability Hate Crime policy emergence. As evidenced in subsequent chapters, this was to prove a very temporary policy silence and the competing problematisation and problem representation of disabled people's experience as one of vulnerable people was lurking just around the corner (Bacchi, 1999, 2009).

Through a blend of successful problematisation, activism, and successful coupling with political-policy priorities, Disability Hate Crime emerged into the legal policy domain in late 2003. However, it was a piece of legislation that was not to be enacted for another two years, in 2005, and the policy domain was not to become more fully active until 2006-07. Reflecting on this emergence of Disability Hate Crime into the policy

domain in 2003, Kingdon talks of such a key moment as agenda setting. Kingdon refers to agenda setting as that critical moment when an issue secures its substantive place on the government's policy agenda. However, considering what occurred for Disability Hate Crime in 2003 and its silent aftermath, I hesitate to describe it as agenda setting. I tend to view the enactment of Section 146 as about agenda triggering rather than agenda setting, a view shared by key informants interviewed as part of the research for this thesis (R7).

The agenda was triggered in that Disability Hate Crime was formally on the statute book. It was now a legal fact. A policy agenda was not yet set in terms of how it would be defined, recognised, and responded to within the CJS for policing and prosecution purposes. Agenda setting for Disability Hate Crime was to take further significant activation over the next four years in the policy and activist streams. In conclusion, I would present this first phase in the emergence of Disability Hate Crime policy diagrammatically as follows (see attached). This is my adaptation of Kingdon and Bacchi's analytical frameworks, constituting agenda triggering rather than full-scale agenda setting which was yet to follow. Furthermore, this was a policy issue where the first set of activists who secured the legal provision largely dissolved post-2003, and a second wave of activists and policy officials with some continuity were to become active later in 2005-06 onwards. Given the time lapse between legislating on the issue and fuller activation of the policy domain, it raised a question as to whether Disability Hate Crime was an issue before its time in 2003 and, then four years later, in 2007 an issue whose time had come. The next chapter addresses this question and, in particular, the development of Disability Hate Crime policy in the years post-2003 through the activation of the policy domain beyond legal enactment.

## Phase 1—Agenda Triggering



## **Chapter 5: Agenda Setting**

### **5.1 Introduction**

Whilst a Disability Hate Crime agenda was triggered with the inclusion of Section 146 addressing hostility aggravation in the CJA in 2003 as noted in the last chapter, it took significant further policy activity, activism, and problematisation to move from agenda triggering to agenda setting on Disability Hate Crime. This chapter aims to analyse the development of Disability Hate Crime policy and practice beyond the issue's first emergence. The focus is on analysing the policy journey from agenda triggering to substantive agenda setting. The chapter aims to do this by tracing and analysing the contributory factors and challenges in the setting of a policy agenda on Disability Hate Crime.

The evidence indicates how the focus shifted to the policy stream whilst also remaining on the activist–problematisation stream. In contrast to phase 1 on agenda triggering, less activity occurs in phase 2 in the politics stream, albeit not absent at strategic moments (Kingdon, 2011).

The arrival of Section 146 on the statute books by the end of 2003 has been regarded as the birth of the Disability Hate Crime policy agenda (Mason–Bish, 2009). Although an essential moment, it was simply a milestone on the journey to a Disability Hate Crime policy agenda. Although legislated for in 2003, Section 146 was not enacted until 2005, and a substantive policy agenda, this chapter evidences, only began to develop from 2004–08 and beyond. Chapter 4 concluded with a query as to the significance of this time lapse. Was Disability Hate Crime an issue before its time in policy terms in 2003? Had its policy time come in 2007, when significant evidence of policy development was available? The evidence indicates that Disability Hate Crime was a way of conceiving of targeted victimisation of disabled people that was in advance of the prevalent view of hate crime in 2003 and an issue whose embrace into the policy domain was to come in 2007 (R7).

This chapter critically traces the increasing social construction of Disability Hate Crime policy and practice in 2003–08 and beyond. The issue began to be constructed as a problem requiring a legislative response in the period 2000 to 2003. It required significant further construction to secure substantive policy agenda status which was to occur some years later (Best, 1999; Bacchi, 2009).

### **5.2 Working in the glow and shadow of the Lawrence Inquiry**

As indicated earlier, the Lawrence Inquiry had a catalytic impact on the development of wider equality policy and practices in the public sector, as well as a specific impact on the development of the hate crime agenda in the CJS. This study's findings are consistent with others in this area (Tyson and Hall, 2015; Hall, 2013; Giannasi, 2015). In 2003, public sector organisations in the CJS responded to the then recent Race Equality Duty and started to put race equality schemes in place. Alongside this, the CJS had developed policy on

racist and religious crimes (CPS, 2002). There were now tangible CJS policy products demonstrating what was possible at least in respect of one protected characteristic, race. This did not go unnoticed by activists and policy officials involved and as one national disability activist commented:

“The Stephen Lawrence Inquiry ... gave a framework which we could overlay across other equality strands” (R10).

And disability activists were able

“... to turn themes from the Lawrence Inquiry from institutional racism into institutional discrimination; from racist crime into hate crime, and in time into Disability Hate Crime” (R10).

This resonates with existing literature on the influence of the earliest equality strands on those that come later (Grattet and Jenness, 2001) and on policy transfer and diffusion (Jones and Newburn, 2007).

Senior CJS officials, both in policing and prosecution services, shared these views of the catalytic impact of the Lawrence Inquiry, although expressed differently.

A senior manager at the London Metropolitan Police said:

“I don't recall, prior to the Stephen Lawrence Inquiry, much interest at all in this area (equality and hate crime) .... The Stephen Lawrence Inquiry report utterly changed how we act in the police force, so it was a pivotal moment. And obviously, it started off with the recommendations ... Initially it was on the basis of race ... and introducing processes and procedures to make sure that we would not mess up, for want of a better expression, as badly again ... Then it started to move into wider areas and ... there was a recognition ... that there are other people who are underrepresented and who may be vulnerable. I remember it very quickly moved into LGBT policies and then it started to migrate into, ‘We need this approach for other groups, including disability’” (R11).

This is a recognised theme in the literature on the impact of the Lawrence Inquiry on equality and hate crime policy making (Hall, 2013; Giannasi, 2015).

A striking feature in analysing the language used by respondents when referring to the Lawrence Inquiry impact on equality and hate crime policy making was the use of phrases such as ‘opening up space’, ‘opening doors’, ‘seizing opportunities’. This resonated with Kingdon's emphasis on opening windows of opportunity through which new policies may emerge (Kingdon, 2011).

Some respondents linked the catalytic impact of the Lawrence Inquiry to wider societal developments at the time, enabling a coalescing of developments to occur (Ibid.).

“You had a pretty strong disability rights movement (in the late Nineties) which was well established and pushing on all fronts, in fact, you had a flowering of a kind of new civil rights movement ... from the late Nineties. I think because you had New Labour and you had a kind of relatively progressive regime on civil rights, except on terrorism ... you had this space for things to happen, which meant that ... there were reforms happening in lots of areas. So, you had relatively reformist Home Secretaries who were willing to do things, at the same time as control other things” (R12).

A top tier civil servant with responsibilities on hate crime policy interviewed for this thesis said of the Lawrence Inquiry’s influence on the equality and hate crime agendas:

“We had the seminal moment in the CJS which was about Lawrence ... about race for obvious reasons ... What then took place is that a number of other strands of equalities, and the people who champion their causes, came forward and said, ‘You know, we experience those very same things and we need to be heard too ... That seminal moment brought about a step change for race, and then other people were saying, ‘But we mustn’t be forgotten” (R13).

He added that the Lawrence inquiry and its aftermath

“... created the language ... this idea of rights, which was not a language we’d used before” (R13).

However, he cautioned that this language and framework of equality did not deliver for all equality strands, in particular disability, what might have been expected:

“This was the view ... you send one equality and right through the door (race) and the rest get pulled along on the coattails, and that wasn’t true. It did it for religion, I think, and belatedly it started to do it for LGBT equality. It hasn’t done it yet for disability, and that’s what we need to do” (R13).

This vividly articulates Grattet and Jenness’ identification of a journey from core protected statuses in hate crime to a second tier of protected statuses (Grattet and Jenness, 2001). My analysis now turns to this issue of disability journeying through the hate crime policy door–window.

### **5.3 The Policy Stream further activates the development of Disability Hate Crime policy and the Activist Stream engages**

A central issue highlighted by the Lawrence Inquiry was the challenge of institutional racism potentially facing Britain’s public sector. In accepting the inquiry recommendations, the Government undertook to legislate to place a duty on public bodies to promote race equality and plan racism out of these institutions. This Race Equality Duty took effect across 42,000 public bodies in Britain in 2002. Notwithstanding critiques of the equality duties approach (McLoughlin, 2007; McVeigh, 2017), in particular how a systemic challenge

became redefined as a bureaucratised response in terms of equality schemes, the research for this thesis has found that these duties marked a seminal moment in policy development on equality and hate crime. As a senior independent research respondent commented:

“The Stephen Lawrence Inquiry led to the first public sector equality duty, the Race Equality Duty, and then the Disability Equality Duty came after that, shortly followed by the Gender Equality Duty and now, of course, we have the Single Equality Duty. So, in a sense, the Stephen Lawrence Inquiry was a scene setter and complete watershed moment ... The state now had a role in terms of moving away from that passive reactive model of just trying to manage and deal with an event after it has happened, to moving to a more proactive approach of promoting and raising equality and requiring public bodies, including the criminal justice organisations, to start adopting that more proactive approach” (R14).

#### **5.4 Arrival of Disability Equality Duty prompts “discovery” of both the Disability Hate Crime solution and problem**

Scholars have noted the significance of the enactment of legal provisions to address equality and hate crime as a key stage in the development of the equality agenda (McLoughlin, 2007) and the hate crime agenda (Best, 1999). Legislation marks a key stage in the “institutionalisation” of hate crime with “laws on the books and bureaucrats keeping records” and these issues transition to become “the objects of social policy” (Best, 1999, p. 63). Mason-Bish (2009) notes that the specific impact of equality anti-discrimination legal provisions on the establishment of hate crime policy and practice in Britain was a research gap of hers which merited consideration. This research thesis has addressed this gap and considers these equality law impacts below in this first academic analysis of the influence of the Disability Equality Duty on Disability Hate Crime policy.

##### 5.4.1 Considering the influence of the Disability Equality Duty

The Disability Equality Duty came into effect in 2004 and required public sector bodies to advance disability equality. Public organisations had to involve disabled people in identifying the priority areas that their organisation should focus on. They were also required to proactively work to eliminate disability harassment as it related to their functions. Public organisations were required to set out their planned response in a Disability Equality Scheme or a Single Equality Scheme - a plan for advancing equality over a three-year period.

The context in which the duty emerged into the CJS is significant. The CJS had been subject to significant criticism in the Lawrence Inquiry, with the Race Equality Duty and racist crime initiatives following in its aftermath. Issues of equality and diversity rose significantly up the policy agendas of CJS agencies (Giannasi, 2015; R11).

A strategic focus on issues of equality and diversity emerged in the CJS. Thus, the organisational climate was amenable to responding to equality and diversity issues (McLoughlin, 2007; O'Leary, Schneider, Jackson, and Iqbal, 2003). Respondents were critical of the wider public-sector response to the Disability Equality Duty but singled out the positive response of parts of the police and the prosecution service. A former senior manager at the DRC commented:

“I think the Disability Equality Duty played a positive role in organisations like the Crown Prosecution Service and the police and others in their thinking about equality and hate crime” (R7).

However, he was less positive about its impact in the wider public sectors:

“The big opportunity that was there with the duty to address disability related harassment more widely in the public sector ... is one that was never really taken up” (R7).

#### 5.4.2 Disability Equality Duty enabled a coupling of Activist and Policy stream priorities and the policy 'discovery' of Disability Hate Crime

The Disability Equality Duty's requirement for CJS agencies to involve disabled people in identifying their priorities for disability equality led to unprecedented levels of engagement between the CJS and disabled people. This led to the 'discovery' of Disability Hate Crime as a shared priority between disability activists and policy officials charged with framing organisational responses to the Disability Equality Duty.

CJS respondents highlighted the Disability Equality Duty as the single most significant contributory factor to the development of the Disability Hate Crime agenda in the hate crime domain. They identified the Disability Equality Duty as moving the Disability Hate Crime agenda from inactive statute book provision to an active policy agenda.

A policy official involved on Disability Hate Crime policy recalled paying attention in a meaningful way for the first time:

“When the duty (Disability Equality Duty) came into force, that gave the system some levers to actually develop and then implement a policy around Disability Hate Crime. My sense is that Disability Hate Crime wasn't really recognised as a hate crime before the duty came into force” (R16).

One CJS policy official with recent involvement on hate crime policy felt that the Disability Equality Duty was central to CJS agencies prioritising Disability Hate Crime as a policy agenda:

“There’s the establishment of the Disability Equality Duty and the DRC because, as you’ll appreciate, public sector institutions will take that statutory framework very seriously ... it was not an item that could be ducked once it was on that agenda, once that framework had been set. That was a key contributory factor ... because that sort of set the thing in motion. It gave the framework” (R17).

Respondents emphasised that a space had to be created where criminal justice officials met disabled people face-to-face, explained what their organisations do and asked disabled people what their priorities were for the future from this organisation. Criminal justice agencies indicated they were ‘in the business’, so to speak, of preventing, detecting, responding to, and prosecuting crime, reassuring communities and, within all this, they had a focus on hate crime. In this context, not surprisingly, disabled people identified Disability Hate Crime as a priority.

This was a classic coupling with ingredients co-existing in the policy domain – a policy solution existing coterminous with, if not in advance of, a policy problem. This hate crime solution available in the CJS could be provided almost as an off-the-shelf solution to the Disability Hate Crime problem. Kingdon (2011) describes this as a scenario where the solution precedes the problem, and the solution seeks the problem. Indeed, a hate crime policy official commented that when Disability Hate Crime emerged into the hate crime domain, some Chief Constables queried, somewhat sceptically, whether this was not a solution in search of a problem (R8).

This context of a coupling of disabled people’s priorities and CJS organisations’ duty to respond led to the ‘discovery’ of Disability Hate Crime in a serious policy focused way. Disability Hate Crime moved closer to securing policy agenda status (Kingdon, 2011). In order to meet their new statutory duty, policy officials allowed Disability Hate Crime up the hate crime policy agenda, allowing increasing coupling to occur. They enabled the three streams of activism (where the Disability Hate Crime problem existed), politics (which had recently legislated for equality duties and hate crime), and policy activity (which now had to respond to the equality duty with a policy response informed by disabled people’s priorities) to flow closer together, moving Disability Hate Crime up the hate crime policy agenda (Kingdon, 2011).

These processes of discovering Disability Hate Crime did not occur in one fell swoop or in unproblematic ways. They involved, yet again, rearticulating and enhancement of the evidence base, and the move up the policy agenda came in stages. Criminal justice agencies gave policy commitments in their Equality Schemes to such initiatives as ‘Putting in place a Disability Crimes Policy’ (CPS, 2006) and committed to establishing a monitoring of Disability Hate Crimes (CPS, 2006; MPS, 2006). These acts of framing Disability Hate Crime policy commitments in statutory equality documents are significant policy moments. Thus, Disability Hate Crime began to move from inactive legal construct to active policy construction. Its social construction was increasingly underway.

This consideration of the influence of the Disability Equality Duty on the development of the Disability Hate Crime agenda highlights other themes in the literature. It points to the value of considering the political and policy environment impacting disabled people from the late-1990s to the mid-2000s, referred to as the beginnings of the 'civil rights era' for disabled people in Britain by respondents (R7; R12). Both civil law protections, such as the Disability Equality Duty, and criminal law provisions, such as Section 146, can be seen as part of a wider disability policy approach informed by themes of equality, rights, and justice (Roulstone and Prideaux, 2012). Kingdon (2011) points to the significance of the political-policy climate to understand the progress on any one-policy initiative. The developing civil rights agenda went beyond Disability Hate Crime whilst enabling further progress to be made. Without the wider 'pro-disability' climate engendered by the Disability Equality Duty, Disability Hate Crime would not have developed as it did in the mid-2000s.

The research for this thesis also shows that the Disability Equality Duty was uniquely influential for a time in the police and the prosecution service. There is not the same evidence that the duty was as influential in the wider public sector. In fact, there is critique of the limited contribution of the equality duties approach to advancing substantive equality, including scholarly articles calling on disabled people not to get involved with this largely processual response to challenges of systemic inequality (McLoughlin, 2007; Pearson, Watson, Stabler, Lerpiniere, Patersen, and Ferree, 2011). The most trenchant criticisms highlight how the equalities duties approach can fail to address systemic challenges, despite their origins as a response to institutional discrimination. Over time, it is argued the institutional discrimination challenge has slipped from view while a hate crime agenda has been promoted as a CJS domain. What were originally both institutional and individual-level issues have been repackaged to focus almost exclusively on the individual level, namely hate crime. In the process, institutional discrimination easily goes unchecked, in an era where CJS agencies have successfully positioned themselves as on the side of hate crime victims. In this increasing slip from the institutional to the individual, which has occurred over 15 or more years, critics have argued the risk is an over-individualised focus on inequality, whilst institutional inequalities go unquestioned (McVeigh, 2017; Piggott, 2011; Conrad, 2014).

However, it is clear that, at a specific moment in the mid-2000s in the CJS in England and Wales, a significant flowing together of streams of policy activity on disability equality arising from the Disability Equality Duty, together with activist demands for prioritisation of Disability Hate Crime, met in terrain predisposed to progress, and the Disability Hate Crime agenda further developed at that time.

Significantly, the emphasis was on parity of protection and equivalence in experience across hate crime strands. This is understandable for the Disability Hate Crime agenda still seeking to secure a firm policy and practice home in the hate crime domain. Explicit recognition of the differences in the Disability Hate

Crime experience were still unidentified; policy silence on differentiated experiences remained and was to do so for a while (Bacchi, 2009).

## **5.5 Policy stream maintains momentum with development of a common definition and policy statements; Activist stream highlights policy–practice gaps and case failures**

### 5.5.1 Public Policy Statement developed on Disability Hate Crime

The CJS policy stream, particularly in the prosecution service, the police nationally, and the then Office for Criminal Justice Reform (OCJR), began to engage seriously with the Disability Hate Crime agenda on the back of the Disability Equality Duty. This led to the CPS and the police prioritising Disability Hate Crime in their first Disability Equality Schemes or Single Equality Schemes (CPS, 2006; MPS, 2006), with the CPS publishing a Disability Hate Crimes Policy in 2007.

The research for this thesis indicated that the CPS set about producing this Disability Hate Crimes policy based on an established policy production formula from the existing hate crime strands of racist and religious crimes and homophobic crime. Its Disability Crimes Policy Working Group comprised CPS lawyers and officials, a senior ACPO representative, and a range of disability NGOs.

Indeed, the structure of the first CPS Disability Hate Crimes Policy closely reflects the previous CPS Racist and Religious Crimes Policy and the previous CPS Homophobic Crime Policy. There is limited issue-specific content. The CPS Disability Hate Crimes Policy was drafted to fit within an existing hate crime policy template - “a hate crime family”, according to one senior prosecution respondent (R29). A CPS policy official involved said:

“This architecture was there, the system could be adopted or tweaked for another hate crime policy, there was a reason to introduce it ... We followed the template (for hate crime policies) really in producing the policy guidance. It was quite easy to put together” (R16).

The working group chair reflected that this use of an existing hate crime template “might have strait-jacketed us as, I suppose, if you know something works, you tend to use that” (R18).

This resonated with existing analyses of policy making and the importance of ‘fit’ with an established policy approach, emphasised by Kingdon (2011), and the issue of hate crime domain expansion following an established path identified by Grattet and Jenness (2001).

However, two elements distinguish the CPS policy statement on Disability Hate Crime from earlier hate crime policies.

Firstly, the CPS' hate crime policy to address hostility based on disability was entitled 'Disability Hate Crimes Policy' (CPS, 2007). Although this title explicitly located the policy within the hate crime domain, it set the Disability Hate Crime Policy apart from other strands. Whilst there was no mention of 'hate' in the title of the established hate crimes policies – the Racist and Religious Crimes Policy and the Homophobic Crime Policy (CPS, 2002, 2004) - the existence of hostility and hate was probably more accepted in these areas. Meanwhile, the emphasis on 'hate' in the title of the Disability Hate Crimes Policy set a high linguistic and conceptual threshold for disability hostility (Roulstone, Thomas, and Balderstone, 2011). For established hate crime strands, there was an immediate location of the policy statements within wider prejudicial ideologies of racism and homophobia. However, there was no mention of a Disablist Crimes Policy or a location within disablism or ableism. Reflecting on this difference, a former CJS senior manager recalls considering – but not using - the term Disablist Crime:

“I remember us discussing that, as to how we termed it but, of course, disablist doesn't seem to exist as a sort of established term of prejudice in the same way as racist or homophobic” (R18).

Reflecting on this entitling of the policy statement as Disability Hate Crime, in contrast to the other hate crime policies, one former CJS leader wondered if:

“It may mean that, subconsciously, the threshold for Disability Hate Crime is higher than it is for other strands of hate crime, because prosecutors might ask themselves, 'Is this a racist crime?' And they might identify something as racism without asking themselves, and is it hatred? They are more likely to conflate and merge hostility and hatred together which, in the disability field, if you are sticking with Disability Hate Crime, means that you are arguably not approaching it in the same way” (R19).

In constructing it in this way, whilst very well-intentioned to explicitly locate it within the hate crime domain, the CJS may have inadvertently set higher thresholds for Disability Hate Crime than exists for other hate crimes strands.

This failure to locate disability hostility within wider disability prejudice is considered in the penultimate chapter on the relationship between Disability Hate Crime, Disablism, and Ableism. Here, it has been identified as an element in the further social construction of the policy in its policy development phase. Foregrounding hate in the title of this policy statement may well have contributed to future institutionalisation challenges. Roulstone et al. (2011) questioned whether its consequences for practice are that it “proves too high a legal and linguistic threshold to afford disabled people an equitable and responsive criminal justice system” (p. 362).

The second issue which marks the CPS Disability Hate Crimes Policy Statement out from the other hate crime policy statements is the attempted distinguishing between crimes based on vulnerability and crimes based on hostility. The issue of vulnerability as a challenge in respect of Disability Hate Crime is considered in Chapter 7. Here, I focus on how the issue of vulnerability entered into and featured in the policy development phase.

Chapter 4 showed how vulnerability attempted to surface in the first phase of agenda triggering but was subject to policy silence by the activists and DRC, helped by the ascendance of the activist stream. However, now the policy stream was in the lead on framing the CPS Disability Hate Crimes Policy and the issue emerged again. This time it secured a distinct focus in the Disability Hate Crimes Policy Statement. This marked a significant development in the social construction of Disability Hate Crime, when competing problem representations of vulnerability and hostility became problematically intertwined in a policy statement on Disability Hate Crime (Bacchi, 2009). Dealing with the consequences of this has posed one of the biggest challenges, which the research for this thesis identified in addressing Disability Hate Crime.

Those involved in drafting the first CPS Policy Statement on Disability Hate Crime, whilst perceiving a distinction between crimes based on vulnerability and crimes based on hostility, identified this issue as the most challenging aspect of the policy development on Disability Hate Crime. It was challenging in part because distinguishing between crimes based on vulnerability and crimes based on hostility was, in their view, a tricky, subtle difference. Their view was also influenced by the engagement with NGO members of the working group involved in framing the Disability Hate Crime Policy. Difficulties in the working group revolved around how the issue of vulnerability was to be addressed in the policy. A former NGO and CJS official who felt the vulnerability focus was inappropriate reflected:

“I remember having some back and forth ... I felt there was a set way that the CPS was doing it and it was not so responsive ... to some of the points that I was putting in ... I remember there being some resistance really ... I was being quite strong about the need to strengthen the language to get rid of the word ‘vulnerable’ ... When the force fit was being challenged, there was in part a lack of creativity about it ... It felt like we had to either force ourselves into this racist hate crime model or fall back on the thing of a vulnerable adult” (R3).

Notwithstanding varying views, those of CJS agencies prevailed. The policy stream was in the ascendant, and Disability Hate Crime was constructed as Disability Hate Crime plus vulnerability. It was constructed with a challenge of vulnerability built into the heart of the policy. In a trenchant critique of the CPS construction of Disability Hate Crime, Roulstone et al. (2011) comment:

“It is perhaps odd that having established the powers that attach to disablist hate crime responses, that blanket exceptions come into play where crimes are seen to be motivated not by hatred but by

the perceived 'vulnerability' of a disabled person ... it is concerning that vulnerability should weaken disabled people's right to legal redress, especially where institutional practices have helped cement notions of difference and where their categorical status is seen to weaken rather than strengthen such rights ... The notion of vulnerability, although not unique to disability, can be seen as categorically more pernicious when used in certain criminal justice debates ... It seems unjust to blame the individual" (p. 357).

Nonetheless, the 2007 CPS policy statement on Disability Hate Crime was seen as central to activating the policy domain on Disability Hate Crime by policy makers, practitioners, and activists involved. There now existed a policy statement that enlivened the statute for operational purposes.

On reflection, key officials wondered if they could have framed the policy statement to focus more clearly on disability hostility:

"I think we definitely recognised it was an issue (i.e. issues of vulnerability and hostility focus), but I'm not sure we took all the steps we could to address it" (R16).

The subsequent years highlighted challenges still to be addressed on this topic with the CPS having to issue further guidance to clarify the distinction between issues of hostility and vulnerability in Disability Hate Crime cases in 2010, and instigating a full review of the Disability Hate Crime policy in 2015-16.

#### 5.5.2 Development of a common definition of monitored hate crime – an incremental journey

Simultaneously, another CJS strand of work was underway in the policy stream. The ACPO led a cross-government work programme on hate crime based in the OCJR-Ministry of Justice (MOJ), including development of a common definition of monitored hate crime in the CJS. The policy stream was very active, not only in defining Disability Hate Crime and codifying this in a Policy Statement, but also in including Disability Hate Crime in what was to be CJS-wide hate crime monitoring. The further social construction of Disability Hate Crime was gathering pace. Disability Hate Crime was progressing towards 'institutionalisation', a crucial step in its policy development journey (Best, 1999).

To understand the policy activity on securing a common definition of monitored hate crime in 2006-07, it is important to revisit the Lawrence Inquiry and related developments within the CPS.

The Lawrence Inquiry contained a simple, yet far-reaching, recommendation in relation to defining and recording racist incidents. It recommended that an incident and/or a crime should be recorded as a racist incident or crime if the victim or any other person perceived it to be motivated by racism. This recommendation was accepted by the government. This definition remains at the heart of CJS definitions of hate crime. It is sometimes referred to as a victim-centred definition or a perception-based definition (Hall,

2013). The rationale was to enable reporting of hate crime and to minimise the risk of institutional blindness to hate crime exposed in the Lawrence Inquiry. Indeed, the continued use of the victim-centred definition when defining Disability Hate Crime for CJS policy and operational purposes confirms, yet again, the foundational influence of the Lawrence Inquiry agenda on the hate crime domain (Hall, 2013; Tyson and Hall, 2015).

In 2000, one year after the Lawrence Inquiry, the CPS launched the Denman Inquiry into potential racial discrimination in the prosecution service. The Denman Inquiry had its origins in racial discrimination in employment tribunal findings against the CPS in the late-1990s. The focus was largely on equality in employment, although it raised questions and made recommendations regarding prosecution practices and potential racial bias in charging decisions (CPS, 2001). The then DPP, Sir David Calvert Smith, accepted the challenge of institutional racism in line with the Lawrence Inquiry definition. A programme of work was launched to plan the potential for institutional bias out of the CPS and to promote equality (Taylor, 2009). One aspect was a project by Professor Gus John to analyse CPS charging decisions, to identify any potential racial bias within prosecutors' decision making. Among the recommendations in the ensuing report, 'Race for Justice' (CPS, 2003), was a recommendation that the Attorney General should take a lead across the CJS in moving forward issues raised in this project, "not least in respect of the handling of race crimes by the police, the CPS and the Courts" (CPS, 2003).

It was 2005 before the Attorney General appointed Mr Justice Fulford to chair a task force to address the issue. In its report in mid-2006, the Race for Justice Taskforce highlighted patchy and poor monitoring of racist crimes across the CJS and recommended that:

"All the agencies track cases from receipt of an allegation to the end of the court process using some core, common terminology" (AGO Race for Justice Taskforce, 2006).

The Taskforce's recommendations regarding the need for common definitions, training, monitoring and service delivery were accepted by the Attorney General and the CJS.

Although the Fulford Taskforce report has limited profile beyond those involved, the research for this thesis found that it set the scene for the emergence of a common definition of monitored hate crime (R8; R3). It also set the scene for the development of a cross-government programme of work on hate crime for the first time and for the institutionalisation of Disability Hate Crime in the hate crime domain (Giannasi, 2015). It also stands as the sole significant positive engagement by the judiciary with the development of the hate crime policy agenda.

A Race for Justice Programme of work was put in place in early 2007 across government to address the Taskforce recommendations in relation to common definitions, training, monitoring, and services to victims.

Coordinated by an ACPO lead based in the then OCJR, it developed into the Cross-Government Hate Crime Programme and is located to this day in the MOJ, supported by an independent advisory group. It has provided key elements of the overarching national framework within which the hate crime agenda, including Disability Hate Crime, continues to develop. The Programme's approach – reading across from racist crime to apply the recommendations equally to other hate crime strands, including disability - was to prove very significant.

Following a period of assessment, ACPO produced a common definition of monitored hate crime, with the categories set out as race, religion, sexuality, disability, and gender identity.

The inclusion of Disability Hate Crime in this common definition of monitored hate crime was, according to respondents, a significant moment in the construction of Disability Hate Crime policy and practice in the hate crime domain:

“It brought disability into the hate crime canon, into the fray in the UK and it meant that every year ... there was a scrutiny on disability along with all the rest ... It was bringing together disparate agendas on hate crime ... so racist crime, homophobic crime, disability crime now came into this overall hate crime policy agenda ... It made hate crime policy definitions coherent. It made a cohesive whole, if you like, with these recognised specific strands” (R3).

Another respondent emphasised how this definition:

“... placed disability on an equal footing in terms of other hate crime strands and conveyed government policy that this is one of the issues we will look at” (R20).

Some respondents emphasised the symbolic and substantive recognition conveyed through such inclusion, reflecting the importance of the “politics of recognition” for minority identities such as disability:

“It meant that Disability Hate Crime was interpreted on the same footing as other equality strands where previously there's been a difference, which was symbolically important. I think that was important because it was in a sense linking disability to areas where it is already framed in terms of justice and equality” (R21).

Such recognition, akin to the cultural recognition analysed by theorists of multiculturalism such as Charles Taylor, goes some way to understanding the symbolic and substantive importance for the disability movement of the inclusion of Disability Hate Crime in this common definition. A group who expressed a

sense of social injustice based on misrecognition now felt affirmed, felt an injustice was in part righted and felt included, echoing the significance of the thrill of recognition for victim groups (Taylor, 1994).

Whilst activists tended to emphasise the importance of symbolic recognition per se, policy officials tended to emphasise the pragmatic benefits of having a common definition of monitored hate crime.

A HMIC respondent reflected:

“I think it was very significant. I think institutions with large numbers of people working in them need definitions in order to trigger a service ... if you don't have a definition, you don't know what you're doing and whether even the basics are being covered properly. And then in dialogue between agencies, particularly in the criminal justice system, you have to be talking more or less about the same thing along that chain, otherwise you don't trigger the right services at the right time” (R23).

Those more centrally involved in the policy activity to secure a common definition were cognisant of the significance of this stream of activity. Lead officials commented on it as of “massive significance” (R8), as a step in developing hate crime policy that “helps massively” (R36).

For activists, the politics of recognition, conveyed through an inclusive definition, mattered most (Taylor, 1994) - for some, it was as if recognition was the substance. For policy officials, recognition mattered, but having what they regarded as an operable definition against which crimes could be recorded mattered more.

However, the move towards a common definition of monitored hate crime was not universally welcomed by activists; some argued that the focus should remain on racist crime until there was greater progress towards eradicating it (Giannasi, 2015a; Scotland, 2007). This view was resisted by the CJS agencies that were concerned with a cross-strand approach in this era of multi-strand equality duties. Policy officials enlisted politicians in demarcating the policy terrain for the future. In late-2007, Baroness Scotland QC, then Attorney General, in a keynote speech to a European Hate Crime Conference in London endorsed a cross-strand approach without countenancing any dilution of efforts to combat racism.

In this moment, the policy and politics streams flowed closer together, enabling the further construction of the Disability Hate Crime policy agenda. By now in 2007, there was a legal provision to address Disability Hate Crime on the statute books, enactment of that legal provision, and a prosecution Policy Statement that sought to enliven and make the statute operable. There was an agreed definition of what was to constitute monitored hate crime which included disability. All of this was underwritten by the relevant politician delineating the hate crime domain with disability at its centre. The policy domain was, in a sense, opening

for business on Disability Hate Crime. Now it remained to test the policy in practice and to populate the category with cases. Activists were not slow to do so.

### **5.6 Activist stream challenges Disability Hate Crime policy in practice and populates the Disability Hate Crime category**

Alert to the policy developments that had occurred, the gains made in problematising disability hostility, and securing increased problem representation as a problem of Disability Hate Crime, activists were keen to further activate the domain to secure increased agenda status and appropriate responses (Bacchi, 2009; Kingdon, 2011).

It is interesting that the activist stream members pursuing the Disability Hate Crime policy agenda changed somewhat from 2005 onwards. Of those involved pre-2003, Mencap, VIA, the DRC, and activists in south and east London involved in police Independent Advisory Groups (IAGs) remained involved. They were joined, from 2005 onwards at different times, by a new Disability Hate Crime Network, Voice UK, Disability Now magazine, Disability Rights UK, and charities Scope and Mind. Post-2005, the DRC's involvement moved firmly into the policy stream, reflecting its organisational evolution. It made influential interventions to move the agenda forward, including strategic documents that foregrounded the issue of disability hostility (DRC, 2005, 2007). Strikingly, the evolving Disability Hate Crime movement was somewhat separate from the wider disability NGO sector. The wider movement engaged with the Disability Hate Crime agenda in bouts of action rather than sustained ways. In recent years, with many disability organisations focused on mitigating welfare benefit changes due to austerity measures, issues such as Disability Hate Crime decreased as a priority (R21).

Nonetheless, the activist stream, largely through the Disability Hate Crime Network, continued to contribute significantly to the further construction of the policy agenda on Disability Hate Crime. Key activist-driven developments occurred in 2006-07 when Disability Now magazine linked up with disability activists to focus on the issue. The magazine had come to the issue through profiling of high-profile cases, beginning with the case of Kevin Davies, a disabled man who was tortured and kept in a shed in the Forest of Dean (R12).

At the same time, other activists engaged with the CPS, ACPO, the Metropolitan Police, and the Metropolitan Police Authority in pushing forward the Disability Hate Crime policy agenda. They were securing an essential foothold in the hate crime domain as the elements of a policy and practice architecture were beginning to be put in place. However, activists were concerned at how Disability Hate Crimes were still not being recognised and responded to appropriately by the CJS (Sin, 2014).

In 2007, activists produced a Disability Now hate crimes dossier of 50 cases which the magazine argued should have been investigated as hate crimes. Disability Now, with a reputation for exposing previous abuse

against disabled people in institutional settings, was now lending its weight to this exposé of Disability Hate Crime. A cabinet minister interviewed in the research for this thesis noted the significant contribution that Disability Now made to setting a policy agenda on Disability Hate Crime (R5).

The Disability Now hate crimes dossier was informed by the close collaboration between the campaigning journalist involved and activists engaged with the police and CPS, including the Disability Hate Crime Network. One CJS policy official commented:

“They are quite a powerful journalistic lobby. They are effective from an organisational reputation point of view ... particularly in high-profile cases ... they know which strings to pull and how to have issues highlighted when there are shortcomings” (R17).

The activists’ approach lay in part in media exposé and campaigning journalism, not surprising given the backgrounds of some key activists. One disability activist reflected that his background enabled him to “almost sell the concept” of Disability Hate Crime to the CJS through exposing ‘the good’ - the CJS’ willingness to set a policy agenda on Disability Hate Crime - and ‘the bad’ – the CJS’ failure to respond appropriately to the issues (R24).

The activists’ approach was also informed by their involvement with various CJS groups involved in addressing the Disability Hate Crime agenda. They sat on CPS working groups, on Police IAGs, on Hate Crime Scrutiny Panels. They began to shift their modus operandi, from active campaigners for Disability Hate Crime policy development to active critics of gaps in performance. They shifted from problematising disability hostility to problematising CJS failures to address it through cases. They engaged in critique of a neglected form of hate crime often dealt with inappropriately by CJS agencies. Their criticisms revolved around the following narrative to the CJS: ‘This form of hate crime is widespread, you just don’t recognise it; your response is inadequate, and you are failing on very serious cases. How can you expect us to have confidence to report if you do not recognise and respond appropriately?’ As one disability activist commented:

“People like myself and X and Y also were involved in various police advisory groups. So, being on IAGs, we suddenly were then able to say, ‘Hang on, let’s look at what we’re talking about here and relate it back to what we’re doing on the policy bodies (on Disability Hate Crime) and find the gaps’. Suddenly we find that there was not just a gap but a great black hole. The police ... weren’t being negligent in not charging hate crime, they just didn’t know of Disability Hate Crime. So that was an issue, and therefore the Crown Prosecution Service hadn’t got anything to go on .... And all of us activists were in advisory positions anyway and we were able to bring these things to agencies’ attention” (R24).

Activists did not rely on working as outsiders on the inside, raising issues with the CJS agencies through various working groups. They also worked in collaboration with others and used their well-established tactic of campaigning journalism and research drawing on their insider knowledge to expose policy implementation gaps in seeking to further progress the Disability Hate Crime agenda. These led to the publication in 2008 of the activists' report, 'Getting Away with Murder', published by Scope. The report sought to expose, through a series of case profiles that perpetrators were getting away without a murder charge, and sometimes without any charge at all, in cases involving targeted crimes against disabled people (Scope, 2008).

'Getting Away with Murder' fitted into classic social movement activism on hate crime where shocking cases are used to highlight the seriousness of hate crime and serious gaps in criminal justice agencies' response. It suggested a near epidemic of serious cases resonant of earlier social movement activism (Best, 1999; Grattet and Jenness, 2001). It served an agenda-grabbing function to move beyond agenda triggering to firm agenda setting (Kingdon, 2011).

The response to the report was significant with supporting statements issued from a Home Office Minister, the DPP, and a Metropolitan Police Assistant Commissioner. Policy stream respondents were critical of the report's methodology, whilst acknowledging its agenda-setting impacts. They indicated that it was the first report from the disability movement highlighting Disability Hate Crime shortcomings that elicited a whole-of-government response.

One senior EHRC official commented:

"The landmark moment really was the 'Getting Away with Murder' report because that was so shocking in its evidence. Of course, its evidence was ripped to shreds in terms of ability to create research that was robust and effective, but the evidence was there nonetheless ... That was the first thing that came out of the disability rights movement that put the test to the criminal justice system to think differently about it" (R20).

As with other reports on this agenda, 'Getting Away with Murder' underwent a transformation, a sort of evidence-cleansing exercise and, as a result, both chimed with and propelled forward the direction of travel underway in the policy stream (Kingdon, 2011).

In the research for this thesis, one disability activist wondered if the report's focus on very serious cases set up future challenges to identifying Disability Hate Crimes:

"This is something we were partly responsible for. The 'Getting Away with Murder' report set the bar too high because the cases reported in there were very serious. They were murders and they

were serious injuries. What we wanted to do was make people recognise that crimes against disabled people should be reported but we almost got to the point of, we turned people off by saying, 'Well, I haven't been injured or I'm alive, so therefore I've got nothing to report', and the big battle remained" (R24).

Notwithstanding the potential shortcomings of this 'shock and awe' strategy, it did, on balance, impact in progressing the agenda. It partly influenced the CPS in including a keynote contribution from an NGO Director at its Senior Management Conference in 2008 which was also attended by senior police colleagues. This NGO Director spoke about the CJS response to disabled victims and witnesses, a theme wider than hate crime, and addressed the issue of Disability Hate Crime. She highlighted some of the cases profiled in the 'Getting Away with Murder' report and the shortcomings in the CJS response. She asked whether the CJS had to await a Lawrence-type case for Disability Hate Crime to be taken seriously. A former CJS leader responded that, in his view, the 'Lawrence Cases' had already occurred in Disability Hate Crime, they just had not been acknowledged, and he pledged that this issue would be taken seriously (R30).

After this conference, the policy stream, via the CPS and the police, were further propelled into developing the Disability Hate Crime policy agenda. A few months later in October 2008, in a keynote address on Prosecuting Disability Hate Crime at a joint Bar Council–Equality and Diversity Forum-hosted seminar, the DPP stated that, in his view, Disability Hate Crime was widespread. He said that cases, including very serious cases, were not being prosecuted as they should be. He went on to say:

"This is a scar on the conscience of criminal justice. And all bodies and all institutions involved in the delivery of justice, including my own, share the responsibility" (Macdonald, 2008).

That speech not only accepted disability activists' criticisms of CJS failures but also challenged the CJS to recognise its failings. It was a leadership call to prioritise a focus on Disability Hate Crime.

Activists said they felt their core arguments regarding non-recognition, poor response, and vulnerability 'clouding the issue' were, for the first time, accepted by a CJS leader.

Activists and policy stream respondents spontaneously mentioned this speech as a significant contributory factor in the development of the Disability Hate Crime agenda.

A disability activist said:

"There was one Ken Macdonald who made that wonderful speech, disabled people are being let down ... Suddenly, the circle was squared ... That speech resonated through the whole criminal justice system. I think that was very important. We all did our work, but he was in a position to be

public, and that was what was needed. I'd say that speech did more to get the police, the CJS, and therefore ourselves ... the support we needed to go up into the next gear. It was a very powerfully received speech" (R24).

Policy stream officials involved were also aware of the speech's significance. They saw it as reflecting a developing policy agenda underway since 2006 and which gathered pace in 2007–08. A hate crime policy official involved reflected:

"Ken Macdonald's talk about a scar on the country's criminal justice system was a massive influential point and something I've quoted endlessly since" (R8).

### **5.7 Increasing coupling of streams of activity and a focusing event propel agenda setting on Disability Hate Crime**

During 2006–08, there was increased coupling activity from the policy stream, namely the impact of the Disability Equality Duty; the impact of the adoption of a common definition of monitored hate crime, together with ongoing activism and policy acceptance of shortcomings, and political endorsement of a way forward based on an espousal of parity of protection across hate crime strands. This was accompanied by what may be termed a focusing event in bringing the policy, activist and political streams closer together at this time (Kingdon, 2011). This focusing event was the Pilkington case, or the deaths of Fiona Pilkington and Francecca Hardwick. The aftermath of this event and the publication of the coroner's inquest report and an IPCC report into the deaths created a window of opportunity, through which the Disability Hate Crime agenda emerged (again) and a policy agenda status was secured.

Fiona Pilkington (38) and her daughter, Francecca Hardwick (18), died in October 2007. The coroner's report was issued in September 2009, followed by an IPCC investigation report into their deaths in 2011. When she died, Fiona was a mother of two learning-disabled children, Francecca and her brother. Fiona lived on a mixed tenure housing estate in Barwell, Leicestershire with her two children and her mother.

Fiona and her two disabled children experienced sustained anti-social behaviour, targeted harassment, and Disability Hate Crime over a ten-year period (Quarmby, 2011). Fiona contacted the police on over 30 occasions to report incidents of harassment and disability abuse of her and her children and targeting of her property. She also had contact with her local council. Fiona reported incidents of her children being called 'mong', 'spastic', 'freaks', 'Frankenstein', 'perv', 'nutcase', 'spazzo', and 'lunatic'. Both children were also subject to what was termed 'bullying' and targeted harassment at school. This verbal abuse often took place in the context of other harassment which included frequent window breaking, damage to the family's car, damage to the family's garden and, on one occasion, taking the boy captive, locking him in a shed and holding him at knife point.

Fiona reported all these incidents to the police and was frequently able to name the youths involved. A number of diary entries express Fiona's deep sense of frustration with the lack of official responses to the harassment. In a letter to her MP in 2004, she wrote, "I really am getting to the stage where I am at a loss as to what to do about most things". Then, three years later, with little progress she wrote to her son:

"The street kids are still being intolerable ... well, I have just given up ... I am just not cut out to take this much harassment" (IPCC, 2011).

The bodies of Fiona and her daughter, Francecca, were found in a burnt-out car in a lay-by near Earl Shilton in Leicestershire in October 2007. An inquest concluded that Fiona unlawfully killed her daughter and died by suicide herself. The inquest found that the responses of the police and the local council to reports made to them by the family contributed to Fiona's decision to act as she did (Inquest, 2008).

There are two sets of pertinent responses to the Pilkington case. There are the police and other agencies' responses over the 11-year period of the targeted harassment. Then, latterly, there are the responses by a range of bodies in the aftermath of Fiona's and Francecca's deaths.

Over the period of ongoing targeted harassment, incidents were dealt with in isolation and in an unstructured approach. There was little attempt to link incidents and appraise the extent and nature of the targeted harassment which the family were experiencing. The vast majority of incidents were closed soon after reporting and noted as incidents of "anti-social behaviour" (IPCC, 2011; Bacchi, 2009).

There was no identification by the police or other agencies of the incidents as hate incidents or hate crime, despite the police having a hate crime policy since 2004. However, the area did not incorporate national guidance on hate crime until late-2007.

The anti-social behaviour categorisation became the problem representation for what happened to Fiona and her family. Police did not distinguish between the level of seriousness of general anti-social behaviour and targeted harassment of this family. Beyond problematising each incident as anti-social behaviour, there was a lack of strategic appraisal of the range of incidents and lack of awareness of disabled people's experience of hate crime. They failed to respond to Fiona's repeated reports that this harassment was 'ongoing' and that it was her disabled family that was particularly targeted. Consequently, the police failed to consider the family's treatment as Disability Hate Crime (IPCC, 2011). These failures to recognise the targeted nature of the harassment and to respond appropriately linked to the tragic events of October 2007.

Latterly, the Pilkington case led to the critical inquest mentioned earlier which linked the lack of appropriate response by local agencies to the deaths of Fiona and Francecca. It also led to an IPCC inquiry into the police handling of the family's contact with the force over 11 years. In the next chapter, this study will

consider the institutionalisation of the Disability Hate Crime Policy agenda, and the influence of the Pilkington case on the EHRC's decision to proceed with a formal inquiry into Disability Related Harassment.

Kingdon (2011) defines a focusing event in policy making as a final "push" which a problem may require "to get the attention of people in and around government" (p. 94–95). Kingdon proposes that a focusing event may be "a crisis or a disaster that comes along to call attention to the problem, a powerful symbol that catches on" (p. 94–95). He acknowledges that focusing events are not all of the same nature and impact - in some areas, focusing events may be a determining factor in setting the future policy agenda, while in other policy areas, they may take on an "influence to make an item in a less visible arena move up a government agenda" (p. 95).

The evidence points to the Pilkington case as a focusing event, but a second-order focusing event. The case moved Disability Hate Crime, a less visible area of hate crime policy, up the government agenda. It opened a window of opportunity through which Disability Hate Crime emerged yet again, this time to secure policy agenda status.

Most respondents in the research for this thesis identified the Pilkington case as a focusing event. However, many qualified their view, saying that the Pilkington case, albeit a focusing event, was not a focusing event in the way they viewed the Lawrence case.

Here, as in so many aspects of the development of this policy agenda, the long shadow of the Lawrence case is present. It is as if the Lawrence case had, for some respondents, become synonymous with a hate crime focusing event.

One CJS hate crime champion said:

"Clearly, there have been some focusing cases in Disability Hate Crime ... we've Fiona Pilkington. There have also been some horrendous cases involving homicides and, whilst they had a high profile, they've not been as enduring as Stephen Lawrence" (R25).

It is as if, for many respondents, the Lawrence case was a first-order focusing event, with a far-reaching policy agenda that has been sustained for over 20 years. The Pilkington case was a second-order focusing event, which moved Disability Hate Crime significantly up the government agenda, such that it secured policy agenda status, but with less far-reaching impacts.

The Pilkington case was, in a sense, simultaneously familiar and different. At one level, it fitted the dominant narrative in the sense of an ordinary deprived neighbourhood and the corrosive effect of so-called 'low-level' hate incidents over time. This confirmed its continuities and fit with established hate crime strands important

for securing agenda status (Kingdon, 2011). It was also different in that this was a mother killing her disabled daughter and herself in response to this sustained disability harassment. In one sense, it was not a Disability Hate Crime but a reaction to Disability Hate Crimes. That said, it demonstrated how devastating the impact of hate crime can be and when faced with inaction by responsible agencies.

Some respondents reflected that the Pilkington case is better understood alongside a number of other serious cases of Disability Hate Crime. One former director in a disability NGO commented:

“There have been a number of events but they’re more fragmented than one particular thing ... the deaths in Leicestershire of the two women, the death of Stephen Hoskins ... the deaths of other folk all around the same time .... Instead of these being one event, there were quite a number of more fragmented tragedies that drew people’s attention to it ... A lot of people had to lose their lives before this was taken seriously” (R26).

This view on a number of second and lower-order focusing events is congruent with Kingdon’s analytical framework in which he identifies that, for some policy issues, sustained “awareness of a problem comes only with the second crisis, not the first, because the second cannot be dismissed as an isolated fluke, as the first could” (Kingdon, 2001, p. 98). In a sense, the Pilkington case was such a stark case in the aftermath of previous serious cases. Likewise, the Stephen Lawrence case was not the first racist murder in Britain (Bowling, 1999). Rather, these cases succeeded in a coalescing of politics, activism, events, and policy making such that the policy issues moved up the government agenda in significant ways (Thorneycroft and Asquith 2017).

The Pilkington case and subsequent coroner’s and IPCC investigation reports constituted the opening of a policy window of opportunity through which Disability Hate Crime secured agenda status in the hate crime domain. The case impacted the increased focus on recording, monitoring, and responding to disability hate incidents (Giannasi, 2015). It acted as the trigger for the announcement of the EHRC’s formal inquiry into disability related harassment (R14; R7); it enhanced the receptive responses to an OPM study on disabled people’s experiences of harassment and targeted violence (R14; R 7). It gave Disability Hate Crime a higher profile in both policing and prosecution policy and practice activity (R36; R8; R3). It formed a backdrop to political party manifesto pledges in 2010 to improve monitoring of Disability Hate Crime, and to its subsequent inclusion in the programme for government in 2010 (Liberal Democrats, 2010).

However, whilst achieving all of this, challenges, competing representations, silences, and ambivalences lurked within this policy agenda-setting activity. These challenges were to emerge in a very short time as the agenda moved towards institutionalisation as discussed in the next chapter of this thesis.

## 5.8 Conclusion

In this second phase of the development of Disability Hate Crime policy and practice in the CJS in England and Wales from 2004 onwards, it was then that the policy stream became actively engaged with this agenda and the activist stream fully engaged where it could with these policy stream developments. In contrast to phase one on agenda triggering where politicians determined the direction of travel and policy officials did what they were told, here, in phase two, policy officials were in the lead, steering developments and only occasionally asked politicians to intervene in support, which they did.

The arrival of the Disability Equality Duty applying to the public sector from 2004 shaped the 'discovery' of Disability Hate Crime by the CJS. Stung by past criticisms and alert to equality agendas after the Lawrence Inquiry, the CJS was keen to be proactive on equality issues. Thus, Disability Hate Crime entered a receptive criminal justice environment. The Disability Equality Duty led to a tweaking of a pre-existing solution to hate crime by the CJS that offered it to the disability movement to address disability hostility. The policy stream allowed this coupling of a hate crime policy solution and the disability hostility problem because it fitted their new statutory requirements to advance disability equality. In doing so, a largely off-the-shelf hate crime template was placed around Disability Hate Crime with limited attention paid to its differences. In fact, in an otherwise chequered history, the development of the Disability Hate Crime agenda is one of the relatively few examples of the Disability Equality Duty contributing to positive policy development.

Policy stream activity to implement a common definition of 'monitored hate crime' constituted another significant moment in the development of the Disability Hate Crime agenda. The significance lay in the recognition conveyed by the inclusion of disability within the monitored strands. This was hailed by activists for its symbolic recognition value and by policy officials for its pragmatic value. For many activists, recognition was the substantive issue whilst, for policy officials, having an operable definition was the substance. In the context of this study, this marked a key moment in the construction of the Disability Hate Crime agenda.

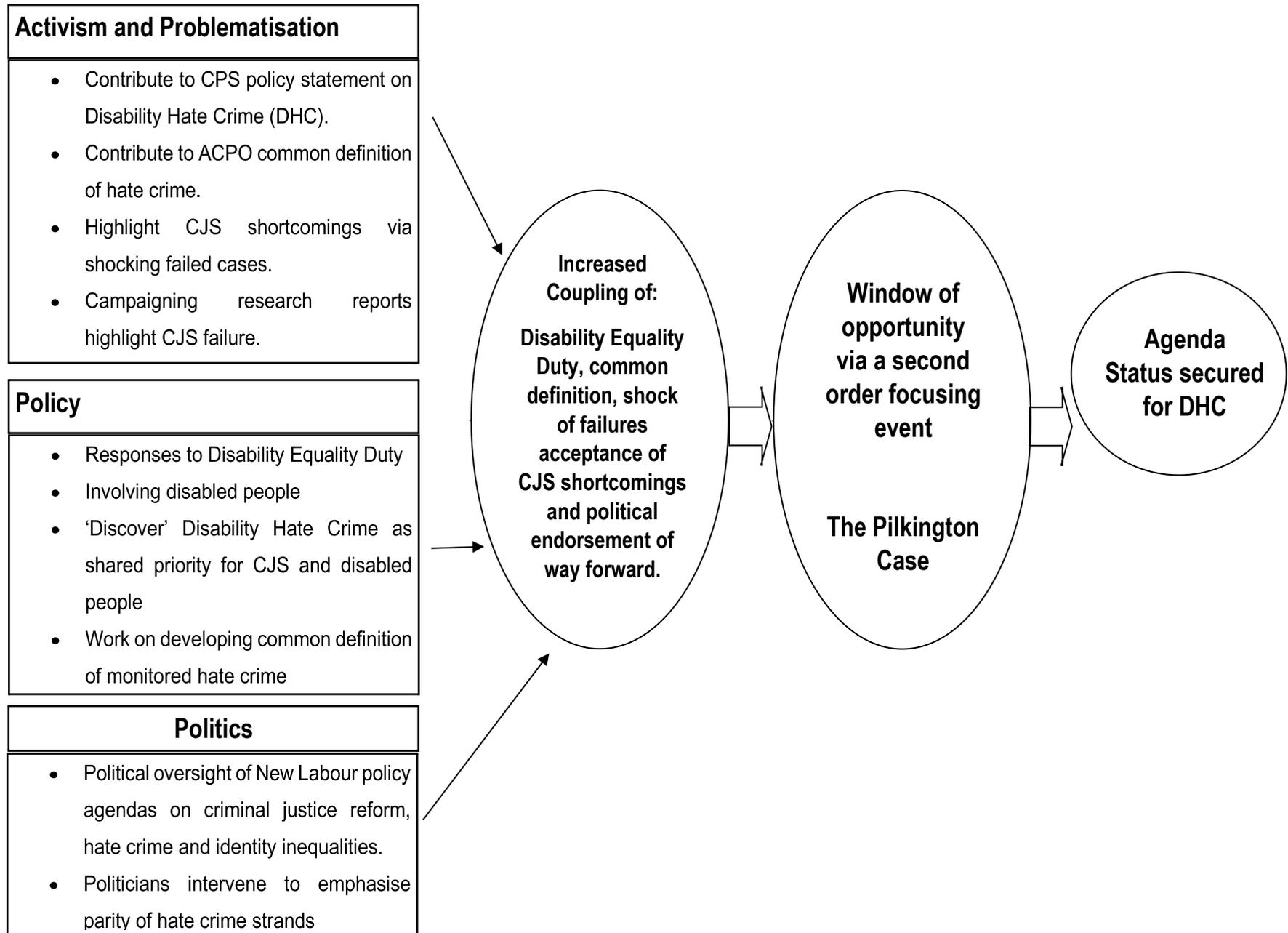
Furthermore, policy stream activity to develop a CPS Public Policy Statement on Disability Hate Crime constituted an equally significant moment in the construction and development of a Disability Hate Crime policy agenda. Taking Section 146 of the CJA 2003 as its launch pad, it enlivened and codified what it would mean for prosecution purposes. It made Disability Hate Crime real for lawyers and police having to investigate and prosecute it and for communities in raising awareness and appraising performance. It reflected established realities in that it largely replicated a model of hate crime devised some years earlier to fit racial hostility. It also broke the policy silence on vulnerability and hostility in Disability Hate Crime cases - this surfaced a challenge in the Disability Hate Crime domain (see Chapter 7).

Alongside these policy developments, activists contributed to both the development of a common definition and the development of a Public Policy Statement on this policy agenda. Having done so, they were alert to the need to test the policy in practice and to populate the category with cases. In a short timeframe, activists switched from being friendly critical contributors to policy development to becoming stringent critics of CJS failings. Activists used insights gained from policy involvement to highlight failure to prosecute particular cases as Disability Hate Crimes. They majored on exposing the policy–practice gap, partly through media exposé and campaigning reports. They gained traction with a narrative of lack of recognition and response and failure to deliver justice.

During 2006-08, there was increased coupling activity from the policy stream, with the impacts of the Disability Equality Duty, the development of a common definition, inputs from the activist stream highlighting stark policy–practice gaps, together with political and policy endorsement of a way forward based on espoused parity of protection across hate crime strands. This increased coupling of the policy, activist and political streams was significantly enabled by the influence of a second-order focusing event, namely the Pilkington case. Its aftermath and the related reports created a window of opportunity through which the Disability Hate Crime agenda emerged (again) and policy agenda status was secured (see diagram).

Whilst the Pilkington case moved Disability Hate Crime significantly up the policy agenda, it did not launch a wholesale policy agenda for the years ahead. Various challenges, competing problem representations, breaking silences, and the dilemmas of disability difference lurked within this policy agenda-setting activity. These became an issue in a very short time as the policy agenda journeyed on from agenda setting towards agenda institutionalisation (see Chapter 6).

## Phase 2—Agenda Setting



## **Chapter 6: Towards Agenda Institutionalisation?**

### **6.1 Introduction**

Whilst a Disability Hate Crime agenda was triggered with the introduction of Section 146 of the CJA 2003 and, subsequently, policy agenda status was secured in the aftermath of the focusing impact of the Pilkington case as noted in the last chapter, the agenda continued to develop and to journey towards institutionalisation from 2009 onwards. This chapter analyses the institutionalisation of this agenda beyond agenda setting. It focuses on analysing and understanding the policy journey to embed and institutionalise Disability Hate Crime within the hate crime domain. By institutionalisation in this context, this study analyses the efforts to embed Disability Hate Crime in the CJS in terms of law, policy, and daily practice (Best, 1999). The chapter analyses these efforts, informed by existing work on policy making and policy institutionalisation (Powell and DiMaggio, 1991; Best, 1999; Grattet and Jenness, 2001; Hill, 2013; Kingdon, 2011; Bacchi, 2009).

The evidence indicates how the activity was mostly focused in the policy stream with ongoing activity in the activism stream, but with less activity, although some strategic interventions, in the political stream. Although the primary focus in Kingdon's analytical perspective is on issue emergence and agenda setting on policy issues, his policy streams' perspective offers some insights into the institutionalisation phase of policy making. One insight, which the research for this thesis supports, is that policy development, institutionalisation, and evaluation do not take place or lend themselves to analysis in discrete, sequential stages. The evidence in this chapter points to policy development, policy institutionalisation, and evaluation on Disability Hate Crime taking place simultaneously at times (Kingdon, 2011). Kingdon also proposes that this is the phase when "career bureaucrats" have most influence in contrast to early policy making phases when politicians and activists played significant roles.

The analysis in this chapter augments Kingdon's analytical emphasis on the agenda setting phase with this analysis of agenda institutionalisation. This is a stage further on where the focus is more on embedding the policy within CJS business. Kingdon focused on how an issue gets onto the policy agenda; I complemented that with a focus on how it becomes embedded in practice.

### **6.2 Institutionalising the Disability Hate Crime agenda**

Whilst institutionalisation of the Disability Hate Crime agenda gathered pace in the aftermath of the Pilkington case, its origins lay in the legal recognition conferred by the introduction of Section 146 into the CJA 2003. Criminal justice agencies responsible for enforcing the new law then had to "operationalise the category" (Best, 1999, p. 60). They had to define Disability Hate Crime for law enforcement purposes, record this 'new' form of crime, respond to, investigate, and prosecute this crime. In doing so, they had to engage in significant ongoing social construction of Disability Hate Crime for

day-to-day law enforcement purposes. In this process also, they were beginning to place boundaries around this new crime, in terms of deciding what it was and what it was not (Best, 1999).

The concept of institutionalisation referred to here is informed by the insights of scholars on institutionalisation analysis such as Powell and DiMaggio (1991) and adapted by Grattet and Jenness (2001) in their analysis of policy making on hate crime, and the insights of Best (1999) on institutionalisation. Key elements in this perspective include the emphasis placed on policy formation as influenced by the importance of endorsement of a particular policy model by powerful state organisations giving rise to a policy domain; that policy domains are characterised by adopting similar ways of responding over time – ‘temporal homogenisation’: how the ‘taken for grantedness’ of a policy approach becomes reflected in how a policy topic is discussed and approached. It can take time for “debate and discussion to diminish as actors converge around a set of policy practices and definitions”. In time also, the part played by “collective action” should lessen as a “policy formula” takes hold and there is less need for constant “active promotion by particular collective actors” (Grattet and Jenness, 2001, p. 12). Finally, at different times in the policy making process, definitions, conceptions and categories can be used differently and evolve.

Best analyses the social construction of a range of social problems including the emergence of hate crimes as a “new crime problem in the 1980s” (Best, 1999, p. 63). He analyses the institutionalisation of hate crime as a criminal justice policy and practice in the US and the part played by legislation in achieving such institutionalisation. He emphasises the importance of the part played by criminal justice officials in terms of how vigorously they choose to enforce new laws once a policy is agreed, and “how the courts rule on the new laws” in influencing whether hate crime becomes a fully institutionalised crime problem, or whether it may fade from public attention. He views this institutionalisation of hate crime in the CJS as a daily process of social construction of hate crime by CJS officials (Ibid., p. 71).

I drew upon these theoretical insights together with those cited earlier in considering the continuing policy making journey of Disability Hate Crime and, in particular, in this phase of assembling the architecture and practices of institutionalisation.

### **6.3 Institutionalisation underway: from common definitions to common reporting**

Chapter 5 considered the significance of the CJS’ adoption of a common definition of hate crime, and how that constituted an important moment in the social construction of Disability Hate Crime. Following the inclusion of Disability Hate Crime in the common definition of hate crime by the CJS, the police began to produce Annual Hate Crime data and the CPS began to produce Annual Hate Crime Reports. These provided information on numbers of cases reported or referred, prosecutions, and prosecution outcomes. These data were located alongside data on established hate crime strands of racist crimes, religious

crimes, and homophobic crimes (refined in time to include transphobic crimes). This marked a significant step in the institutionalisation of Disability Hate Crime. It required from the CJS institutions a parity of consideration in practice via the police and CPS Annual Reports, with boundaries being placed around the officially reported problem. From the outset, these annual reports and data emphasised that these official hate crime figures were evolving administrative data sets with significant limitations and likely to underrepresent the scale of hate crime in society. This emphasis in this institutionalisation period on under-representation of the scale of hate crime has been accompanied by an equal emphasis on encouraging hate crime victims to report their experiences of targeted crimes, and an emphasis on how the CJS takes such crimes seriously. Alongside this, to further institutionalise the agenda, the CJS welcomed year-on-year increases in hate crime reporting as indicative of increased victim confidence to report rather than an increase in hate crime. It had confidence in this approach in part because the British Crime Survey (now the Crime Survey for England and Wales) had for some time indicated very significant under-reporting of racist crime victimisation. The Crime Survey for England and Wales' inclusion of questions on disability targeted victimisation in 2011-12 was a significant underwriting of the institutionalisation of the policy agenda on Disability Hate Crime being pursued by the CJS activists, policy officials, and politicians. One top civil servant respondent in this study described the 2011 report of an analysis of the Crime Survey data by Iganski, Botcherby, Glen, Jochelson, and Lagou (2011) on targeted disability victimisation as an "invaluable wake-up call" (R13). He talked of using this wider prevalence data to frame a call to staff for institutional action. It was a sobering reminder to the CJS of how, in the words of a former DPP, the CJS "was still 'only in the foothills' of institutionalising this agenda" (Starmer, 2011).

Thus far, the elements in this process of institutionalisation of Disability Hate Crime included the adoption of a common definition, embedding that definition within the CJS, the CJS' emphasis on under-recognition and under-reporting of Disability Hate Crime, along with its encouragement of further reporting and highlighting of the prevalence–reporting gap. These elements can be seen as institutional efforts in terms of both system management and system convergence. They attempted to make Disability Hate Crime 'real' in manageable terms for police and prosecution services in particular, and to secure a convergence of definitions and practices across the CJS (Power and DiMaggio, 1991). Analysis of CJS annual reports, press releases and policy statements/speeches on Disability Hate Crime figures from this institutionalisation period convey an identifiable CJS discourse in relation to Disability Hate Crime which emphasised the following themes:

- A significant and prevalent problem of Disability Hate Crime exists
- The significant under-reporting of Disability Hate Crime

- The historical and understandable lack of confidence by victims' communities to report Disability Hate Crimes to the CJS
- The seriousness with which the CJS now takes Disability Hate Crime reporting and its encouragement that victims report any hate crime experiences
- That the CJS can be trusted to take Disability Hate Crime seriously and respond robustly to reports
- That increases in Disability Hate Crime reporting reflect increases in public confidence in the CJS more than actual increase in hate crime
- That the CJS stands with victims of hate crimes and their communities in their commitment to tackle hate crime

These are powerful discursive messages to minoritised communities that have had mixed and often negative experiences of the CJS historically, including experiences of stereotyping, neglect, discrimination, and police victimisation (McVeigh, 2017). These messages, often packaged as 'public confidence measures' and/or 'victim-centred services', also served to legitimise a CJS that has historically faced a legitimisation crisis in its contacts with minoritised communities.

#### **6.4 From common reporting to the dilemma of disability difference – a challenge to institutionalising the agenda**

Whilst this increased institutionalisation of Disability Hate Crime was intended to 'normalise' it as part of the established hate crime domain through processes of shared definitions, reporting, recording, and responses, it not only led to increased policy convergence, but also began to highlight differences in the manifestations of Disability Hate Crime. A dilemma for the CJS was, and remains, whether the differences raised by Disability Hate Crime in terms of its manifestations can be responded to within the hate crime domain.

Over time, internal monitoring and annual reports from the CPS, the police and independent research by the EHRC (2009), and the evidence amassed through the EHRC Inquiry (2011) into Disability Related Harassment began to identify the emerging features of Disability Hate Crime. There was also developing international evidence (FRA, 2015a, 2015b) pointing to commonalities between Disability Hate Crime and established hate crime strands. It also pointed to specific features of Disability Hate Crime, not shared with established hate crime strands, but some of which were shared with violence against women. The following table adopted from the CPS' Annual Hate Crime Report 2010-11 highlights the shared and specific features of Disability Hate Crime.

<b>Principal offence category by hate crime strand</b>			
<b>Offence Category</b>	<b>Hate Crime Strand</b>		
	<b>Disability</b>	<b>LGBT</b>	<b>Racist and Religious</b>
Homicide	0.19%	0.4%	0.1%
Offences against the Person	41.6%	47.8%	44.2%
Sexual Offences	7.5%	0.7%	0.2%
Burglary	6.1%	0.9%	0.3%
Robbery	7.9%	3.5%	0.8%
Theft and Handling	10.1%	0.9%	3.0%
Fraud and Forgery	3.6%	0.1%	0.2%
Criminal Damage	4.6%	3.0%	5.6%
Drug Offences	0.1%	0.8%	1.0%
Public Order	12.5%	36.7%	37.6%

(Source: CPS Annual Hate Crime Report 2010-11)

The continuities between Disability Hate Crime and racist and religious and homophobic crime are indicated in the similarity in offending levels for homicides, offences against the person, and offences of criminal damage. They serve to support the institutionalisation of Disability Hate Crime within the hate crime domain. The specificities of Disability Hate Crime are indicated in the heightened levels of aggravated sexual offences, burglaries, robberies, theft and handling, fraud and forgery among Disability Hate Crimes, and in the lower levels of recorded public order offences.

These features of Disability Hate Crimes are also reflected in findings from CPS internal monitoring reflected in guidance to prosecutors (CPS, 2010b), in OPM research (EHRC, 2009), and in the EHRC statutory inquiry into Disability Related Harassment (2011a). These findings include:

- The frequent presence of previous incidents
- ‘Opportunistic’ offending becomes systematic with regular targeting
- Perpetrators are sometimes “friends”, carers, acquaintances, or neighbours
- The escalation of incidents in severity and frequency

- The occasional involvement by multiple perpetrators in incidents condoning and encouraging the main offender(s) – often through filming on a mobile phone and sending pictures to friends/social networking sites
- False accusations of the victim as being a paedophile or ‘grass’
- Sustained attacks, excessive violence
- Cruelty, humiliation, degrading treatment, often related to the nature of the impairment
- Negative experiences of reporting to criminal justice agencies

Disabled people’s tendency to report incidents to a third party rather than to the police

- The EHRC Inquiry (2011a) also identified the most frequently mentioned types of harassment in their inquiry as:
  - Damage to property
  - Exploitation, theft and fraud
  - Cyber-bullying and cyber harassment
  - Sexual violence and harassment
  - Bullying
  - Anti-social behaviour
  - Domestic violence
  - Physical violence
  - Institutional abuse

In attempts to institutionalise Disability Hate Crime and its manifest differences within the hate crime domain, the CJS broke the policy silence on the nature of Disability Hate Crime and issued further guidance to CJS practitioners designed to help them better recognise Disability Hate Crime and its different manifestations whilst continuing to firmly locate it in the hate crime domain (CPS, 2010b). Having emphasised its commonality with other hate crimes for over seven years, the emphasis

shifted to the need to recognise its different manifestations whilst still clearly locating it within the hate crime domain.

However, the specificities of Disability Hate Crime appeared to pose challenges to its further institutionalisation. These specificities challenged whether a homogenisation of a policy and practice response is possible, whether the 'taken-for-granted' hate crime approach is appropriate (Powell and DiMaggio, 1991), whether a 'policy formula' for responding to Disability Hate Crime that fits within the hate crime domain can be settled, and whether there is still a need for ongoing discussion and collective action to settle the institutionalisation of Disability Hate Crime (Powell and DiMaggio, 1991). The evidence indicated that the efforts at institutionalising Disability Hate Crime have and continue to pose challenges for the accommodation of the differences it brings to the hate crime domain which, whilst evolving and flexible, has well established if not homogenised policy and practice approaches (Macdonald, Donovan and Clayton 2017): (Thornycroft and Asquith 2015).

### **6.5 A call to institutional action or a challenge to institutional responses? The issues raised by the EHRC Inquiry**

The institutionalisation of the Disability Hate Crime agenda secured further impetus when the EHRC announced a formal statutory inquiry into Disability Related Harassment in 2009. Whilst some CJS respondents in this study indicated their surprise with this further step in institutionalisation, analysis indicates that it was some time in the making. It is another strand in the institutionalisation of this agenda in which the contribution of the earlier DRC, its legacy agenda, and the work of its former staff can be traced.

On its dissolution and merger into the EHRC in 2007 as mentioned in Chapter 2, the DRC had a clear recommendation that a top ten priority for advancing disability equality was a focus on disability harassment, safety, and security (DRC, 2007b). The EHRC responded and published a developing strand of work on the safety and security of disabled people in 2009 (EHRC, 2009). This study on disabled people's experience of targeted harassment, hostility and violence (EHRC, 2009) was a nuanced, rigorous account of the available evidence on this issue. However, this did not in itself trigger a commission-level response to concerted action on Disability Hate Crime. Notwithstanding the evidence-based approach, as with other studies, this study had to undergo the required process of transformation, where it moved from being a mere statement of conditions to being hailed as compelling evidence of the need for further institutional action (Kingdon, 2011). This transformation occurred when the Pilkington case and the reports into its handling became a significant media issue in 2009 and beyond. Respondents working in and with the EHRC said that

the Pilkington case played a pivotal role in “crystallising action within the Commission” (Smith, 2015, p. 38), (R14; R7).

However, these were significant aspects of the problem representation in relation to the EHRC’s formal inquiry into Disability Related Harassment. Whilst the impetus lay in concerns about Disability Hate Crime, the problem was deliberately framed as Disability Related Harassment to capture the continuum of disabled people’s experience, and because of a recognised difficulty with the language of hate (R7). Furthermore, the EHRC Inquiry was framed within the terms of the Disability Equality Duty responsibilities of public bodies to advance disability equality, work to eliminate disability harassment, and address unlawful discrimination. Thus, the EHRC was firmly locating the issue on the continuum of disability discrimination including violent discrimination. This was significant in institutionalising the issue as an issue of discrimination akin to other protected discriminations. It reinforced the case made in the previous chapter about the influence of the statutory equalities duty approach to hate crime developments. One national disability activist involved felt this Inquiry and

“... this approach was significant because it was thorough and inclusive and looked right across the field and was framed in such a way that could be understood by institutions and it did include activists, and it did it all within an equality duties framework. I think that made a huge difference” (R10).

Over a two-year period, the EHRC undertook a broad range of evidence-gathering exercises. Respondents who worked on the EHRC Inquiry said the process was a catalyst for change and institutionalisation in the public sector. One senior EHRC official reflected:

“The beauty of doing an inquiry is that it’s a lengthy process ... it allows change to happen along the way .... because, during the investigation, when you’re asking questions, when you’re taking evidence, when you’re talking to witnesses, you then find that people shift in the way they think, and it enables them to start doing things differently as a result” (R20).

The EHRC Inquiry highlighted conceptual and problem representation issues that resonate with findings in this study and highlighted central challenges in recognising and responding to Disability Hate Crime. It also implied a significant issue, which did not surface explicitly and was, in effect, silent. The first significant issue lies in the title of the EHRC Inquiry, *Hidden in Plain Sight*, a title proposed by the then Chair of the EHRC (R27). The Inquiry found that criminal justice agencies and wider public-sector organisations had often not recognised the hate crime dimension of cases, simply because they were not looking for it. Their perspectives were too often on anti-social behaviour and vulnerability. One EHRC Commissioner at the time wrote subsequently:

“If anyone had been looking, the issue of disability related harassment would be in plain sight, but it was hidden from the collective consciousness of these organisations that should be doing something about it” (Smith, 2015, p. 46).

This study has found a similar tendency by CJS agencies, particularly in the identification, investigation, and prosecution of cases in which a disabled person has been a targeted victim.

The second significant issue was the focus by state agencies on victims’ perceived ‘vulnerability’ rather than dealing with the perpetrators’ offending behaviour. Through a consideration of 10 serious cases, the Inquiry highlighted how an undue focus on vulnerability led to some of these cases being dealt with as social care reviews and never entering the CJS, resulting in justice being denied for disabled victims of targeted crimes. This goes to the heart of the unique challenge in Disability Hate Crime cases, the competing problem representations of vulnerability and hostility, which this study has also found, and which is the focus of Chapter 7.

The third significant issue relates to the Inquiry highlighting similarities in manifestations between Disability Hate Crime and crimes of violence against women in particular as they relate to abuse of power and exploitation. It might be argued that disabled people, because of their social positioning in society find themselves at heightened risk of experiencing an imbalance in power whether on the streets, in their homes, in care contexts. This again goes to the heart of challenges raised by Disability Hate Crime, and whether the difference which violent disability discrimination brings to the hate crime domain can be responded to within that domain. I consider this in Chapters 7 and 8.

The final issue implied – but never named - by the EHRC Inquiry relates to the issue of institutional discrimination. The Inquiry talks about “the systemic failure” by public authorities to recognise disability related harassment, to act to prevent it, and to intervene effectively when it does. It emphasises institutional and “organisational failings” to address the issue and how attempts to address disability related harassment need to focus on “organisational change” alongside the challenge of transforming how disabled people are treated and included in society (EHRC, 2011a). The focus is clearly on institutional discrimination without naming it as such, a policy silence that appears to have been consciously decided by the EHRC given a perceived negative legacy in relation to the challenge of institutional discrimination in the public sector in the aftermath of the Lawrence Inquiry. One EHRC commissioner reflected:

“We had to be careful of what we wrote and claimed in the report. It seemed lazy at the time to have just used the same language and said there was institutional disablism. Also, we did not feel that people had been able to focus and deal with the Lawrence Inquiry on

institutional discrimination. This is why we said instead that there was systemic failure on the part of the relevant bodies. It was carefully chosen language to try to infer the same thing without using the same language” (R28).

This section of the chapter questions whether the EHRC Inquiry constituted a call to action for public sector organisations or was it a challenge to institutional responses to date? The evidence in this study indicates that it had elements of both a call to action and a challenge to institutional responses. There is a level at which the EHRC Inquiry could be seen as an agenda-setting document that emerged in an agenda institutionalisation phase of policymaking. It had some features of a focusing event: it contained shocking cases highlighting institutional failure and conveyed starkly how disabled people were being let down by the CJS.

Varied views existed regarding the impact of the EHRC Inquiry and these in part reflected different expectations of the Inquiry. Some CJS officials thought the EHRC Inquiry would constitute a road map to further institutionalise the agenda in the CJS hate crime domain. They felt let down by another “shock report” (R15). One former senior CJS manager said:

“The whole ‘Hidden in Plain Sight’ report was a missed opportunity. It had the potential to do so much more than it did ... this is the programme for change, this is what you need to be doing within organisations ... this is what professionals were looking for .... They were looking for the Inquiry to provide that piece of future policy guidance that would energise the agenda again” (R15).

Other respondents felt that the very undertaking of the EHRC Inquiry was symbolically and substantively important, and its lengthy process and long-term reporting on progress helped institutionalise the agenda. A former CJS leader reflected:

“It was important that the EHRC picked up the baton for a period ... I think if you are going to change things and they are cultural things ... when you are talking about cultural change, you have to get the arrangements right. Then you have to constantly come back to them, monitor, change, monitor and develop a strategy for change, and so these reports are more important in that respect” (R19).

The EHRC did put in place a monitoring framework for tracking public sector progress against the Inquiry’s recommendations at yearly, three-yearly, and five-yearly intervals. Reflecting on this challenge of achieving institutional progress in responding to Disability Hate Crime, one senior EHRC official involved said:

“It will be 10 years before you see any significant change and it’s really hard for an organisation like ours, or any actually, to invest in something that is going to happen in five years’ time because we do not know where we’ll be, what our business plans will be, what our strategic purpose will be” (R20).

The research for this thesis found that criminal justice agencies felt the impact of the EHRC Inquiry in the first year following publication. However, they reported that, three years on, its impact as an impetus for further development and institutionalisation of the agenda declined. Respondents felt that an opportunity to further institutionalise the agenda may not have been sustained. An EHRC commissioner said:

“I do not know that the Commission has done an awful lot on the area publicly since, and I wonder if the relevant bodies just feel like they are not being watched as much ... I would have liked to have seen more progress by now, and I think that is reflected in the national numbers” (the low level of cases coming through to the CJS) (R28).

However, there is no doubt that the EHRC Inquiry contributed significantly to delineating the contours of the Disability Hate Crime agenda. It became a focal point for a lot of work and, because of its formal statutory basis, it commanded serious attention and is perceived to have influenced the CJS inspectorates and the Law Commission in taking up the agenda.

One former senior manager at the DRC involved with the Inquiry summed up its impact and this reflection resonates with the findings of the research for this thesis:

“Without doubt, the EHRC’s Inquiry was significant more ... because of its formality and focus ... It had a lot of buy-in and became a focus for a lot of work. I don’t think it particularly took us forward in our knowledge necessarily, maybe it was not intended to, and I don’t know what impact it subsequently had. I think, in terms of profile raising, it was key” (R7).

As stated earlier, policy making on hate crime, and indeed public policy making more widely, does not lend itself to analysis in terms of discrete sequential stages. The EHRC Inquiry was indeed a profile-raising and agenda-setting Inquiry and report that occurred in the agenda institutionalisation period for Disability Hate Crime. It was as much a call to institutional action as it was a challenge to institutional responses. That is not to detract from its contribution to further institutionalising the Disability Hate Crime agenda through its architecture of formality and through this call to action, a call taken up by other institutionalising contributions which we consider below.

Whilst the EHRC Inquiry was under way, momentum gathered around a disparity in the tariff for murder charges involving disability hostility. My research found that this had been picked up by CJS officials in 2007-08. As officials engaged with activists, they appraised them that the calculation for the minimum tariff in hate crimes (excluding disability) was 30 years if hostility was proven. Activists latched onto this and linked with politicians to highlight another lack of parity in protection on the basis of disability. They were assisted by policy officials identifying a window of opportunity to address this anomaly through the Legal Aid, Sentencing and Punishment of Offenders Act 2012 which was successfully availed of. This was yet another agenda-setting initiative occurring far into the agenda institutionalisation phase just as the EHRC Inquiry itself was.

## **6.6 Institutions failing to institutionalise Disability Hate Crime?**

Throughout the mid- to late-2000s, the CJS embarked on further initiatives aimed at institutionalising Disability Hate Crime within the hate crime domain. Initially, these reflected elements of a 'top-down approach' to policy institutionalisation reflected in government action plans to address hate crime which specifically set actions on hate crime including improving reporting, recording, and responding. In the earlier period, similar approaches included the setting of Disability Hate Crime targets to reduce unsuccessful outcomes by the CPS. These early initiatives fit within classic 'top-down' policy implementation approaches identified in the institutionalisation and implementation literature (Hill, 2013; Ramesh and Howlett, 2007). This broadly top-down target-driven performance management-based approach to institutionalising the Disability Hate Crime agenda was sustained for five to six years. A move away from this approach appears to have been influenced by a change in government in 2010, the prioritisation of a localism agenda, and the attendant move away from centrally controlled performance agendas. It may also have been linked to the impacts of increasing austerity, and the consequences of "Disability Hate Crime coming very late to the hate crime party" (R29). However, the CJS emphasised continuing priority be afforded to implementing Disability Hate Crime in the hate crime domain. A new focus emerged with CPS local areas working to a hate crime assurance system. This was an attempt at a more blended top-down bottom-up approach to policy institutionalisation reflecting a shift in the political emphasis (Sabatier and Weible, 2014) within a nationally defined framework where local criminal justice areas had autonomy to take action and demonstrate achievements.

Meanwhile, the criminal justice inspectorates (Her Majesty's Crown Prosecution Service Inspectorate [HMCPSI], Her Majesty's Inspectorate of Constabulary [HMIC], and HMI Probation [HMIP]) embarked on a joint review of CJS responses to Disability Hate Crime. Triggered by a concern about the handling of cases involving disabled victims and media reports of poor handling of Disability Hate Crime cases which had caused concern amongst disability groups, the CJS inspectorates decided to undertake a joint thematic review. Inspection of public sector policy

implementation fits within the 'top-down' policy making approach. The criminal justice inspectorates, in subtle but significant messaging, went beyond a limited performance review focus. They stated that Disability Hate Crime required a specific focus because society's attitudes had not yet changed to the extent they had on other equality issues. Thus, in many ways, "Disability Hate Crime ... is the hate crime that has been left behind" (HMCPST, HMIC, HMIP, 2013, p. 3; R54).

The first thematic inspection report published in 2013 revealed significant failures to institutionalise the Disability Hate Crime agenda within the CJS. It highlighted fundamental failings of the CJS' lack of clarity and understanding of what constitutes Disability Hate Crime, failure to prioritise the issue of Disability Hate Crime, failure to record Disability Hate Crime appropriately, failure to fully consider Disability Hate Crime issues in daily policing and prosecution work, and failure to use and record use of Section 146 in Disability Hate Crime court cases (R54; HMCPST, HMIC, HMIP, 2013).

These findings indicate that the CJS faced basic agenda-setting challenges in what should be a further advanced agenda-institutionalisation period. Considering the gaps highlighted above alongside the classic features of institutionalisation identified by Powell and DiMaggio, one can see the extent of the institutionalisation challenge which remained in 2013. Contrary to the classic features of adoption of a particular policy model (in this instance Disability Hate Crime) giving rise to a policy domain characterised by shared definitions, ways of responding, shared ways of approaching and considering the issue, and a shared policy formula, this inspection of Disability Hate Crime highlighted the need for ongoing debate and discussion, different definitions in operation, and a lack of a settled conception and policy formula. These features of agenda setting remained unsettled and continued into the agenda institutionalisation period for Disability Hate Crime (Powell and DiMaggio, 1991).

After this report was published, the CJS acknowledged that progress in implementing Disability Hate Crime policy had been slow and "a new impetus is required" (HMCPST, HMIC, HMIP, 2013, p. 1).

In classic institutionalisation steps, further CJS action plans followed, albeit with time lapses in getting these further improvement plans in place. A CJS inspectorate follow-up inspection in 2014 highlighted limited progress in institutionalising the Disability Hate Crime agenda in the CJS. It stressed that the "additional focus and attention" required to implement Disability Hate Crime policy "at an operational level, has yet to gain sufficient traction", and concluded that "performance has not improved sufficiently" (HMCPST, HMIC, HMIP, 2015, p. 1). The Inspectorates reminded the criminal justice agencies of their statutory equality duty to address this agenda: "This is a necessity and not an option as the criminal justice agencies have an obligation to tackle the underlying prejudice that drives all hate crime" (Ibid., p. 1). They highlighted the need to keep the focus on

institutionalisation. The CJS took further institutionalising steps including assigning lead responsibility for the agenda to the most senior management, devising further action plans, reviewing policy statements and guidance, and committing to prioritising Disability Hate Crime yet again in a further cross-government Hate Crime Action Plan in late-2016. The institutionalisation effects of these latest initiatives are yet to fully impact and be appraised and are the subject of a third CJS inspection in early to mid-2018 just as this thesis is being finalised. I would anticipate this most recent inspection indicating further progress in prosecution and policing policy and practice towards effective institutionalisation whilst still having a journey to travel to securing consistent good practice.

This all points to the ongoing challenge in institutionalising Disability Hate Crime in the CJS, and the overlap between agenda institutionalisation and ongoing agenda setting. Fifteen years on from initial agenda triggering, Disability Hate Crime is yet to become a settled concept in the CJS, working to a policy formula that is agreed, shared, and implemented across the system. Indeed, the extent to which the legal construction of Disability Hate Crime has provided such a settled concept was itself to become the subject of a review, instigated by the Law Commission in 2013.

### **6.7 Further institutionalisation or indicative of a need for an institutional review?**

In the drive towards institutionalisation of hate crime, including Disability Hate Crime in the CJS, the government and CJS agencies issued various 'action plans' or 'work programmes' to improve the institutional responses to hate crime. In 2012, the then coalition government, building on its manifesto and programme for government commitments mentioned earlier, published a plan to tackle hate crime, 'Challenge it, Report it, and Stop it' (HM Government, 2012a). It contained a commitment to "conduct a review of sentences for offences motivated by hostility on the grounds of disability, sexual orientation and gender identity to consider whether there is a need for new specific offences similar to racially and religiously aggravated offences" (HM Government MOJ, HO, 2012, p. 21). In time, this was framed as a formal request from HM Government (MOJ) to the Law Commission to "look at (a) extending the aggravated offences in the Crime and Disorder Act 1998 to include where hostility is demonstrated towards people on the grounds of disability, sexual orientation or gender identity, and (b) the case for extending the stirring up of hatred offences under the Public Order Act 1986 to include stirring up of hatred on the grounds of disability or gender identity" (Law Commission, 2014, No. 348, p. 1).

In the context of this study, this Law Commission Review raises significant points in relation to institutionalisation. Indeed the Review reflected and unintentionally served to reproduce an

institutionalised hierarchy of criminal law provisions for Disability Hate Crime. The Law Commission reflected that, whilst persuaded by the equality arguments made by consultees for parity of protection across hate crime strands, it was constrained by an institutionalised set of aggravated offences designed over 15 years earlier to address the specifics of racial hostility (Law Commission, 2014, No. 348, p. 12): “We had to assume (for this project) that if the aggravated offences were extended, they would take the form of the existing aggravated offences in the CDA. We were not asked to look at whether some other form of offence would be preferable” (Ibid., p. 10). And they highlight that consultees recognised this institutionalised constraint, when they questioned whether the Law Commission “should simply graft onto three distinct characteristics (disability, sexual orientation and gender identity)” a set of offences that were designed two decades ago to address racial hostility” (Ibid., p. 10). Consultees understandably said the existing offences may not be appropriate given the offending now being committed due to hostility on two quite different grounds” (Ibid., p. 10). Consultees said that targeted offending in respect of disability, sexual orientation, and gender identity involved more sexual offences and financial crimes and aggravated offences may need to reflect these different offence patterns. The Law Commission accepted the principle of the equality of protection argument. Notwithstanding this, because it was not commissioned to do so, it did not recommend moving beyond the current differentiated sentencing enhancement regime, pending its recommended wider review of all hate crimes offences. The net effect has been that nearly four years on from this Law Commission review, the hierarchy of criminal law provisions remains institutionalised within the CJS.

The symbolic messaging and substantive consequences of such differentiated criminal law provisions was not lost on the Law Commission and was acknowledged in their comments on the differences in maximum sentences that can be handed down for a racially or religiously aggravated offence and an offence based on disability, sexual orientation or gender identity (Law Commission, 2014, No. 348, p. 7).

Four years on, the Government is yet to announce its response to this review. In the meantime, the institutionalised hierarchy of hate crime victim legal protections remains embedded with a question as to its appropriateness for tackling Disability Hate Crime given its partial origins in a model based on racial hostility 15 years earlier. The Law Commission Review sums it up well when it says that some consultees stated “our terms of reference were too narrow. They suggested that a wider scope would have helped ... to take proper account of differences between the types of hate crime affecting disabled, LGB and transgender people” (Law Commission, 2014, No. 348, p. 12).

The Law Commission delivered a competent informed review within significant constraints. However, in structuring it as a refining review within an established institutionalised domain, rather

than a fundamental review of the wider institutionalisation of hate crime overall, the report could only reflect, refine and ultimately reproduce the institutionalised legal–policy hierarchy. This institutionalisation of a hate crime domain which includes disability, but on terms not of its own choosing or suitability, was similarly reflected in the government’s rejection of the EHRC’s questioning of the language of hate crime in its Formal Inquiry into Disability Related Harassment. The EHRC recommended its preference for the language of hostility, harassment, and abuse of power rather than the term ‘hate’. However, the government rejected this recommendation, saying such a language change could not be done because it would “not be in line with hate crime language for other protected strands” (Smith, 2015, p. 51). This illustrates the price of the ‘force fit’ of acceptance into the hate crime domain, albeit on the basis of an ‘accepted fit’. These efforts to institutionalise Disability Hate Crime highlight how, simultaneously, there is a wider hate crime domain that is increasingly normatively embedded and institutionalised whilst Disability Hate Crime remains partially institutionalised in that domain. When Disability Hate Crime raises issues of evolutionary change within the normatively embedded hate crime domain, these issues can be accommodated. However, issues of transformative change cannot be so easily accommodated. Disability Hate Crime points both to the flexibility in the expansion of the hate crime domain, whilst also illuminating its embeddedness (Greenwood and Hinnings, 1996). In this context, these attempts at institutionalising Disability Hate Crime increasingly led to situations where Disability Hate Crime pushes at the boundaries of possibility in terms of institutionalisation in the hate crime domain.

### **6.8 An institutionalisation process yet to commence – judicial engagement with Disability Hate Crime?**

This study now turns to the key role of the judiciary in the institutionalisation and legal construction of Disability Hate Crime, in their determination of “the scope and meaning” of Disability Hate Crime (Grattet and Jenness, 2001, p. 103). The judiciary, through their decisions over time, deliberate and fix meaning for hate crime laws. As Grattet and Jenness (2001) point out, whilst the politicians provide the basic legal templates through passing laws, it is judges in the courts who give “authoritative meaning to these templates” (p. 103).

To date, there is limited evidence of active judicial engagement with the issue of Disability Hate Crime in England and Wales, an absence supported by the findings of the research for this thesis. Disability activists, police, and prosecution officials, together with independent statutory actors, all identify limited judicial engagement with the Disability Hate Crime agenda as constituting a significant challenge to further institutionalisation in the hate crime domain. The research for this thesis also found judges at all levels of the judiciary expressing a view that Disability Hate Crime had a low profile, that it arose rarely in courts and that, perhaps, it did not have the profile it ought

to have as a form of hate crime. The judges interviewed in this study tended to say that police and prosecutors were not raising the issue of Section 146 of the CJA (2003) for consideration at sentencing stage. This view was echoed by the earlier CJS joint inspection of Disability Hate Crime (HMCPST, HMIC, HMIP, 2013).

What is striking from the research for this thesis is that most activity and institutionalisation effort in England and Wales appears to be concentrated in the activist, policing, and prosecution sectors, with very limited evidence of institutionalisation effort in the judicial system. This is in contrast to the US where Grattet and Jenness (2001) found that, following activist and legislative activity, the next institutional arena where most early activity occurred was in terms of judicial decision making, and construction by the judiciary through their decisions on the meaning of hate crime over time.

The research for this thesis found an absence of a whole CJS-wide institutionalisation understanding shared across police, prosecutors, and judiciary to implement a sustained focus on Disability Hate Crime. Indeed, other senior CJS actors were forthright in their views of the judiciary's limited efforts. A former senior manager in London Metropolitan Police commented:

“The Magistracy, the judiciary, I'm not sure that they get it and they hate being told that they might not be doing something well .... I got a really un-warm feeling about their willingness to accept negative feedback ... it doesn't look like there's a huge deal of recognition that this is an issue” (R11).

A former CJS leader said:

“I don't know what's going through the judge's mind when he or she is confronted with facts that seem so blatantly obviously to be motivated by hostility ... There may be a broader hostility to the whole concept of categorising hate crime as any different from any other crime, because there is some reluctance on the part of judges to do that .... Many judges would say, 'Look, an assault is an assault' ... They're just instinctively reluctant ... there seems to be a complete failure to acknowledge the gravity of this area of offending” (R30).

Reflecting on judicial engagement with Disability Hate Crime through their engagement with the EHRC Inquiry, a senior EHRC official involved at the time commented:

“I think they (the judiciary) were not as engaged as public servants, as some other sectors have been” (R20).

One national disability activist involved with campaigning for CJS progress on responding to Disability Hate Crime commented:

“I think police officers have come a long way since 2007 and do understand it. I think prosecutors have also come a long way and do understand it. I think the missing link now is the judiciary ... I think that’s the real problem ... what happens in court. I think we’ve seen a lot of change in the other two bits of the criminal justice system” (R12).

This was echoed by another leading disability activist:

“The challenge is to get the judiciary to take these things on board because we know that the CPS can’t drive it themselves. They have a very definite policy on Disability Hate Crime. The police now, through ACPO, have a very definite policy. We can’t seem to get anywhere with the judiciary” (R24).

Yet, this study found limited efforts by activists or other CJS agencies to engage with the judiciary on this agenda. It found varied views amongst the judiciary interviewed, including some recognition of and receptiveness to the need for progress.

In this study, members of the judiciary were interviewed, including at the levels of district judge, Crown Court judge, central criminal court judge, and appeal court judge. A feature of judges’ responses was the strength of view that Disability Hate Crime is, in their experience, a very rare form of crime brought to their attention in court and that they are more used to dealing with disabled people targeted on the basis of vulnerability.

One district judge commented:

“Disability Hate Crime is very rare in my experience ... I’d be very surprised if it was one to two per cent of the cases that come before me, a tiny fraction” (R31).

He said this rarity may pose challenges for police, prosecutors and judges alike:

“It is not every day fare when it comes up ... When Disability Hate Crime is so rare in the courts, which fact finder is going to build up the experience, or which prosecutor is going to build up the sophistication to say, ‘Actually, you can draw this conclusion, and it’s a safe conclusion’ ... So, it’s a perennial challenge” (R31).

At the same time, judges at all levels expressed increased awareness of and confidence in responding to issues of vulnerability in cases involving disabled victims.

A district judge commented that now:

“... the criminal justice system is reasonably good at spotting vulnerability ... Not only is vulnerability going to be regarded as an aggravating feature in its own right, but increasingly it leads to a different approach in terms of case management ... The criminal justice system has intensified its desire to deal with vulnerability” (R31).

Whilst, in recent years, the profile of Disability Hate Crime has risen somewhat, this judge reflected

“it would be unsurprising if the situation were still not the same, if it’s a focus on vulnerability rather than hostility” (R31).

Other judges echoed this institutional focus on vulnerability. One central criminal court judge commented:

“Vulnerability, put broadly, is an issue ... We are pretty used to having our antennae up” (R32).

In the analysis of Disability Hate Crime cases for this thesis, there was evidence of judges’ simultaneous embrace of vulnerability and non-recognition of hostility in court cases involving targeted crimes against disabled people (see Appendix F). In one case, where a disabled man visiting a skate park was targeted, taunted, and assaulted by young people, the case was prosecuted as a Disability Hate Crime by the CPS. However, in open court, the judge rejected the prosecutor’s case that it was a crime aggravated by disability hostility. The judge stated this was an attack on a vulnerable person and “not your [prosecutor’s] argument” about hostility (Case 5).

In another high-profile case involving targeted abuse of learning disabled people in a residential care home, the judge left aside the prosecution case that it was a Disability Hate Crime. The judge focused on vulnerability and mistreatment of adults in care under the mental health legislation, notwithstanding that prosecuting counsel focused on disability hostility (Case 9).

One judge working at the Crown Court level initially said that a focus on vulnerability rather than hostility was not unduly problematic if it led to an aggravated sentence. However, he also stressed the scope for improvements in the judicial response to Disability Hate Crime but emphasised his view that the judiciary were alert to issues of vulnerability involving disabled victims of crime and conveyed how a vulnerability focus was increasingly institutionalised in court processes. During

the interview, this judge's thinking evolved regarding the focus on vulnerability compared to the lack of a focus on hostility.

The judge initially reflected that the judicial institutionalisation of a focus on disabled people's vulnerability can deliver the same result as a judicial institutionalisation of a focus on hostility:

"It's a distinction (between vulnerability and hostility) without much of a difference, isn't it? ... That's a point more easily taken by someone who doesn't have to do the sentencing exercise. Show me the difference in reality ... it'll lead to the same end result. That's why I said 'distinction without a difference' from the sentencer's point of view ... But I can see from the disability rights' community where that may be an interesting contrast" (R33).

This judge reflected that:

"I think that spotting it and, more seriously than spotting it, is getting the judiciary to take it seriously ... is even more difficult ... because I think there are people who don't accept it as a concept .... or shrug it off ... I'm not entirely satisfied that each and every one of my judicial brothers and sisters take this as seriously as I think they should.

"I think racist and homophobic is easy. Easier to recognise, to deal with, to prepare for, to cope with and, if necessary, to punish in respect of ... It [Disability Hate Crime] is difficult because I think the nuances and the subtleties of it are simply something that generally passes you by" (R33).

In terms of the overall judicial response to Disability Hate Crime to date, he said:

"It's probably not good generally ... I think there are those who don't take it seriously enough, don't recognise it when it's staring them in the face and equally, importantly, don't know where to look for it" (R33).

Judges also highlighted the need for judicial training and awareness raising on Disability Hate Crime if institutionalisation progress is going to be achieved. A district level judge agreed that:

"You have to get it onto the agenda and keep it on the agenda somehow" (R31).

One Crown Court judge commented:

“I think the best and most effective way of bringing this issue on to the agenda is to feed it into the Judicial College training” (R33).

Most recently, the Judicial College has issued an updated edition of the Equal Treatment Benchbook (Judicial College, 2018). This is, in significant aspects, an impressive 400-page-plus guidance document for the judiciary. It sets out equality and diversity issues for consideration when judges are hearing cases. It reflects contemporary understandings of issues such as racism, antisemitism and Islamophobia. It has a substantial section on Disability. However, this section is framed within firstly a focus on disabled people as vulnerable and, secondly, on providing guidance to make reasonable accommodations in court cases involving disabled people. It is silent on Disability Hate Crime. It reflects and reproduces a conception of disabled people as inherently vulnerable. Given the extent of engagement and progress in other parts of the CJS in the past 18 years, this document is indicative of the lack of judicial engagement with the issue of Disability Hate Crime to date.

It is clear that there has been limited judicial engagement with the Disability Hate Crime agenda to date. This reflects both a rarity feature and an institutionalised judicial focus on vulnerability and non-recognition of disability hostility. This is accentuated by the nature of the legal provision on Disability Hate Crime, namely Section 146 as simply a sentencing enhancement construct. There are very few examples of appellate courts addressing Section 146 - it is the decisions of appellate courts that form the basis of legal guidance to lawyers and judges in these cases. This is reflected in the CPS legal guidance for prosecutors on Disability Hate Crime (CPS, 2007) in which all the case studies are based on racially and religiously aggravated appellate court decisions. Whilst understanding the legal reasoning for basing legal guidance on appellate court decisions, it carries a significant negative risk for Disability Hate Crime cases. Given that some of its features manifest differently to racially and religiously aggravated crimes, disability hostility cases are in a sense appraised against an earlier settled framework which can inadvertently prevent Disability Hate Crime cases from meeting the appraisal criteria (CPS Legal Guidance on Disability Hate Crime, 2007).

This hurdle to institutionalisation of Disability Hate Crime is further accentuated by the fact that the issue of hostility under Section 146 arises only at the stage of sentencing. Finding an opportunity for Section 146 issues to be considered by a higher court is likely to prove more difficult than it has been to secure higher court consideration of aggravated offences in terms of race and religion. The

most likely route to secure judicial clarification is through application for leave to review a sentence on behalf of the Attorney General on the basis that it was unduly lenient. This would most likely be heard by three senior judges who could then contribute to the further institutionalisation of Disability Hate Crime through producing “an authoritative statement of law and principle” on Disability Hate Crime (CPS Legal Advice on Section 146 of CJA 2003, June 2015). That very important institutionalising moment in “the legal construction of hate crime” (Grattet and Jenness, 2001, p. 103) has yet to occur in respect of Disability Hate Crime. In the meantime, Disability Hate Crime cases are appraised against a racial hostility model and set of race case precedents. In this respect, the judiciary are yet to institutionalise Disability Hate Crime in the judicial realm on its own terms. Judges as CJS actors are yet to reach a consensus with other CJS actors and for the concept to become “more settled”. Disability Hate Crime is ripe for “judicial meaning making” given that, for them, it is still a new and comparatively unsettled concept (Grattet and Jenness, 2001).

## **6.9 Conclusion**

Whilst policy agenda status was secured in the aftermath of the focusing impact of the Pilkington case, the Disability Hate Crime agenda has continued to journey towards institutionalisation from 2009 onwards. Significant questions remain: has institutionalisation occurred as one might expect; and what is the nature and extent of institutionalisation to date?

Institutionalisation of a policy agenda is regarded as a process that involves development of a policy domain, with shared definitions, ways of responding, and discourse; a diminution in the need for collective action over time, and an embedded taken-for-granted approach (Powell and DiMaggio, 1991). Compared to this policy institutionalisation template, it is clear that, whilst elements of institutionalisation are underway in respect of Disability Hate Crime, institutionalisation has yet to deliver an agreed settled approach to this policy agenda.

Clearly, significant institutionalising efforts and achievements have occurred in establishing common definitions and annual reporting within the CJS, all of which are essential institutional steps in making the Disability Hate Crime agenda operable and ‘real’ for police, prosecutors, and communities on a daily basis.

Whilst common definitions and annual reporting constitute a significant step in institutionalisation of the Disability Hate Crime agenda, this chapter shows how they also foregrounded the dilemma of difference that sits within Disability Hate Crime. Recording and annual reporting has brought to the fore both the commonalities across hate crime strands and the specifics of Disability Hate Crime. In doing so, these institutionalisation efforts have helped surface a further institutionalisation challenge – can the differences which Disability Hate Crime brings to the hate crime domain be

accommodated within this domain? The evidence indicates that the differences in Disability Hate Crime continue to pose challenges to its institutionalisation within the wider hate crime domain. Fifteen years on from agenda triggering, despite considerable CJS institutional efforts, it remains an unsettled concept pushing at the boundaries of possibility in the hate crime domain.

Further institutionalisation efforts were manifest in the wide-ranging EHRC Inquiry into Disability Related Harassment that took place after the Pilkington Inquiry. This Inquiry helped to further institutionalise Disability Hate Crime in that it helped to delineate the contours of the problem, it questioned the framing of the issue to date by the public sector, and it challenged institutional responses, and constituted a call to action for improved institutional responses. It was a significant agenda-setting initiative in an agenda-institutionalisation period, and it highlighted some shortcomings that others pursued.

A spotlight has been shone on institutionalisation efforts and failures to embed Disability Hate Crime in the CJS through a number of criminal justice inspections. These thematic inspections seriously questioned the extent of substantial institutionalisation of Disability Hate Crime which has occurred to date. Inspections pointed to a lack of shared definitions and understanding, varied ways of responding by agencies, and a far-from-settled policy formula and way of working to address Disability Hate Crime. The reports point to continuing basic agenda-setting challenges in the period of agenda institutionalisation.

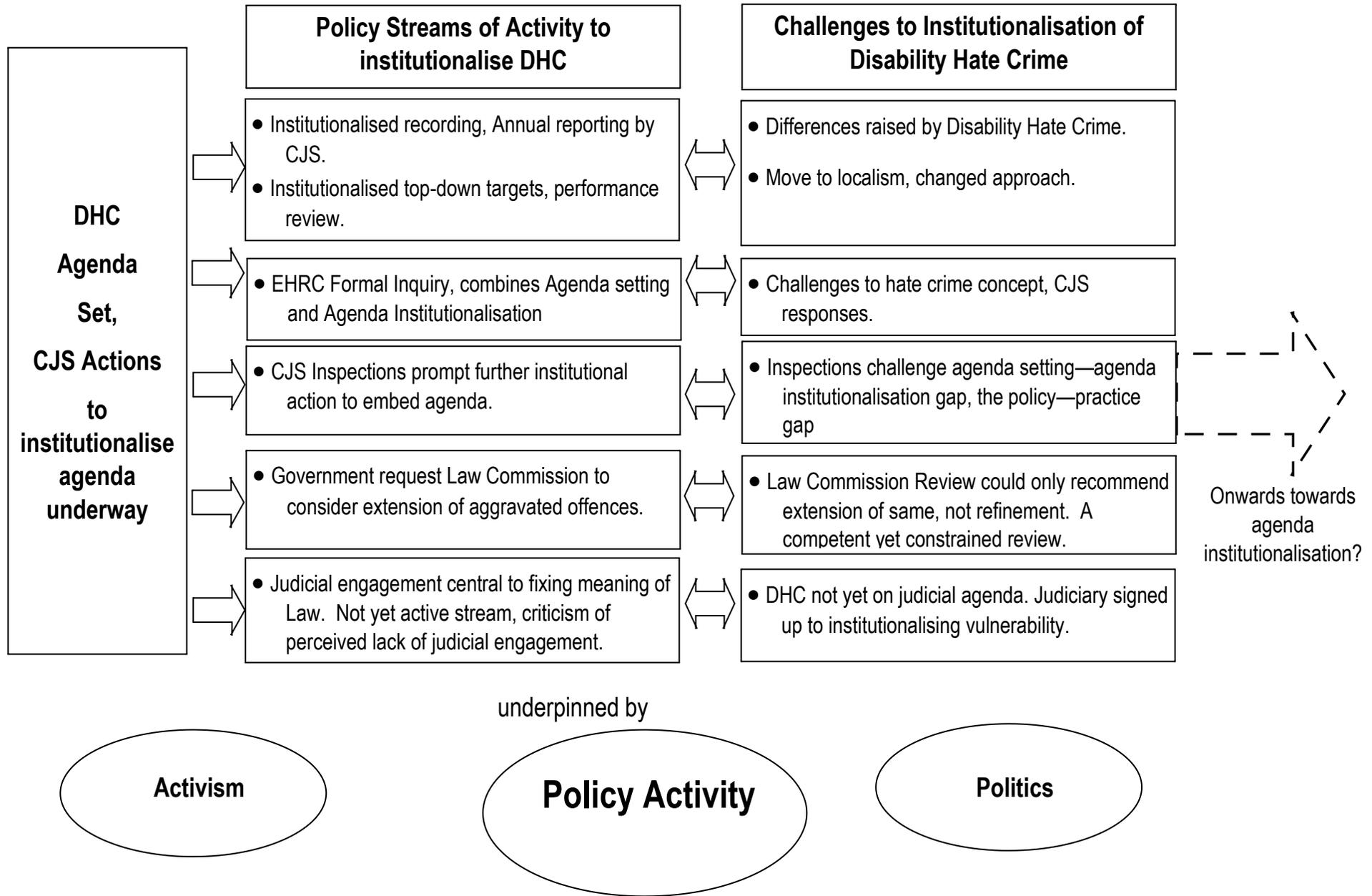
Such are the institutional challenges posed by the Disability Hate Crime agenda that the government requested the Law Commission to conduct a review as to whether the existing aggravated offences should be extended to cover disability and other strands. The Law Commission concluded that there were strong equality arguments for doing so. Despite an expected government response within one year, no substantive response has been forthcoming. In the absence of progress on the legal provisions in place, institutionalisation challenges persist, and limited institutionalisation is occurring.

This chapter has highlighted how, in contrast to the US, where the judiciary were amongst the first criminal justice actors to engage with hate crime, in terms of the institutionalisation of its meaning and boundaries, in England and Wales, active judicial institutionalisation is yet to commence. This study found shared views across activists, police, and prosecution respondents that judicial engagement is central to further institutionalisation. However, the judiciary are engaged with, sensitive to, and committed to institutionalising a vulnerability focus regarding disabled victims of crime. Again, for Disability Hate Crime, the construct constraints posed by Section 146 in terms of securing authoritative judicial judgements on the meaning of the statute pose a significant challenge

to furthering institutionalisation of this policy agenda. The context is ripe for judicial awareness-raising to enhance judicial engagement and potentially further institutionalisation.

This chapter is entitled Towards Institutionalisation? Based on this first critical analysis of the evidence on institutionalisation of the Disability Hate Crime agenda, I would argue that institutionalisation of Disability Hate Crime is underway but far from achieved. The CJS' journey towards institutionalisation itself faces institutional challenges based on institutionalised constructs of hate crime, reflected in law, in policy, and practice. Disability Hate Crime has required and secured considerable national CJS institutional effort to institutionalise it within the hate crime domain and progress has been made. Yet, close on 15 years from legislating to address Disability Hate Crime, instead of becoming a settled concept, business as usual, it remains unusual business in the CJS. Disability Hate Crime continues to push at the boundaries of possibility in the hate crime domain, reflecting both unique challenges which it raises and the broader conception of hostility and discrimination, themes considered in the next two chapters.

### Phase 3 - Towards Agenda Institutionalisation?



## **Chapter 7: An Agenda Challenge – The Vulnerability Focus and Disability Hate Crime**

### **7.1 Introduction**

In each stage of the journey in the development of Disability Hate Crime policy, as considered in the preceding chapters, one issue has been continuously present: the issue of vulnerability. It has at times emerged onto the Disability Hate Crime agenda, only to be silenced; on some occasions, it is seen as an alternative representation of the 'problem', eliciting a different set of responses focused on protection and safeguarding rather than rights, justice, and equality. At other times, it is presented as complementary to the hate crime problem representation, with vulnerability presented as better capturing the range of disabled people's experiences of victimisation. What is clear throughout these varied problem representations is that the issue of vulnerability has posed challenges to agenda institutionalisation of Disability Hate Crime.

This chapter analyses the issue of vulnerability as it has impacted upon the construction and institutionalisation of Disability Hate Crime in the CJS. The emphasis is on understanding the vulnerability focus in the CJS and its application to disabled people. How does a vulnerability focus impact upon Disability Hate Crime policy and pose challenges to institutionalisation? It is argued that the shifting understanding of vulnerability in relation to Disability Hate Crime is evolving largely in response to activists' concerns and reviews external to the CJS.

This chapter's analysis also focuses on all three streams of activity in relation to vulnerability - the political, the policy, and the activist streams. The focus is more so on the policy and activist streams as these are where most activity on vulnerability has, and continues to, occur.

### **7.2 Rise of a vulnerability focus in public policy, including in the CJS**

A discourse and set of practices in relation to vulnerability in public policy, including in criminal justice policy in England and Wales, emerged in the last two decades (Brown, 2014; Thorneycroft, 2017). Various population groups have been problematised as vulnerable for policy purposes. Some link this to the rise of the so-called 'therapeutic state' and an attendant therapy culture (Furedi, 2004). Others view it as potentially linked to a recasting of long-standing notions of deserving and underserving groups in society for policy purposes (Roulstone and Prideaux, 2012). Others again view it as linked to the deepening of inequalities associated with neoliberal economies which, it is argued, can accentuate the vulnerability of some groups who are seen as less autonomous (Fineman, 2012). In recent years, the concepts of vulnerability and difference together have been proposed as offering a lens for better understanding hate crime victimisation (Chakraborti and Garland, 2012). Some have emphasised the vulnerability in all human

living and seek to decouple the concept from minoritised experiences (Fineman, 2012; Thorneycroft, 2017).

Groups constructed as vulnerable in policy discourse can include children, young people, older people, women, LGBT people, migrants, ethnic minorities, and, in this context, disabled people. In many instances, the attribution of a vulnerable categorisation to a group is taken to indicate a lack of agency to act as free rational adults exercising autonomy. For many public service providers, it implies a commitment to protection of those deemed vulnerable and intended to imply access to protective supports. It is clear from this research study and others (Brown, 2016) that, for many policy makers and service providers, a focus on vulnerability is a well-intentioned approach in public policy, if also an embedded approach seldom subjected to interrogation. This flows from an ethos focused more on a paternalist concern for the vulnerable rather than rights for citizens. Such a vulnerability focus can facilitate access to supports for some people experiencing varying levels of risk and need. As one senior CJS official reflected: “The assumption around vulnerability is, in a way, a kind of shorthand that acts as a trigger for services that you might need” (R23).

This vulnerability categorisation is so pervasive within public policy today that the disability movement and NGO sector themselves both critique and deploy it in different arenas. It is often rejected in pan-disability rights and Disability Hate Crime arenas whilst deployed by disability NGOs to argue for much-needed welfare services. This was noted by respondents as indicative of the sheer pervasiveness of the vulnerability framing and how the disability movement can hold itself back as a fully-fledged equal rights movement by playing a ‘pity card’. One respondent referred to the disability movement wanting it both ways in terms of embracing and rejecting the vulnerability categorisation (R27).

Critical consideration indicates that in policy discourse and practice, the vulnerability categorisation has been used increasingly but with possibly less consensus on a shared meaning. Almost all vulnerability categorisations include disabled people regardless of their views as to whether they regard themselves as vulnerable. Indeed, almost all usages of the vulnerability categorisation imply inherent weakness and reduced capability. Vulnerability has become a malleable concept in policy and practice that lends itself to rhetorical use and, indeed, to challenge and change. This malleability has provided the context within which the understanding of vulnerability applied to Disability Hate Crime has evolved in parts of the CJS in England and Wales.

In terms of influence on policy discourse in England and Wales, the vulnerability focus gained prominence in social care policy from the late 1990s–early 2000s. The focus was on protecting vulnerable adults with national policy initiatives, such as ‘No Secrets’ (Department of Health [DOH] policy on safeguarding of vulnerable adults), increasingly using vulnerable adult categories, and implementing adult safeguarding structures at local level. This care and protection focus became the dominant frame within which the

'problem' of disabled people was represented and responded to (Bacchi, 2009; EHRC, 2011a). It is noteworthy that, in the more recent 2014 Care Act, there is a moving away from the language of vulnerability in terms of groups of people and more focus on situations that can accentuate risk and vulnerability (*Care Act 2014*; R34). In the intervening years, there had been critique of the vulnerable adult categorisation in social care, from service user groups and, reflected in, a shift in DOH social care categorisations.

This chapter analyses whether this problem representation and discourse on vulnerability has impacted on policy and practice in the CJS. If so, has this problem representation and policy discourse in turn impacted on agenda setting and institutionalisation of Disability Hate Crime? What is the situation now and what may require future focus? In this analysis, this study draws upon Bacchi's analytical framework, cited in the Methodological discussion: the What is the Problem Represented to be Framework (WPR) (Bacchi, 2009).

### **7.3 Has a wider problem representation discourse on vulnerability impacted on the CJS?**

The research for this thesis found that a focus on the vulnerability of victims has featured in criminal justice policy in England and Wales in recent decades. Scholars trace this increased prominence to the first New Labour government's justice and equality reform agendas which contained a dual focus on vulnerability and rights as they addressed disabled people (Dunn, Clare, and Holland, 2008). New Labour simultaneously spoke to civil rights for disabled people whilst also pursuing a well-intentioned, albeit paternalistic vulnerability focus. The latter was reflected in both law and CJS guidance. For instance, the Youth Justice and Criminal Evidence Act 1999 (YJCEA) defines a vulnerable person as a person, in this instance a victim or witness, who "suffers from mental disorder within the meaning of the Mental Health Act 1983 or otherwise has a significant impairment of intelligence and social functioning or has a physical disability or is suffering from a physical disorder" (YJCEA 1999). This codification was significant as it inadvertently institutionalised a stereotype of disabled people as inherently vulnerable within the legal framework and that continues to pose challenges and constraints for those working within the legal system in England and Wales.

As an example, analysis of the guidance issued by the Sentencing Guidelines Council illustrates the pervasiveness of this inherent vulnerability focus. Thirteen different sentencing guidelines identify a whole range of crimes (ranging from robbery, fraud, assault etc.) where the vulnerability of the victim based on disability is an aggravating feature. Thus, a vulnerability focus is part of the CJS' architectural framing of disabled victims and pervades the possible criminal justice responses to disability victimisation. Alongside these sentencing guidelines, Section 146 of the CJA 2003 refers to aggravation based on disability hostility, and there are no specific sentencing guidelines on hate crime.

This embedded focus on vulnerability in criminal justice policy and practice which equates disability and vulnerability has not gone unquestioned (Roulstone et al., 2011; Quarmby, 2011). The research for this thesis found that, although a vulnerability focus first became dominant in the social care domain, and remains prevalent in health care, the social care domain has embraced other categorisations of disabled people which focus more on 'situational risk'. However, there has been a significant time lag between shifting understandings in the social care domain and the continued pervasiveness of a vulnerability problem representation in the CJS. A senior policy official in the DOH (R34) was critical of the pervasive use of the vulnerable person categorisation in public policy; she referred to a process to 'cleanse' social care policy of the vulnerability categorisation whilst that categorisation persists in criminal justice policy and practices. In reflecting on the current position, this official commented:

"Whilst I think we've pretty well knocked it on the head in social care policy, our battle is trying to get the Ministry of Justice, the Home Office, the police, housing to do this because they all have a vulnerable-person category ... so there's a multi-prong attack needed ... It is just so ingrained and, of course, it's easy because actually thinking of an alternative to describe what you mean can be quite challenging. It's easier to say, 'vulnerable people', it rolls off the tongue, it's just not helpful" (R34).

There is a varied, somewhat complicated and shifting situation in relation to a vulnerability focus in the CJS. Alongside the embedded focus in criminal law and supporting guidelines which equates vulnerability and disability, there is an increasing desire to focus on vulnerability amongst the judiciary and parts of the police. In a context of declining policing resources, increased demand, and critique of police handling of cases such as the Pilkington case, the police are moving towards a revised national policing model where vulnerability is proposed as a key criterion guiding policing interventions and this is to be mirrored in national policing inspection frameworks (R23). This potentially constitutes a further institutionalisation of a vulnerability focus in the CJS. The competing problem representations continue. Yet, at the same time, the research for this thesis found clear evidence of a shifting understanding of the vulnerability problem representation as applied to disabled people amongst senior CPS and national police leads involved with the hate crime agendas. It is as if shifts in problem and policy representation are occurring in parts of the CJS in response to disability activists' critique, performance challenges, external inspections, and internal reflection based on case experiences. However, these 'progressive' changes exist within the CPS and parts of the police alongside a continued pervasiveness of vulnerability focus across the CJS more widely.

7.3.1 Has the problem representation of vulnerability impacted the construction of Disability Hate Crime? If so, does a vulnerability focus matter?

The research for this thesis has found that the policy discourse on vulnerability has been palpably present in the development of Disability Hate Crime policy in terms of problem representation and policy

responses. Although always present, this presence has been far from static. At times, it has been subject to policy silence or a competing problem representation; most recently, it has been included in policy initiatives aimed at a more overarching representation of disability victimisation referred to as Disability Hate Crimes and other crimes against disabled people (CPS, 2017; Bacchi, 2009). In this analysis, the focus is on the salience of this shifting vulnerability focus. It is possible, over the past 17 years, to identify three phases in the developing construction of vulnerability as it relates to Disability Hate Crime. These are a Policy Silence Phase, a Disability Hate Crime plus Vulnerability Phase, and, most recently, an all-embracing Disability Hate Crime and other Crimes against Disabled People Phase. Chapter 4 on Agenda Triggering notes that, in 2003, government officials' initial drafts of a disability hostility aggravation amendment to the CJA 2003 focused on vulnerability aggravation rather than hostility aggravation (R6). It was as if the vulnerability focus was the default setting in the policy mind-set. Thus, the issue of vulnerability in Disability Hate Crime was present from the very outset of this agenda. However, as was noted in Chapter 4, given that the activist and political streams were in the ascendant at that stage, the activists' focus on disability hostility per se prevailed and the vulnerability issue was subject to policy silence for a period (Bacchi, 2009).

Given the policy construction of targeted crimes against disabled people as either vulnerability or hostility based, a focus on one has inhibited movement on the other. In such an either/or policy construction, this initial period of policy silence on vulnerability in relation to hate crime was of sufficient duration to secure the legal amendment known as Section 146 (CJA 2003), focused solely on disability hostility. However, as Bacchi (2009) notes, policy silences do not necessarily resolve the duality in issues masked by the silence: silences can stand as pointers to ongoing challenges and can emerge, or indeed erupt, at later stages in the policy process. This occurred in the subsequent development of Disability Hate Crime policy.

Having secured Section 146, the agenda increasingly moved from the activist stream to the policy stream. Policy officials were now in the lead and managing the responses to activists' demands. A focus in this agenda-setting period was the fleshing out of the two-sentence legal provision in Section 146 into what it would mean in operational terms for the CPS and the police. Much of this activity took place around the framing of a CPS Public Policy Statement on Disability Hate Crime in 2007. This activity, as noted in Chapter 5 on Agenda Setting, was led by CJS officials and involved inputs from disability organisations and activists. Analysis indicates that, in terms of problem representation, this original CPS public policy statement was perhaps more accurately described as a Disability Hate Crime plus Vulnerability policy statement. The 2007 Public Policy Statement states that, for its purposes, some crimes against disabled people are hate crimes and "some crimes are committed because the offender regards the disabled person as being vulnerable and not because the offender dislikes or hates disabled people" (CPS, 2007, p. 9). Thus, the CJS constructed a focus on disability hostility and a focus on disability vulnerability as mutually exclusive (Roulstone et al., 2011, p. 352). Respondents who were involved in the development of the

Disability Hate Crime policy highlighted the challenges in arriving at this distinction. Whilst many acknowledged the challenges, CJS officials indicated more ease with this distinction. Disability organisations indicated less ease, and a sense of less ability to influence the final focus of the public policy statement. There was a sense that this dual focus was what was on offer and, although less than appropriate, there appeared a reluctant resigned acceptance (R3).

This problem framing potentially provided perpetrators with a get-out clause where their targeting of disabled victims because of their disability could go unrecognised. It set a high threshold for Disability Hate Crime to meet, constructing crimes perceived to be based on vulnerability as not hate crimes. This was to pose fundamental challenges given the pervasiveness of the stereotype of disabled people as vulnerable.

Having a public policy statement on Disability Hate Crime that distinguished emphatically between crimes based on hostility and those based on vulnerability begs the question: Do these separate problem representations matter? What has it meant in practice? My analysis in this thesis indicates that this separating out of a hostility and vulnerability focus in Disability Hate Crime cases has had significant impacts at the levels of both recognition and redistribution (Fraser, 2003) which I address below.

The research for this thesis found that there have been significant impacts at the level of overall recognition, in the sense of group recognition, affirmation, and response to minoritised experiences as elaborated by scholars such as Fraser (2003) and Taylor (1994). Impacts in terms of recognition of crimes have had implications for reporting, monitoring and response. As reflected by some respondents, the Disability Hate Crime agenda is fundamentally an issue of recognition-based justice. In terms of identity recognition, the disability movement in recent decades has emphasised the quest for independent living as exemplifying full citizenship. Within this emphasis, a policy focused on disabled people as vulnerable runs contrary to how many disabled people define their situation. Part of the objection is to the very use of the term 'vulnerable' and its conjuring up of an inferior weak status. Thus, a focus on vulnerability is seen as a deficit concept that limits the capacity for full citizenship and independent living. It places the focus on the individual disabled victim rather than on disability prejudice in society and disabled perpetrators. A focus on vulnerability in targeted disability crimes is viewed by many disabled activists as an act of serious misrecognition, as social justice subordination with significant consequences for individual and group esteem and justice (Taylor, 1994). A senior independent researcher involved reflected:

“Implicit within the vulnerability focus is that the answer to the problem (of disability victimisation) lay in the group itself. This plays into the more medical–personal tragedy model of disability ... the focus on disabled people’s vulnerability is really a lever that causes people to look at disabled people with the attendant implications that it is their vulnerability that explains why they experience

different kinds of hate crime. So, your interest is in who experiences what and where rather than actually tackling the wider societal structures that reproduce vulnerability” (R14).

He concludes that an undue focus on vulnerability in disability victimisation leads to:

“... a lot of responses focused on managing the disabled person – and the issue of vulnerability becomes ultimately a shorthand for depriving disabled people of rights” (R14).

In fact, the research for this thesis found that the vulnerability categorisation as reflected in the original Public Policy Statement on Disability Hate Crime was rejected by all disability activist respondents and by others in the equal rights sector and some in the CJS. Considering that the issue of self-definition is a defining feature of the identity based equality movements and acknowledged as central to minority respect and recognition (Taylor, 1994), it is striking how a policy categorisation of disabled people as vulnerable became so embedded in policy discourse and practice. Regardless of how disabled people view themselves, and how much they reject the vulnerability categorisation, it is a categorisation placed upon them. Relatively recent research on young people in contact with social care agencies in England and Wales found similarly to this study (Brown, 2016).

The research for this thesis found that the problem representation of disabled people as vulnerable evoked strong views amongst respondents, and that the issues revolve around recognition-based justice for disability activists and for some others involved with this agenda.

An EHRC commissioner said the focus on vulnerability in considering Disability Hate Crimes was “unfortunate and regrettable”:

“For a start, it immediately puts the focus on the victim as the person who needs to fix themselves or be protected or saved and it draws attention away from the acts of the perpetrators” (R28).

Some disability activists were more forthright about the use of the vulnerable person problem representation to refer to disabled victims of hate crime. A former director of a disability NGO commented:

“If you have a narrative of vulnerability and people who are deserving only of our pity and our patronage and our kind of patting them on the head and saying, ‘Oh well, it’s terrible, terrible, terrible’, that’s less challenging than accepting that people are equal to us and are worthy of our respect, our recognition, and our support. And, therefore, when crimes happen to them, they need to be dealt with on an equal footing to us. But, if we see people as vulnerable, that’s less challenging to our notion of difference, they’re vulnerable, they’re to be pitied” (R26).

She added that a vulnerability focus simply evokes a pity response rather than a rights and justice response.

Recognition of how a problem representation of disabled people as vulnerable can cloud issues of hostility in what are Disability Hate Crimes goes to the heart of the challenges in the institutionalisation of the Disability Hate Crime agenda in the CJS. This was recognised by a range of respondents within the CJS.

One former CJS leader said:

“We have to be very careful here with the language we use and the approach that we take. Disabled people are not by definition vulnerable but, like all people, they may get into vulnerable situations and it is someone in a vulnerable situation who is very often taken advantage of. So, it doesn't mean that they are, and I think it is wrong to say they are, as it were, in a constant state of vulnerability, because they're not. It's just that they may find themselves in vulnerable situations more often than other people, and that's what is exploited ... But it is quite important in this context to make sure we are talking about the situation that somebody finds themselves in rather than vulnerable by characteristics ... And it may be that some groups find themselves in vulnerable situations more often, but it's still wrong to say they're always vulnerable” (R19).

Another former CJS leader elaborated on the consequences of a vulnerable-person focus in Disability Hate Crimes:

“There's an overarching point which is that it's demeaning ... it can be demeaning language. The problem with doing it (using the vulnerable-person label) in an overarching way is that it fails to mark the essential gravity of the offence. It's obviously bad to pick on someone because they're vulnerable. In some circumstances, it can be extremely bad, and it seems to me that a crime which is additionally motivated by hostility towards the disability .... that is bound to represent an aggravating feature ... what an undue focus on vulnerability does is that it denies that additional aggravating feature and it means that society isn't marking its disapproval of that form of hostility. So much of this crime is, in truth, motivated by hostility ... whether the judges and prosecutors recognise it or not, it seems to be the truth” (R30).

This respondent identified wider consequences that can flow from this over-focus on the vulnerable victim to the neglect of a focus on disability hostility:

“What becomes the exclusive attention of the court is the situation of the victim. So, the crime is situated within that vulnerability context and it stops short of analysing and taking proper account of the motivation of the offender in all its wickedness. Because, obviously, the hostility element

is an additional element of wickedness which, if you focus on the victim and the victim is in a vulnerable state, is simply ignored and then it's ignored for sentencing purposes which is bad. But just as bad and perhaps worse is it's ignored in terms of marking the seriousness of the offence which is what flows from sentencing. So, then, there's no acknowledgement on the part of society of the true gravity of the conduct" (R30)

He reflected, based on his experience, that the greatest challenge to establishing an appropriate CJS response to Disability Hate Crime was:

"... The dual problem of the excessive focus on vulnerability and the inability to move away from an idea that this is not a wider social problem, wider than the idea that the problem is contained within the people who are disabled. So, I think these two are linked and I think that is the biggest challenge to progress" (R30).

He reflected that this excessive focus on vulnerability raised challenges for the justice system that were still not appropriately recognised and addressed, resulting in Disability Hate Crime lagging behind other hate crime strands in terms of recognition and response:

"It was almost as though the justice system saw disabled people as bringing their problems on themselves by being disabled. In other words, this is a problem because you are disabled. Now, we'd never these days say to a black person or to a gay person, 'This is your problem because you're black or you're gay'. I think we still say this to disabled people, it's seen as a problem for them because they're different and because they raise feelings of fear or hostility ... So, there's a sense that there's a problem that emanates from disability, in a way that you no longer ever say, 'This is a problem that emanates from your ethnicity or your sexuality'. We would say, 'This is a problem because we have homophobic people' or 'This is a problem because we have racists'. We're still not saying, 'This is a problem because we have people who are hostile towards the disabled'" (R30).

A former senior CJS manager reflected how a focus on the vulnerability of disabled victims rather than a focus on the hostility of perpetrators in hate crime cases:

"... puts Disability Hate Crime on the margins (of hate crime) and, even in terms of the approach, it becomes a social care issue; it's not even a serious criminal justice issue" (R15).

A senior independent researcher involved in hate crime research reflected that the issue of vulnerability was sensitive and challenging in terms of disability victimisation. He reflected that, depending on the nature of people's impairment, it can:

“Influence the fact of their ability to cope. Now it is not just situational, that is, it is to some extent intrinsic, but only at the individual level, not at the group level” (R35).

Recognition-based justice, for many respondents, is what the Disability Hate Crime agenda is fundamentally about. It is about recognising the harms, including hostility, which can be attendant with living with a minoritised disability identity. It can be argued that failure to recognise disability hostility in the CJS is a breach of recognition-based justice. It is a failure to afford parity of esteem to a legally protected characteristic, a failure to extend in practice the cover of the hostility victimisation framework to a victimised group.

However, the research for this thesis found that this failure is also often a breach of substantive or redistributive justice. It is not only a recognition failure. It is about naming the experience in a victim-centred way (recognition) to enable the CJS to deal with it substantively and justly within the CJS (redistribution). It can also lead to a failure to mark the substantive gravity of the crimes committed in all their dimensions through failing to materially address the hostility dimension in the sentence handed down (redistribution failure). Thus, full justice is not being delivered. Recognition and redistributive justice are intertwined here. This can lead to a sense of double victimisation by the CJS for disabled people: the insult of non-recognition together with the injury of failure to deliver substantive justice (Fraser and Olsen, 2008).

The recognition–redistribution template as devised by Fraser is a useful reminder of the significance of both identity and material dimensions of inequalities. As with any heuristic framework, it risks over-compartmentalising identity and material dimensions of inequalities in ways which may neglect how they flow into each other, such that there are material dimensions to identity inequalities and identity dimensions to material inequalities. There are very real material consequences to recognition-based failure. There also are the real psychological–material gains which may accrue to a perpetrator in a hostility based crime which, through a single incident, can contribute to reproducing an unequal social order with material consequences flowing from identity (Perry, B., 2001). To the extent that Disability Hate Crime is recognised at all, it is more readily recognised as a recognition-based inequality, but it is not solely that. If Disability Hate Crime is misrecognised as hate crime, this can flow on to material–substantive injustice where the actual penalty handed down not only fails to recognise the identity aspect at all but also fails to materially reflect that in an enhanced penalty. That is the failure of redistributive justice linked to what starts out from recognition inequality.

#### **7.4 Exploring individual cases of Disability Hate Crime – does vulnerability focus matter?**

As part of the research for this thesis and as mentioned in Chapter 3, I analysed 15 cases in which disabled people had been victims of targeted incidents and crimes, all of which could be regarded as hate incidents

or hate crimes. In Appendix F, there is a descriptor of each case, together with an indication of the case outcomes in terms of whether they were successfully prosecuted as Disability Hate Crimes. There also are case profiles for an illustrative selection of cases in Appendix F which would be helpful to refer to when reading this chapter. Twelve of these cases were accessed via the CJS and three via NGOs or the independent statutory sector. All 15 cases involved targeted victimisation of disabled people linked to their disability status. In selecting and analysing these cases, the aim was to explore the range of cases that feature in both officially recorded and non-crime cases. Notwithstanding the current limitations of Disability Hate Crime data, this marked a unique analysis of Disability Hate Crime cases.

It is striking that all 12 cases accessed via the CJS were identified by the police and the CPS as involving a vulnerable victim. It is as if the identification of a disabled victim of crime automatically leads to a vulnerability categorisation, indicating an embedded equating of disability and vulnerability in the CJS. Consistent with the insights of Lipsky on street level bureaucracy and discretion, this study has found in its analysis of individual cases, a clear tendency to “routinize, simplify and differentiate” Disability Hate Crime cases based on a vulnerability categorisation-stereotype. There is as Lipsky noted an institutional receptivity to differentiate the victim population informed prevalent attitudes and prejudices, in this instance, into vulnerability categorisation. To the extent that discretion was exercised in these cases the research for this thesis found that it was exercised in an institutionally patterned way that help divide up the victim population for case management and response purposes. This can and did lead to stereotyping and was in turn to impact the delivery of substantive justice (Lipsky 2010). As this analysis found, this vulnerability categorisation influenced subsequent experiences, some positive, some less so, for the delivery of justice. This automatic categorisation of disability victimisation under a vulnerability category is understandable given the surrounding legal architecture on vulnerability within which CJS practitioners operate. While this categorisation may be intended to lead to supports in the criminal justice process, the research for this thesis found that special measures were provided in only three of the 12 cases identified with a vulnerability categorisation. These included the use of court intermediaries and in-court reading of impact statements rather than direct giving of evidence by victims. These measures helped to secure justice based on vulnerability in these three cases.

However, in the other nine cases, the vulnerability categorisation had no identifiable positive influence on the consideration of or use of special measures. My analysis has found that, in the more serious offences where a vulnerability categorisation was identified, it served to occlude a focus on hostility, particularly during the court process and at sentencing stage (see Appendix F, Cases 8, 9, and 14). In many cases where the police and prosecutors used dual-case categorisations - vulnerability focused and hostility focused - the vulnerability focus became the master categorisation as these cases journeyed through the CJS, with the disability hostility focus silent or slipping from consideration at key criminal justice stages. In other analysed cases, where the vulnerability focus emerged as the master category at the outset, a

disability hostility focus was unlikely to feature at all. This is highlighted in the disability enslavement case outlined in Appendix F, Case 8. Furthermore, this analysis – and this study’s key informant interviews - found that there are issues in relation to the judiciary’s embracing of the vulnerability categorisation, and their under-recognition and, in some cases, rejection of a hostility dimension as applied to crimes targeting disabled people (see Appendix F, Cases 5 and 9). As key actors in the CJS, the judiciary’s problem recognitions, case categorisations and, as a corollary, their problem silences have consequences for both recognition and redistributive justice for victims of Disability Hate Crime. These consequences arise, firstly, in terms of recognising the hostility aspect of the crime and, secondly, in terms of marking the substantive harm of the hostility dimension in the penalty handed down.

My analysis of the 15 cases supports the view of a range of this study’s key informants that Disability Hate Crime and vulnerability do not exist wholly as free-standing phenomena. Rather, they are constructed and problematised daily through the decisions, categorisations, and mis-categorisations made by CJS officials. This case analysis supported the view that Disability Hate Crime cases were frequently constructed to involve ‘competing’ problem representations as cases of vulnerability or hostility, leading to case framings that failed to deliver full justice for disabled victims of hate crimes.

An undue focus on vulnerability in the cases analysed occluded a legitimate focus on disability hostility. Indeed, a Disability Hate Crime dimension is often recognised and acknowledged in the CJS only in cases involving more accepted manifest verbal hostility (see Chapter 3, Cases 1, 3, and 6, and Appendix F). This means that serious offences up to and including murder have gone unrecognised as they have not fitted the prevalent hostility frame (see Appendix F, Cases 8 and 9). This augments a finding from the EHRC Formal Inquiry where the dominant framing of disabled people as vulnerable allowed targeted murders to be treated less seriously than warranted, dealt with as a social care review, and ending in denial of full justice (EHRC, 2011a). The received messaging about lives lesser valued has been felt acutely amongst disabled people (Quarmby, 2011).

Based on the research for this thesis, I found that targeted crimes that can arise in the contexts of an imbalance in power relations and abuse of power also featured among Disability Hate Crimes (see Chapter 3, Cases 2, 8, 10, 11, and Appendix F,). This raised questions about Disability Hate Crime and its relationship to the wider hate crime domain. It raised a question as to whether all hate crimes involve some acting out of imbalanced power relations, a particular form of ‘doing difference’ (Perry, B. 2001, p. 4–5). May such imbalances of power arise much more frequently and explicitly in Disability Hate Crimes, given disabled people’s often increased situational vulnerability? It is noteworthy that almost all the successful Disability Hate Crime cases occurred outdoors (five out of six) and almost all the failed Disability Hate Crime cases occurred indoors (eight out of nine). This is perhaps reflective of some insensitivity to

the different geography of segregation impacting on disability and, in turn, on Disability Hate Crime (Roulstone et al., 2011).

Indeed, the manifestations of some Disability Hate Crimes appear to sit at the intersection between violence against women and what may be termed the more classic racist, religious, and homophobic crimes. Some Disability Hate Crimes that I analysed display characteristics of hostility and violent discrimination, accompanied by verbal abuse often associated with classic racist, religious, and homophobic crimes (see Appendix F, Cases 1, 2, 3, 4, and 6). On the other hand, other Disability Hate Crimes reflect manifestations of the abuse of power more akin to violence against women, including crimes of exploitation (see Appendix F, Cases 8, 9, 10, and 11). The evidence from this study and from CJS data points to heightened levels of sexual offences and criminal damage in both Disability Hate Crimes and crimes of violence against women (CPS, 2010b, 2010c). The research for this thesis points to the need for both to be regarded as manifestations of hostility. Given disabled people's disadvantaged social positioning, some experience an imbalance of power in relationships with families, friends, peers, communities, and in relation to state agencies and other institutions. There exists the potential to abuse and exploit these imbalances of power and there is a need to be equally alert to the discriminatory violence manifestations and the abuse-of-power manifestations because of 'disability vulnerability' in Disability Hate Crimes. Balderston (2012); (2013), in ground-breaking research on disabled women and violence, recognises this issue but also the very limited recognition of and response to the intersectionality of disabled women's experience of targeted violence. The research for this thesis also found that cases involving abuses of power in relation to disabled people were not being recognised and responded to in terms of the hostility that underpins these cases. In this context, substantive justice was not being delivered. The implications of this are expanded on later in this chapter where I make the case for a refined legal model of disability hostility.

At the outset of this analysis, I queried whether the focus on vulnerability in Disability Hate Crime cases had any real impact. It is evident that this focus has had significant impacts at the levels of both recognition and redistributive justice. An undue focus on vulnerability in Disability Hate Crime cases has led to a strong sense of social justice subordination for disabled people and the denial of substantive justice which marks the gravity of hostility based crimes for disabled victims. In the face of such misrecognition, disability activists, parts of the CJS itself, and others have challenged this perceived justice failure.

### **7.5 A shifting focus on vulnerability – from Disability Hate Crimes plus Vulnerability to Disability Hate Crime and other Crimes against Disabled People**

In the years following the 2007 publication of the first Public Policy Statement on Disability Hate Crime, disability activists questioned the CJS's performance in investigating and prosecuting such cases. As indicated in Chapter 5, they articulated their challenge both in response to individual cases of perceived

CJS failure and in campaigning reports highlighting inappropriate responses. At the heart of many of the activists' concerns lay a critique of an undue focus on vulnerability. These criticisms were shared, at least in part, by some in the CJS. This led, in the first instance, to the previously mentioned keynote speech by the then DPP in October 2008 acknowledging that a widespread undue focus on vulnerability in the CJS was "clouding the issues" of hostility in Disability Hate Crime cases, and that the poor performance in handling these cases stood as "a scar on the conscience of the criminal justice system" (Macdonald, 2008). This informed the issuing of supplementary guidance on distinguishing between issues of vulnerability and hostility in such cases (CPS, 2010b).

The case failures continued and the issue was given added impetus by the cases profiled in the EHRC formal inquiry in 2011, which highlighted through profiles of serious case failures of both recognition and substantive-redistributive justice because of an undue focus on issues of vulnerability. The issue was given further impetus by two critical criminal justice inspection reports on the CJS' handling of Disability Hate Crime (considered earlier). These reports highlighted the CJS' ongoing failure to define and operationalise an appropriate definition of Disability Hate Crime.

These critiques and reflections led, in 2015, to a CPS review of the original 2007 Public Policy Statement on Disability Hate Crime. This review also involved the police and a national advisory group, including activists and the independent statutory sector. In August 2017, the updated Public Policy Statement on Disability Hate Crime and other Crimes against Disabled People was published. This Public Policy Statement indicates shifting conceptualisations of Disability Hate Crime and of vulnerability since the first Statement was issued in 2007.

The publication of the revised draft Public Policy Statement on Disability Hate Crime for consultation marked the entry into what I identify as the third phase in the journey to managing vulnerability and Disability Hate Crime. I identify this as the Disability Hate Crime and other Crimes against Disabled People phase, drawing from the title of the 2017 Public Policy Statement. This shift in language is not without significance and reflects changes, continuities, and ongoing challenges in the conceptualisation of Disability Hate Crime. It appears to imply a broader set of crimes against disabled people, of which hate crimes are a part. There is something of a naming and content disconnect between the earlier and the latest public policy statements. The original 2007 Public Policy Statement, whilst foregrounding hate crime in its title, actually foregrounded vulnerability in its substantive content. The latest public policy statement mentions hate crime in its title and immediately balances the title with reference to 'other crimes against disabled people', whilst its content substantially heightens the focus on disability hostility and significantly reduces and critiques any undue focus on vulnerability in Disability Hate Crimes. However, in the policy journey to resolve the challenge of vulnerability in Disability Hate Crime cases, there seems to remain an

alignment gap at the level of policy naming and policy substance, indicating the continuing unsettled nature of this policy agenda.

The 2017 Public Policy Statement at one level signals significant gains for activists and others in terms of their critique of an undue focus on vulnerability. It acknowledges that vulnerability is a problematic categorisation, that it is unacceptable to many disabled people and others, and it commits to interrogating this notion. It reads:

“When presented with cases that involve disabled people, we will be aware that the stereotype-based belief that disabled people as a group are somehow inherently vulnerable, weak and easy targets is an attitude that motivates some crimes against disabled people” (CPS, 2017, p. 1).

It acknowledges the link between a wider disability prejudice and Disability Hate Crimes when it states that:

“When presented with cases that involve disabled people, we will be aware that the prejudice, discrimination and social exclusion experienced by many disabled people is not the inevitable result of their impairments ... but it rather stems from specific barriers they experience on a daily basis: this is known as the social model of disability” (CPS, 2017, p. 1).

Most significantly, the latest Public Policy Statement states that, whilst there will not be an undue focus on vulnerability in such cases in future, this exists within a legal framework which identifies disabled people as vulnerable and the CJS must and will work within that framework. Therein lie ongoing challenges and constraints, not least that the significant positive efforts of prosecutors and police nationally are constrained by the wider legal framework.

So, is the 2017 Public Policy Statement on Disability Hate Crime a significant milestone towards the institutionalisation of the Disability Hate Crime agenda? Or does it represent a continued clash of problem representations? It contains elements of both, according to this study's analysis. In a positive development, it marks significant shifts in the conceptualisation of disability hostility and of vulnerability for policy purposes. Its shifting title could also indicate, at one level, a bilocation of Disability Hate Crime half inside, half outside the hate crime domain. Moreover, it still focuses significantly on a wider set of 'other crimes' experienced by disabled people which it regards may be opportunistic or vulnerability based that are non-hostility based crimes. This is most stark when it states, “It's important to make a distinction between a disability hate crime and a crime committed against a disabled person because of his or her disability ... 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” (CPS, 2017, p. 2). Among the examples of crimes which are committed against disabled people because they are

disabled but are not regarded as hate crimes include 'mate crime' and crimes where there is a relationship and expectation of trust. Thus, the 2017 Public Policy Statement replicates – and amplifies - the most problematic part of the 2007 Public Policy Statement with examples of targeted hostile crimes against disabled people, albeit in relationships of trust, which my research concludes can be regarded as fitting the hate crime definition but which are now not to be regarded as such. It is as if much of the scaffolding in the 2017 Public Policy Statement on Disability Hate Crime has been altered to reflect longstanding critique but a core policy distinction remains largely unaltered. Inevitably, it also remains located within the current wider legal framework which conceives of disability and vulnerability as co-existing statuses. It continues to straddle the competing representations of vulnerability and hostility but in ways that now seek in part to positively rebalance the policy focus. The result is a mix of progress and confusion, a policy scenario marked by one policy step forward and one back. Thus, the ongoing unsettled nature of Disability Hate Crime continues to be manifest in this significant policy pronouncement from the CJS. This is likely to persist without a legal reframing of the issue.

Analysis for this study concludes that sustained progress on vulnerability in the context of Disability Hate Crime is only likely to be realised in the context of moving to a more far-reaching alternative understanding of disability hostility. This would require a shift in the legal framing of disability hostility.

Currently, the CJS is constrained because it operates on a model of disability hostility that is based on hostility motivation and/or hostility demonstration. That is all that Section 146 is designed to address. Indeed, in analysing 15 cases, this study has found that such a model only captures some Disability Hate Crime cases (see Chapter 3, Cases 1, 2, 3, 4, 5, and 7, and Appendix F). In the main, it captures cases that involve manifest verbal hostility alongside other criminal offences. It does not capture Disability Hate Crimes where people are targeted because of their disability and which often involve serious disability based harassment, abuses of power including exploitation (often over time), and, in some instances, murder. The research for this thesis has found that these cases are reframed because of vulnerability (rather than because of disability) and are responded to as such. Having analysed many cases, one disability campaigner reflected that these crimes against disabled people were not attacks on vulnerable people per se, but targeted attacks on disabled people first and foremost. She concluded that this pervasive problem representation as vulnerable was leading to a lack of justice:

“This doesn't just happen because you're a so-called vulnerable person ... and that was the thing that I wanted to get out into the media, that this is not that people attack people because they're vulnerable, they're attacked because they are disabled. These are hate crimes; they are not attacks on a vulnerable person” (R12).

This insight was echoed by a former senior CJS manager. She concluded that lawyers can adopt an 'easy' vulnerability focused mindset in these cases:

“Why do I have to go through the intellectual debate on this? I can just put it to the judge that this is a vulnerable victim, and they’ve got powers to enhance sentence because the victim is vulnerable, so why go through the mental gymnastics? ... And that is where you run into difficulties with the disabled community because it does matter. It is about disabled people’s rights, and the prosecutors, they just don’t get it. They think it’s a prosecution, a person’s been sentenced, and there’s been an uplift of a sort. The fact that it was not under Section 146, that it has not been for disability hostility, they’re not losing sleep over it, but the disabled groups are. They are saying, ‘You’re not recognising our rights and the fact that we are being targeted because of our disability’. So therein lies the problem” (R15).

She goes on to conclude that this undue focus on vulnerability and the inextricably linked failure to recognise crimes committed because of disability led to Disability Hate Crime being placed at the edge of the hate crime domain. This has led to a reframing of disability hostility as a social care issue rather than a criminal justice issue, she said.

A respondent involved with the agenda over many years and across sectors reflected on the undue vulnerability focus in Disability Hate Crimes as one that “constitutes both a barrier and also an opportunity” (R3).

She identified the barrier as the challenge of proving hostility in Disability Hate Crime cases when the pervasive embedded perception is that this all happened because “they are vulnerable, not hated” (R3).

“Being called vulnerable, being perceived as vulnerable is actually a stereotype and when expressed ... is what we would call a bias indicator. It can help prosecutors actually recognise Disability Hate Crime and help make the case that it is a hate crime” (R3).

My analysis concurs with that reflection and takes it further. Indeed, this thesis has found that the vulnerability categorisation–stereotype is, in a sense, the master stereotype that floods the disability experience with an almost automatic equating in the CJS of seeing disability and perceiving vulnerability. If, as this study found and outlines, the vulnerable-person stereotype is the most pervasive stereotype of disabled people, then it can be viewed that targeting disabled people for crime because of their perceived vulnerability is a hostile act and can be regarded as such. Directly related to this, targeting of disabled people for crime because of perceived vulnerability is a discriminatory selection. Indeed, this study’s case analysis has found that targeting disabled people for crime because of their perceived vulnerability often simply provides the cover through which hostility can be expressed (See Chapter 3, Cases 2, 4, 5, 7, 8, 9, 10, and 11, and Appendix F; Faye Waxman, 1991).

My analysis and others have found that targeting of disabled people because of their perceived vulnerability has been popularly linked to what are termed opportunistic crimes. However, as Thomas (2011) has indicated, these crimes are often calculating, in the choice of target. Discriminatory calculation rather than a passing opportunism often guides these crimes with that discriminatory calculation reflected in the selection of a disabled person as a target (Appendix F case profiles).

On the basis of the research for this thesis, I concluded that the issues of perceived vulnerability and hostility are not wholly separate in Disability Hate Crime cases. Thomas (2011) has previously proffered the view that targeting vulnerability might well be a more complicated expression of hostility. The analysis for this study went further and concluded that targeting vulnerability and targeting hostility are not opposite sides of the same coin in Disability Hate Crime; they are, in fact, very often the same sides of the Disability Hate Crime coin. Targeting vulnerability and targeting hostility are almost always variations in the expression of hostility. In this context, I argue that, as one of my research respondents reflected, interrogating vulnerability is central to advancing Disability Hate Crime “and must always be analysed and addressed where it’s raised” (R3).

This raises a wider implication arising from my research. If Disability Hate Crime victimisation requires recognition that it be identifiable through either demonstration of hostility, a hostility motivation, or targeting because of a victim’s disability, then the existing legal framework falls short of what is required to capture the nature and range of Disability Hate Crimes. The current legal framework, the demonstration–motivation model embodied in Section 146 of the CJA, is limited in the range of disability hostility cases it can capture. No matter how enlightened the CJS policy initiatives are, no matter how many times vulnerability is revisited, without a change in the law that captures victimisation because of disability vulnerability, this thesis concludes that only limited justice can be delivered on Disability Hate Crime. Concurrent with the research for this thesis, research led by Mark Walters at Sussex University concluded similarly that hate crime law requires reform to capture targeting by reason of disability or other protected characteristics. Deploying similar methods, Walters, Wiolditzka, and Owusu-Bempah’s research (2017) conclusion adds weight to the conclusion reached here in respect of disability targeting.

That said, there are provisions in jurisdictions which can be appraised and considered, particularly in US states which operate a ‘because of’ or discriminatory selection model of hate crime law. On the basis of my research findings, I would not simply conclude in favour of replacing the current demonstration–motivation model as exists in England and Wales with a discrimination-selection model imported from the US. Rather, this study points to the need to appraise a hybrid model in respect of Disability Hate Crime which can capture motivation, demonstration, and discriminatory selection-based hostility. In this way, the vulnerability targeting challenge can be included within the Disability Hate Crime framework. Given the different histories and “geographies of segregation” (Roulstone et al., 2011) of the different discriminations

such as racism, homophobia, and disablism, different manifestations of discrimination have developed, and these merit a varied geometry in terms of legal, policy, and practice responses. Failure to recognise and respond to these differences risks ongoing failure to deal appropriately with Disability Hate Crime through requiring this specific form of hate crime to conform to a legal model of hostility devised 20 years earlier to respond to racist and religious crimes. Indeed, failure to respond to these differences in manifestations of disability hostility relegates Disability Hate Crime to the status of an unsettled and unsettling concept – largely because of the ongoing failures to revisit and reconstruct the vulnerability/hostility nexus, and the pervasive notions of what can constitute oppression and targeted violence based on identity discrimination.

## **7.6 Conclusion**

Whilst considerable activist, policy, and political stream activities have contributed to the emergence and development of a Disability Hate Crime policy agenda in the CJS, the issue has not yet become institutionalised as business as usual. It remains an unsettled and unsettling agenda. Central to the ongoing unsettled and unsettling nature of this agenda are the questions posed by the issue of vulnerability.

This chapter identified and analysed three phases in the problem representation of vulnerability in relation to Disability Hate Crime. These are an initial Policy Silence phase; a second phase, the Disability Hate Crime plus Vulnerability phase lasting 10 years; and now the most recent phase which I identified as the Disability Hate Crime and other Crimes against Disabled People phase (2016–to date). I conclude that it marks both further progress towards institutionalisation and indicates ongoing policy challenges. The most recent policy statement from the CJS presents what is still an unsettled position. This is reflected in a policy name change that, at one level, bi-locates Disability Hate Crime inside and outside the hate crime domain. At the same time, the substantive policy content significantly foregrounds the focus on hostility and in part critiques the focus on vulnerability. There also remain unsettled issues in terms of how this revised Public Policy Statement sits alongside existing CJS legal guidance including senior counsel's guidance which foregrounds the issue of vulnerability. And all of this policy activity, including considerable positive developments, are taking place within a wider legal framework which still equates disability and vulnerability, which operates competing problem representations. Now, a gap may be emerging between parts of the CJS vision and policy on this agenda and the constraints of the existing legal framework. In this regard, Disability Hate Crime, through forcing vulnerability targeting on to the policy agenda, is pushing at the boundaries of possibility within the current hate crime domain and highlighting its constraints.

This chapter's analysis leads to the conclusion that an ongoing vulnerability focus remains the policy challenge in the journey towards the institutionalisation of Disability Hate Crime. My analysis leads to the conclusion that vulnerability is embedded as the master categorisation–stereotype of disabled people in

criminal justice policy and practice. Vulnerability has proven the most contentious concept in seeking to institutionalise Disability Hate Crime in the CJS. Its uncritical application to disabled people as if it were an inherent group attribute and without disabled people's agreement go to the heart of the challenges and has served to impede the institutionalisation of the Disability Hate Crime agenda. This ensures that Disability Hate Crime continues to be an unsettled and unsettling concept.

The analysis in this chapter, however, also identified a possible way forward towards progressive institutionalisation of Disability Hate Crime. This could be addressed in short- to medium-term legal reform. The research for this thesis found that the legal framework for addressing Disability Hate Crime (Section 146), known as a demonstration–motivation model, is limited in the range of disability hostility cases it can capture. The fundamental challenges lie not in the nature of disability discrimination which can be expressed as classic violent discrimination and/or through abuses of power in imbalanced power relationships, but in the limitations of the available legal framework to address it. What is required is a legal framework for disability hostility that includes hostility based on demonstration, motivation, and/or because of disability. Vulnerability and hostility should not be hermetically sealed off in crimes against disabled people. They should be considered and interrogated together and vulnerability in criminal acts recognised for what it is, a discriminatory and hostile targeting of disabled people.

Given the different natures of the different discriminations, it is warranted that a variable geometry of legal responses to the different hate crime strands be put in place. There is a need to appraise a hybrid model in respect of Disability Hate Crime which can capture motivation, demonstration, and discriminatory selection-based hostility. In this way, the vulnerability targeting challenge in disability victimisation and wider policy challenges posed by vulnerability can be addressed within the Disability Hate Crime framework, and further progress towards institutionalisation can hopefully occur. In the absence of such a change in the legal framework, notwithstanding the good intentions and significant positive efforts of CJS agencies, in particular the CPS and parts of the police and activists' campaigning, the policy challenges of vulnerability are likely to continue and to impede institutionalisation of this policy agenda.

## **Chapter 8: An Agenda item yet to fully speak its name - Ableism, Disablism, and Disability Hate Crime**

### **8.1 Introduction**

The previous chapter analysed a unique challenge in Disability Hate Crime, the challenge of vulnerability targeting and how it is an unsettling feature of this policy agenda. This chapter analyses another unsettling and closely linked feature of Disability Hate Crime and that is, an aspect of this agenda that is yet to fully speak its name. This chapter analyses issues of recognition of disability prejudice, ableism, and disablism as they affect the development and institutionalisation of Disability Hate Crime policy making in the CJS.

In the hate crime policy domain as indicated in earlier chapters, it is commonplace to speak about racist crime, antisemitism, homophobic crime, Islamophobic crime and transphobic crime. In doing so, there is an implied acceptance of the link between ideologies of racism, antisemitism, homophobia, transphobia, and hate crime. There is a recognition of the ideological diminution that minoritised identities experience. Indeed, this is taken as a defining feature of hate crimes.

However, it is not yet commonplace to speak about disablist crime or, indeed, ableist crime. Thus, disablist crime is usually referred to as Disability Hate Crime. This sets a high threshold for disablist crimes. It begs the question whether there is recognition of ideologies of disablism and ableism that underpin disablist incidents and crimes. It raises the further question as to why there may be this lack of recognition of a diminished minoritised identity based on a prejudicial ideology that inferiorises disability identity. What alternative explanations exist and what, if any, are their impacts on Disability Hate Crime policy and practice? This emerged as one of the focused codes for consideration in the data analysis underpinning this research thesis.

The focus in this chapter is firstly on understanding the context of disabled people's experience of disadvantage and discrimination over time and in England and Wales today. The focus is also on the recognition of systemic or institutional discrimination experienced by disabled people in wider society and in the CJS. The chapter analyses the gaps between recognition of institutional discrimination experienced by disabled people and lack of recognition of disablism or ableism influencing Disability Hate Crime. This chapter explores whether, yet again in the disability domain, competing accounts of disabled people's experiences in terms of welfare or rights occlude recognition of disablism and ableism. It explores the roles played by state institutions and by disability organisations in constructing a dual problematisation of welfare versus rights. It analyses shifting understandings and challenges in locating Disability Hate Crime within a wider prejudicial ideology frame of understanding. Is a frame of disablism, ableism, impairmentism, or a blended frame most appropriate? Why does the conceptualisation of disability prejudice remain unsettled? What impact does the use of one term instead of another make in this context? Why is it that academia, particularly outside of Britain, appears more willing to engage with

disablism and ableism? This chapter concludes with thoughts on how disability prejudice, in the form of ableism, is a prejudice that is yet to fully speak its name in England and Wales.

## **8.2 Disabled people's varied experience within a profile of disadvantage and discrimination**

As previously mentioned in Chapter 2, scholarly accounts of the social situation of disabled people in Britain point to varied experiences influenced by issues of class, gender, and impairment (Borsay, 2005; Braddock and Parish, 2001; Oliver and Barnes, 2012). There is recognition of a patterned basis of disadvantage and discrimination experienced by disabled people (Oliver and Barnes, 2012; ODI, 2012).

A recent comprehensive profile of the social situation of disabled people in Britain, 'Being disabled in Britain' (EHRC, 2017a), highlighted the fact that, in education, disabled students in England and Wales are more likely to be bullied, excluded from school, and have nearly three times lower educational attainment levels than non-disabled children (Ibid.).

The report also showed that disabled people are much less likely to be employed than non-disabled people. In 2015-16, 47.6 per cent of disabled adults were working in England and Wales, compared to 80 per cent of non-disabled adults. There is also a disability pay gap akin to gender and ethnicity pay gaps: in 2015-16, disabled people's median hourly take-home pay amounted to £9.85, compared to £11.41 for non-disabled people (Ibid.).

Significantly, more disabled people in England and Wales live in poverty than non-disabled people. In 2014-15, 30 per cent of working-age adults in households with at least one disabled household member were living on incomes below 60 per cent of median income. This compares with 18 per cent of households with no disabled household members (Ibid.).

The EHRC (2017) also highlighted that disabled people in England and Wales are more likely to have major health conditions, to experience health inequalities and are more likely to die younger than non-disabled people.

Disabled people also face a range of physical, attitudinal, and institutional barriers in attempting to participate in society (EHRC, 2017a). These include seeking to vote, under-representation in public appointments and in political office. In addition, there remains inadequate access to transport and other services that can affect the quality of life of disabled people: during 2012-14, 45 per cent of disabled adults in England and Wales reported difficulties in accessing basic services in transport, health, benefits, culture and leisure, compared with 31.7 per cent of non-disabled adults (Ibid.).

Disabled people continue to face difficulty in finding appropriate housing, with less than 17 per cent of housing authorities having strategies in place to build disabled access-friendly homes (Ibid.).

Disabled people also experience disadvantage and disproportionality in terms of justice (Ibid.), with an over-representation of people experiencing mental health difficulties and learning-disabled people in the prison population. Prisoners are not only more likely to have a mental health difficulty compared to the general population, but 70 per cent of prisoners who died by suicide from 2012-14 had identified mental health difficulties (Ibid.).

In addition, disabled people are disproportionately represented as victims of crime, with disabled people feeling a heightened lack of safety, compared to non-disabled people (EHRC, 2017a). These areas of victimisation are reinforced by analysis of crime survey data in England and Wales (Iganski, Botcherby, Glen, Jochelson, and Lagou, 2011), by the work of Emerson and Roulstone (2014) on disability violence, and by two systematic reviews of disabled people's experience of targeted violence (Sin, 2015).

The EHRC (2017) also points to the growing body of evidence on the specific theme of this research thesis, namely Disability Hate Crime. It highlights increased recording of Disability Hate Crimes by the police in recent years, possibly reflecting improved recording and increased reporting.

The EHRC (2017) concludes that "negative attitudes towards disabled people remain prominent in Britain" (Ibid., p. 12) and this patterned disadvantage can be more fully understood in that context. Aspects of the contemporary manifestation of these negative attitudes were highlighted and analysed by Birch in the context of the recent climate of austerity and the construction of disabled people as a 'drain so called hard working tax payers' (Birch 2017 pg392).

This evidence base in relation to the disadvantage experienced by disabled people in England and Wales raises the question: how have we understood and responded to this phenomenon? Responses have shifted over time. At various times, official responses have included banishment, concealment, institutionalisation, segregation and onwards to welfare, care and protection, rights and justice (Borsay, 2005; McDonnell, 2007; Braddock and Parish, 2001). The result is a mix of policy and practice problematisations and paradigms in response to disability. As the EHRC identifies in its 2011 formal inquiry, there are two main paradigms affecting policy responses to disability in Britain today: the Welfare Model and a Rights Model. Taking a longer view of policy and practice responses, the Welfare Model and its antecedents (the Pity and Charity model) and sibling, the Medical Model, have tended to prevail in terms of official responses to disability. The dominance of the Welfare Model has led to the highlighted areas of disability disadvantage being explained away in terms of individual tragedy requiring a support-based response of individual welfare, care and protection. The ideology of welfare interpellates disabled people as individual tragic subjects (Althusser, 1969).

However, a Rights Model of disability has emerged in disability activism and in academia which seeks to shift the problematisation of disability. In the British context, this has largely taken the form of a Social

Model of disability and emerged as a corrective to the dominance of the Welfare Model in the late 1960s and 1970s. The Rights Model shifts the gaze from the individual disabled person to the disabling society – a society which, in terms of attitudinal and physical barriers, disables people who are different simply by virtue of impairment. The focus shifts from care and containment of the individual to transforming social structures to better include everyone, including people with impairments. This Rights–Social Model has begun to influence government policy. As the dominant counter model, it is questionable, however, whether it offers an over-socialised corrective to the Welfare Model (Shakespeare, 2006).

In terms of understanding and responding to disability in Britain today, the Welfare Model tends to predominate, tempered somewhat by the influence of the Rights-Social model. It is as if a 20<sup>th</sup> Century paradigm and problematisation of welfare, care, and control in relation to disability in Britain overshadows a 21<sup>st</sup> Century shift to rights and justice. This forms the context within which these research findings are analysed.

### **8.3 Recognising disadvantage and discrimination experienced by disabled people, including institutional discrimination**

In the research for this thesis, respondents acknowledged the disadvantage and discrimination experienced by disabled people. They acknowledged that there are systemic disadvantages impacting disabled people that go beyond the experience of an individual impairment and have a basis in the structural positioning of disabled people in society. This recognition was shared by disability activists, other rights advocates, and some CJS leaders and officials.

One former CJS leader reflected that institutional discrimination “is particularly stark in the area of disability”, and went on to reflect:

“I think institutional discrimination is probably starker in Britain in respect of disabled people than any other group actually” (R30).

He concluded that:

“I think it is a very fundamental mindset which sees disability as a problem and you see it everywhere ... It is not seen as an issue for liberation, it is seen as a problem ... I think it is a fundamental mindset about disability ... and, as a result, ... the country is full of barriers to disabled people” (R30).

Other CJS leaders tended to emphasise institutional failure to respond appropriately to diverse needs, in this instance disabled victims. Their views reflect in part the emphasis in the earlier Lawrence Inquiry (1999) on a failure to provide an appropriate service to people based on their cultural background.

One HMIC Inspector reflected that she believed institutional discrimination existed in respect of disabled people in the CJS, and, in particular, she spoke about policing:

“Institutions that have a lot of cases, and where there’s a big-volume business (like the police), the way to deal with a big-volume business is to do exactly the same thing for everybody and to manage your demand ... and there’s maybe an unconscious management of demand when more difficult, more complex cases (e.g. some Disability Hate Crime cases) are required to be dealt with. They require you to get off the conveyor belt and not do everything in the same way again. I think that is a big challenge corporately for an institution that it can adapt to do that (in this instance, for disabled people) because, quite often, institutions are not made up of wicked people determined to do a bad job. They are made up of good people who are sometimes frustrated by volume demands” (R23).

She concluded that this can lead to a failure to provide an appropriate service, which amounts to institutional discrimination.

This view of how institutional failure and discrimination can inadvertently become a feature of volume business in the CJS was echoed by a national policing hate crime lead:

“We are OK when it is a vanilla service you require, the same for everyone ... the CJS is not good at responding to subtlety, to anything beyond a black and white service” (R36).

Whilst leaders in the CJS recognised the issue of institutional failure and institutional discrimination as experienced by disabled people, policy officials, disability rights activists, and independent statutory sector respondents more readily identified specific aspects of institutionalised discrimination, which they recognised.

One former CJS senior manager reflected that:

“The whole system [and] the CJS makes assumptions which, of their very nature, discriminate against disabled people. There is an assumption of certain types of mental illness impacting on your ability to tell the truth. There are lots of assumptions within our whole system that I think do discriminate against disabled people. There is an assumption, ‘Oh, you won’t be able to do this; and if you cannot stand up to cross examination, you’re not a reliable witness; and if you need an intermediary, will your evidence be so powerful?’ So, the system is, I think, quite heavily loaded against the disabled victim” (R15).

One CJS hate crime champion went further, asserting that, in the area of hate crime, parliament and legal statute has an inbuilt institutional bias towards disabled people in that:

“For racial and religiously generated offending, we have specific offences, whereas we don’t have these for homophobic or disability (hate crimes) and that makes a significant difference to how victims of these offences are treated within the criminal justice system. Parliament has legislated that the same behaviour done to somebody who is black will have a different sentencing outcome and be treated in a different way in the CJS than exactly the same offence on somebody who is homosexual or has a disability. So, if I punch you in the eye and you have a black eye and I say something racist at the same time which is aggravated, that becomes an either-way offence, two years. If I do the same thing, punch you in the eye, call you a ‘spastic’ or something that can only be dealt with in the magistrate court, maximum sentence six months. I can invoke Section 146 all I like, but it still won’t make it more than six months and so, actually, parliament and the statute itself has an institutional bias” (R22).

This recognition of institutional bias and failure in the CJS to provide disabled victims of crime with an appropriate response as victims and as victims of Disability Hate Crime was also recognised by lead officials who felt somewhat uncomfortable with the language of institutional discrimination. One hate crime policy official, with long-standing involvement, reflected:

“Unwittingly offering a lesser service because of disability, I think, is probably commonplace” (R8).

#### **8.4 From recognising institutional discrimination to non-recognition of disablism or ableism – a missing link?**

Notwithstanding the widespread recognition of institutional discrimination, fewer respondents in this thesis named a prejudicial ideology such as disablism or ableism as underpinning such discrimination. Respondents said they viewed it as significant, yet puzzling, that we readily speak of racist crime, or homophobic crime, but not disablism crime. They tended towards the view that this failure to link targeted crimes against disabled people to a wider disability prejudice, and not recognising it as disablism or ableism, goes to the heart of understanding the challenges to the development of Disability Hate Crime within the hate crime policy domain.

One respondent identified a serious risk in failing to link Disability Hate Crimes to a wider disablism ideology which is the

“real risk of motivations being disregarded in any crime that is experienced by disabled people. We have lost the inference in language linking back to intent and motivation” (R7).

One former CJS leader reflected on this non-recognition of disablism and the non-use of Disablist Crime:

“That just says everything about the history of this issue. There is not the understanding (of disablism). It is a very modern concept, whereas racism is not really such a modern concept. People just have not thought in those terms about disability ... I think it has always been seen as a problem emanating from and owned by disabled people. And so, there isn't a word for it, is there? To talk about disablism doesn't yet mean anything” (R30).

A disability activist added that wider society and the CJS are yet to make the links between disability discrimination, Disability Hate Crime, and wider disablism or ableism because “we're still arguing in the pity place” (R10). She further reflected that:

“The oppression that faces disabled people (i.e. disablism) is still not being recognised .... and we have to struggle very hard for people not to feel sorry for us ... There is something different about the oppression that faces disabled people” (R10).

Not all respondents were quite so unambiguous in their recognition and naming of disablism as an oppressive ideology affecting disabled people's daily lives and experiences of hate crime.

Some activist respondents said they recognised disablism but were hesitant to name it in seeking social change. Indeed, some involved with the EHRC Inquiry into disability related harassment reflected that institutional disablism was the underpinning issue implied in that Inquiry, but that this language was avoided because of how the negative reaction to the issue of institutional racism after the Lawrence Inquiry was perceived. There was fear of a similar reaction in the context of disability as well as wider non-recognition of the term (R28; R20).

Respondents reflected that Disability Hate Crime is not linked to a wider disablism in part because of the impact of the Social Model view of disability. Given this model's distinction between impairment (a given) and subsequent disability (a social construct), for some social model adherents the issue is not disablism but impairmentism. These conceptual challenges were reflected in respondents' views:

“I'm personally not a fan of the phrase 'disablism'. It sort of jars with how I regard things. If you're being accurate (in terms of Social Model analysis), it would probably be impairmentism ... within the way we have constructed disability rights, and see disabilities as socially constructed rather than of the individual ... And I think that's been the whole basis of our analytical framework with the Social Model ... I would say there is institutionalised prejudice towards disabled people” (R7).

Another strong Social Model adherent reflected that “if you follow the Social Model, it gets complicated” (R2), whilst another long-standing national disability activist reflected:

“I don’t like that term (disablism) but there is discrimination and some of it arises in institutions. But it is more than that, it’s also about society and how we work and the way that those in power use that power” (R37).

She further reflected:

“We have worked so hard to get the Social Model integrated into society and, unfortunately, that has been pulled back recently and the Medical Model is coming back in. The Social Model is what we are about, and that is about recognising that we have impairments and that we are not disabled so much by our impairments as through the ways society performs and reacts to our impairments. So, when you talk about disablism, it is sort of a negative word, it has negative connotations. I mean, in a way, you could say the issue is impairmentism” (R37).

Other respondents, less wedded to a purist version of the Social Model of disability, were more embracing of the links between Disability Hate Crime and a wider prejudicial ideology of disablism. They also recognised the challenges in seeking to advance understanding of disablism and its clear underpinning of Disability Hate Crime in the current context.

A former senior CJS manager reflected:

“If you said, ‘This [i.e. Disability Hate Crime] is due to disablism’, staff would say, ‘What do you mean?’ If you said, ‘This is due to racism or sexism’, they get it. I think we are not there yet. Our language has not even evolved to the point where we talk about disablism or disablist. I think this just shows something around where we are in our maturity around understanding the issues” (R15).

Other respondents reflected that they observed a situation in society today where institutional disadvantage based on disability may be recognised but there remains a failure to link up the dimensions of disadvantage, together with a failure to locate them in a coherent understanding of disability prejudice, disablism, or ableism.

One senior independent researcher reflected that, based on his research, disability “stereotypes and prejudices are widely prevalent, widely accepted, and they contribute to the climate in which hate crime happens” (R35).

He further reflected that these stereotypes and prejudices contribute to widespread institutional discrimination experienced by disabled people in employment, service provision, and:

“In the absence of a challenge to institutional discrimination, all these prejudices and stereotypes travel unimpeded into the general ether of society (and impact on hate crime)” (R35).

Other respondents more directly involved in CJS service delivery also reflected on the implications of a failure to link up the dimensions of disability disadvantage and discrimination. One reflected on the significant implications of not locating Disability Hate Crime within a wider understanding of disablism:

“If you do not situate Disability Hate Crime in the broader context of disablism, then you are not going to be able to deal with Disability Hate Crime in the round. You may get your head around proving disability hostility. You may then fail when it comes to actually meeting the access needs of victims and witnesses and all the rest of it, as they can arise from institutional arrangements that exclude disabled people and can arise from institutional discrimination. So, disability hostility has to be understood in the context of wider structural discrimination experienced by disabled people in order to be addressed appropriately” (R3).

She went on to reflect:

“If you take initiatives like the Section 95 Report on Race and the Criminal Justice System in England and Wales ... they situate race hate crime figures in the broader context of race discrimination and disadvantage, linking to issues such as staff perceptions, stop and search, all these things that affect success or failure of, actually, what is quite a specific policy area (i.e. hate crime). We need an equivalent broader context of understanding for Disability Hate Crime. Progress will happen with the growth of such understanding and dismantling of systemic barriers” (R3).

These points regarding the need to situate Disability Hate Crime cases in a broader context of understanding of disability prejudice, disablism, and ableism are considered through the critical analysis of a range of cases in the section which follows.

Notwithstanding this recognition of institutional disadvantage experienced by disabled people and, indeed, its underpinning by an ideology of disablism, there remains an under-articulation of disability hostility as disablist crime, and an under-articulation of disablism and ableism. Indeed, the most recent CJS policy statement on Disability Hate Crime makes one reference to disablism (CPS, 2017). All this begs the question as to why, in the face of evidence of significant disability disadvantage and discrimination, a

failure to locate and understand such disadvantage and discrimination within a context of disablism or ableism persists?

### **8.5 Does a lack of recognition and focus on disability prejudice, disablism, or ableism matter in the delivery of justice in Disability Hate Crime cases?**

As outlined in Chapter 7, as part of the research for this thesis, I analysed cases in which disabled people had been victims of targeted incidents and crimes, all of which could be regarded as hate incidents or hate crimes. Analysis of these cases indicates the importance of recognising disability prejudice, disablism, or ableism for the delivery of full justice. The importance of recognising disability prejudice is highlighted in some of the serious cases considered in this research, including those involving enslavement, murder, and murder–suicide (see Appendix F, Cases 8, 14, and 15).

In Case 14, which analyses the murder of a learning-disabled man with mental health difficulties, there was no identification of a disability prejudice dimension by the police, prosecutors, or the judge involved. At sentencing, the judge spoke of a senseless attack on ‘an extremely vulnerable victim’. The investigating police officer was reported as saying, “There is no motive for this assault but children often bully people with learning difficulties”. At the sentencing hearing, one of the defendants said in open court that he was “not going down for a muppet”.

This case appeared ‘senseless’ and ‘without motive’ because the decision makers did not locate the facts of the case within a wider understanding of disability prejudice, disablism, or ableism. A rereading of this case in the context of disability prejudice, disablism, and ableism charts a history of targeted disablist abuse of the victim going back to primary school. This targeted abuse first led to the victim being moved from mainstream to special education, enforcing educational segregation. Then a targeted assault on him as a teenager culminated in a mental breakdown; he was sectioned and spent seven years in psychiatric care. Upon discharge, he was targeted by a group of teenage ‘mates’ based on his disability and he ‘lost’ his money to this group. The teenagers knocked him unconscious, culminating in a final assault involving head-butting and banging the victim’s head against a parked car. The victim died three days later in hospital.

Long-standing targeted abuse, exploitation, and violence, based on a victim’s disability identity, were identified as manifestations of disablism in the previous chapter. In this case, disability prejudice and underpinning disablism and ableism were present throughout, but never recognised or named. It could be argued that the police, prosecutors, and the judiciary involved saw what their limited view of disability hostility could reveal – the disability hostility and prejudice was simply ‘hidden in plain sight’. There was no consideration of disability aggravation because no-one in a decision-making capacity ever identified it

as such. No-one named the case in all its dimensions of both hostility and vulnerability and, as a consequence, full justice was not delivered (Bennett 2017).

In the aftermath of this case, disability activists argued that there was a strong sense of injustice in the failure to recognise and address the disability prejudice dimension (Quarmby, 2011). For a period of time, the case became a litmus test of the CJS' failure to recognise disability prejudice and its failure to deliver both symbolic and substantive justice for disabled people.

Case 15 profiles the sustained disability related harassment of a family comprising a disabled adult and two disabled children over a 10-year period and which culminated in a murder-suicide. A series of targeted disability related incidents were reported to the police, yet none of the reported incidents were crimed. To the extent that they were noted at all, they were classed as anti-social behaviour incidents and closed. This became known as the Pilkington case and it is detailed earlier in Chapter 5 where it was analysed as a focusing event that led to Disability Hate Crime securing agenda-setting status in the CJS. The case details are not rehearsed here save referencing of information.

Over the course of 10 years approximately, the family reported incidents of disablist verbal abuse including terms such as 'mong', 'spastic', 'freaks', 'Frankenstein', 'perv', 'nutcase', 'spazzo' and 'lunatic', alongside window breaking and damage to the family's car and garden. On one occasion, the disabled boy was taken captive, locked in a shed, and held at knifepoint. This sustained harassment culminated in a situation, the bodies of the mother and daughter were found in a burnt-out car in a lay-by in Leicestershire. Two years later, an inquest found that the mother unlawfully killed her daughter and died by suicide herself. The inquest found that the inappropriate response by the police and the local council to the disability harassment reports made to them by the family contributed to the decision made by the mother to act as she did.

In this case, neither the police nor other agencies recognised or named the incidents as hate incidents or hate crimes linked to disability prejudice, disablism, or ableism. If noted at all, the incidents were termed 'anti-social behaviour', which became the prevalent frame for interpreting what happened to the family. Yet the sustained disability harassment based on manifest disability prejudice was again present throughout but never recognised or named. Again, full justice was denied to this family with particularly tragic consequences through a failure to recognise and name their experiences in the round and to respond appropriately (Capwell, Ralph and Bonnett 2015).

Analysis of the 15 cases in this research thesis indicates that not only is recognition of disability prejudice, disablism, and ableism significant in individual cases, it also indicates that a shared understanding of the disability prejudice dimension of cases needs to exist across decision makers at each key stage in the criminal justice process. It is not enough for police and prosecutors to recognise and name this prejudicial

dimension – the judiciary must recognise and respond appropriately to the prejudice dimension of such cases. Analysis of failed Disability Hate Crime cases points to the judiciary's non-recognition of disability prejudice, disablism, or ableism as significant factors impacting the delivery of full justice for victims of Disability Hate Crime.

The significance of this judicial lack of recognition is highlighted by a number of the cases analysed in the research for this thesis. In Case 5 (Appendix F), where a learning-disabled man was attacked in a skate park, the judge at the sentencing stage rejected the prosecutor's argument that the targeted abuse was due to disability prejudice. Fred was a 29-year-old learning-disabled man with significant physical impairments including partial sight, profound deafness, and a speech impairment. Described as having 'a mental age of 15', he lived with his mother and frequently went for a walk in the local skate park. One Saturday evening, when Fred visited the skate park for a walk, a number of young people were throwing branches and twigs around. They were verbally abusive, demonstrating manifest hostility towards Fred. He remonstrated with these young people and was upset with them. A short time later, three young men came into the skate park in a van, and one of them proceeded to assault Fred. They punched, kicked him, caused a bump to the side of his head, cuts to his mouth and ear, and bruising to his back and legs. Fred got away and, although injured, he was able to get home with his bike. He immediately told his mother about the incident and she contacted the police. Fred identified the young men who attacked him because one of them had assaulted him previously.

From the outset, the CPS recognised and identified this as a case of potential Disability Hate Crime. They pursued a proactive case-building approach to secure evidence in relation to the disability hostility dimension of the case and the prosecutor raised this dimension with the sentencing judge. However, the judge did not accept the disability hostility dimension and stated in open court that this was not a case of disability hostility. He said he knew what type of individual the defendant was. He said that the defendant knew that the victim was a vulnerable person (i.e. based on disability) and that there was a previous incident where this defendant targeted a vulnerable victim. The judge indicated that this case was about an attack on a vulnerable person and 'not your argument of hostility'.

This case highlighted that a shared understanding and recognition of disability prejudice, disablism, and ableism by all decision makers in the CJS is crucial. It highlights that full justice can be denied in practice through non-recognition of disability prejudice in such cases. It also highlighted that CJS officials, in a sense, find what they go looking for in these cases. As a corollary, they cannot find what they are not alert to and do not look for in these cases. This can have consequences for both symbolic and substantive justice in targeted crimes experienced by disabled people.

As mentioned in Chapter 6, 'Towards Agenda Institutionalisation?', the impact of judicial non-recognition and non-naming of disability prejudice is a matter of ongoing concern (mainly outside the judiciary).

It is clear from consideration of cases analysed for this thesis that a lack of alertness to and focus on disability prejudice, disablism, and ableism across the CJS matters in the delivery of both symbolic and substantive justice in Disability Hate Crime cases. Cases have been non-crimes because of a lack of alertness to disability prejudice with a resultant lack of substantive justice. And cases have been crimes solely in one dimension to the neglect of a disability prejudice dimension with a resultant lack of both symbolic and substantive justice (see Chapter 3, Cases 5, 9, 14, and 15, and Appendix F).

This analysis of individual Disability Hate Crime cases which highlights the under recognition of disability prejudice, ableism and disablism underpinning these cases reflect again the issues raised and insights of Lipsky (2010) and Hall (2013) on street level bureaucracy and the exercise of discretion. These cases reflect Lipsky and Hall's insights on how prevalent attitudes to responding to particular types of cases or victim groups can become routinized in day to day policing such that a victim group response became day to day policing practice. This research for this thesis found this in the analysis of individual cases where clear disability hostility was present and relevant but not recognised. The research for this thesis found in the analysis of individual cases a prevalent response to what were constructed as vulnerable victims, and how this was constructed such that other responses could not easily be countenanced. This reflects the often well intentioned response to managing caseloads identified by Lipsky in agencies such as the police, but as seen in the research for this thesis, it can lead to failures to deliver substantive justice (Lipsky 2010; Hall 2013).

### **8.6 Do competing paradigms and problematisations occlude recognition of disablism? What may be the impacts?**

Research undertaken for this thesis provides evidence of the continued existence of two paradigms which frame disability and responses to disability in England and Wales today. These paradigms - the Welfare, Care, and Protection paradigm and the Rights and Justice paradigm – were referred to earlier in this chapter and in Chapters 2 and 7.

As mentioned previously, within the Welfare, Care, and Protection paradigm, disability is constructed as an individual condition that can best be addressed with the interventions of medical and welfare professionals deploying various care, control, and protection mechanisms. This paradigm has evolved over time and has, more recently, incorporated aspects of 'users' voices', mainstreaming, and normalisation in responses to disability.

The Rights and Justice paradigm, in contrast, places the emphasis on disabling attitudinal, institutional, and physical barriers which discriminate against disabled people and prevent them from having equal opportunities to live independent lives. This model places emphasis on removing these systemic barriers. Under the Welfare Model, a disabled person who is a victim of targeted hostility gets a social care plan

designed for a vulnerable person. At most, the issue may become recognised as abuse. Under the Rights Model, a disabled person who is a victim of targeted hostility gets justice on the basis of Disability Hate Crime.

Today, aspects of both the Welfare Model and the Rights Model can be seen to influence public policy and practice, including criminal justice policy and practice. Whilst the Welfare Model remains embedded as the dominant policy and practice response, aspects of the Rights Model have become incorporated in international conventions (UN Convention on the Rights of Persons with Disabilities [CRPD] 2007), in domestic legislation (Equality Act 2010) and in policy documents (ODI, July 2017). Parts of the disability movement have campaigned over considerable time to make these inroads into the previous hegemonic positioning of the Welfare Model (Quinn, 2015).

Research for this thesis not only points to these two ‘competing’ paradigms existing in relation to disability, it also points to the dominance of the Welfare paradigm occluding recognition of disability discrimination and disablism. This dominance acts as a barrier to the recognition of Disability Hate Crime as a serious issue underpinned by disablism and ableism. Because the Welfare paradigm focuses on individual tragedy and is so shrouded in the rhetoric of protection, it can be blind to the hostility which exists towards disabled people and which can manifest as Disability Hate Crime. This research has found that an overly welfare focus is holding back the securing of justice for disabled people in hate crime cases. This is an inadvertent ‘benign bigotry’ towards disabled people as vulnerable, which has the malign impact of denial of justice and rights.

Research for this thesis indicates that, whilst the emergence and dominance of the Welfare paradigm, linked to the rise of professions and increased state interventions in managing ‘social problems’, can be traced over a considerable time period, its articulation and reproduction today cannot be ascribed to state institutions and welfare professionals alone. The disability movement plays some part in reproducing the Welfare Model, which may hold back justice for disabled people in the longer term.

A director of a national disability NGO reflected on these competing paradigms in respect of disability:

“I think the whole discourse on disability does get muddied; it’s complicated by the fact that there is a lot in public discourse about disabled people requiring support, and that is what a lot of people are campaigning for. There is sort of a care paradigm. So, although the Social Model of disability has been taken on to some degree by government, and we have, obviously, got legislation in terms of barring discrimination and it puts in place positive duties. I think that, because some of the campaigns are about ... ‘We need our benefits’, ‘Don’t take our benefits away’, that is not an anti-discrimination message or at least it is not framed as such. It is much more a ‘We need to be looked after’-kind of paradigm and I think that is very challenging” (R21).

This respondent captures the problematisation dilemma that the disability movement finds itself in: the position of disabled people in terms of disadvantage left her wondering if articulating the experience of disablism is “tactically the best way to go” (R21). The disability movement finds itself sometimes caught between a welfare problematisation and the desired end place of rights and justice. Given the structural discrimination experienced by disabled people outlined earlier, disabled people find themselves disproportionately marginalised and in need of various supports to survive in an ableist world. As a result, disabled people find themselves frequently working the Welfare or pity problematisation in order to survive. But, in doing so, this can restrain articulation of rights-based issues such as independent living and hate crime.

Some respondents were critical of the role played by the disability movement in terms of the competing accounts of welfare and rights. A leader in the equality rights sector reflected:

“I think the disability movement completely failed to develop a theory of disability based prejudice. So, the dominant notion about attitudes towards disability, they are still medical, they are still deficit-based. They are still really about pity, sorrow, and all of that. Whereas, of course, in race, you’ve got a very clear, I mean contested, but nonetheless sort of very clear theoretical landscape where you can say, ‘Actually, we have a view about why this action, performed to the harm of a black person or a white person, is based on an idea about race, a theory about race” (R27).

This respondent reflected further that, “because the basic notion about disability is that there’s a deficit, then the kind of dominant cultural attitude is pity and sorrow” (R27). He goes on to reflect that the disability movement became “too fixated on physical disability” and physical barriers in society, neglecting the difference raised by learning disability and mental health. He concludes that there is not yet “a powerful overarching narrative about disability prejudice” reflecting an over-concern with the Social Model focus on barriers and a consequent failure of “the disability movement to develop a theory about the effect of disability difference” (R27).

These issues of competing Welfare and Rights models, together with an under-developed theory of disability prejudice, are inextricably linked. Furthermore, the challenge in understanding disability prejudice is complexified by the simultaneous appeal and limitations of the Social Model of disability. Given the structural positioning of disabled people in England and Wales as a disadvantaged group, the disability movement’s campaigning efforts around survival supports and the theories espoused around disability need, poverty, education, and employment (Roulstone and Prideaux, 2012) have somewhat neglected wider discrimination impacting on disabled people. Understandably, the focus of the disability movement often has to be on quantity of life issues (e.g. benefits to address poverty) rather than quality of life issues (e.g. addressing a life lived with respect through tackling hate crime). In focusing on survival issues, the disability movement, given the wider dominance of the Welfare Model, finds itself playing the pity and

vulnerability card in order to secure much-needed welfare supports from government. In doing so, the disability movement may contribute to limiting the longer-term advancement of disability rights. Research for this thesis found the understandable yet contradictory situation where some disability activists strongly articulated a rejection of the vulnerability label in the context of hate crime policy making, yet deployed the vulnerability label in other arenas when arguing against changes to disability benefits.

And while the Social Model has the appeal of a simple, powerful explanatory framework, attractive in part as a form of liberation framework focused on dismantling barriers, research for this thesis indicates that it has simultaneously advanced and constrained the disability movement from even further progress. Its incompleteness as a full account or theory of disability prejudice in contemporary society has been acknowledged by its academic proponents who have described it as a model rather than a theory for understanding disability (Oliver, 2009; Cameron, 2014). It neglects the stubborn fact of people's impairments and, more so, the accompanying pain that some disabled people experience (Shakespeare, 2006). It shifts the entire gaze from the individual to the structural and, in doing so, occasionally proffers an over-materialist account of disability.

Furthermore, this research found that some proponents of the Social Model found it difficult to accommodate challenges that do not fit this heuristic framework. Thus, it is with accounts of disability prejudice in England and Wales today. Given the Social Model's emphasis on distinguishing so starkly between impairments and disability, it has encountered difficulties in articulating and accommodating the discourse and language of disability prejudice such as disablism and ableism. Given its origins and near-dominance in Britain as a powerful counter framework, there is, with few notable exceptions, under-theorising and under-recognition of disability prejudice in terms of understanding the ideologies of disablism and ableism in Britain (Godley, 2014; Iganski and Levin, J., 2015). In contrast, a developing body of theorising on ableism and disablism is emerging internationally (Kumari Campbell, 2009, 2015; Watermeyer, 2013) and it is commonplace to find chapters on ableism in international text books on identity based inequalities, sitting alongside equivalent chapters on racism, sexism, ageism, and homophobia (Adams, Bell, and Griffin, 2007; Adams, Blumenfeld, Casaneda, Hackman, Peters, and Zuniga, 2013).

It could be queried what difference the absence of an articulation of disablism or ableism makes for the recognition of and response to Disability Hate Crime? One respondent, as mentioned earlier in this chapter, reflected that, by not linking considerations of Disability Hate Crime to wider disablist prejudice, there is a "very real risk of losing the inference in language linking back to intent and motivation" (R7). Research for this thesis finds that, in losing the connection to wider disability prejudice, disablism, and ableism, the hate crime itself can easily be lost. There is an initial failure to recognise the crime as a crime informed by a wider prejudice. Then, as a direct consequence, there is a failure to respond to the crime appropriately. Finally, there can be a failure to deliver justice.

In this context, there is a need for wider work to be undertaken which articulates and advances an understanding of disability prejudice and, within this, to advance understanding of disablism and ableism. Barbara Perry, in a critical account of theorising in the field of hate crime, identifies common threads among contemporary theoretical accounts, including the tendency to locate hate crime as part of “broader social patterns of oppression and disadvantage” (Perry, B., 2009, p. 72). Related to this, she points to the tendency for theorists to emphasise how dominant cultural imaging and ideologies contribute to dehumanisation, demonisation, and stigmatisation of a group and how, in this context of cultural-ideological inferiorisation, it “becomes very easy to then justify their victimisation” through hate crimes (Ibid. p. 72). In the research for this thesis, I have found an under-articulation of such an understanding of Disability Hate Crime, particularly prevalent in policy and practitioner domains, more than in academia. This is somewhat more challenging in the British context, given the near-dominance of the Social Model as the counter-framework of understanding and the challenges it poses for due focus on disablism and ableism conceptually and in terms of discourse.

### **8.7 Emerging significant articulation of disablism, ableism, and their impacts**

In recent years, there has emerged a small but significant body of work on disablism and ableism, in particular the work of Watermeyer and Kumari Campbell internationally, and Godley and Thomas in the British context. Godley (2014) considers disablism and ableism in terms of exploring how both disability and ability are co-constructed and the extent to which a critical consideration of disability requires us to “think simultaneously about disability and ability” (Ibid., Preface, p. XI).

It is argued that what is needed now are not Disability studies but Dis/Ability studies. Godley argues that a consideration of ableism requires a turning away analytically from disability to ask: What do we mean by being able? He argues that disability and ability, and disablism and ableism, can really only be understood in relation to each other. He concludes with a case for Dis/Ability studies which always holds disablism and ableism, disability and ability in co-consideration, so as to interrogate “their co-construction and effect upon one another” (Ibid., Preface, p. XIII).

Kumari Campbell (2009) takes a different approach, arguing for a fundamental shift in the gaze from disability to ability, from disablism to ableism. She argues for a reproblematisation away from welfarist approaches to a focus on deeply embedded ableist underpinnings in society (Bacchi, 2009). Disability studies, she argues, have been over-preoccupied with analysing the attitudes and barriers that contribute to the subordination of disabled people (Kumari Campbell, 2009). In this context, disablism “is a set of assumptions and practices that promote the differential or unequal treatment of people because of actual or presumed disabilities” (Ibid., p. 4). She argues that, informed by a disablism focus, “the strategic positions adopted ... essentially relate to reforming these negative attitudes, assimilating people with disabilities into normative civil society, and providing compensatory initiatives and safety nets in cases of

enduring 'vulnerability'" (Ibid., p. 4). In this context, Kumari Campbell argues that the challenge is to "reverse, invert this traditional approach, to shift our gaze and concentrate on what the study of disability tells us about the production, operation and maintenance of ableism" (Ibid. p.4).

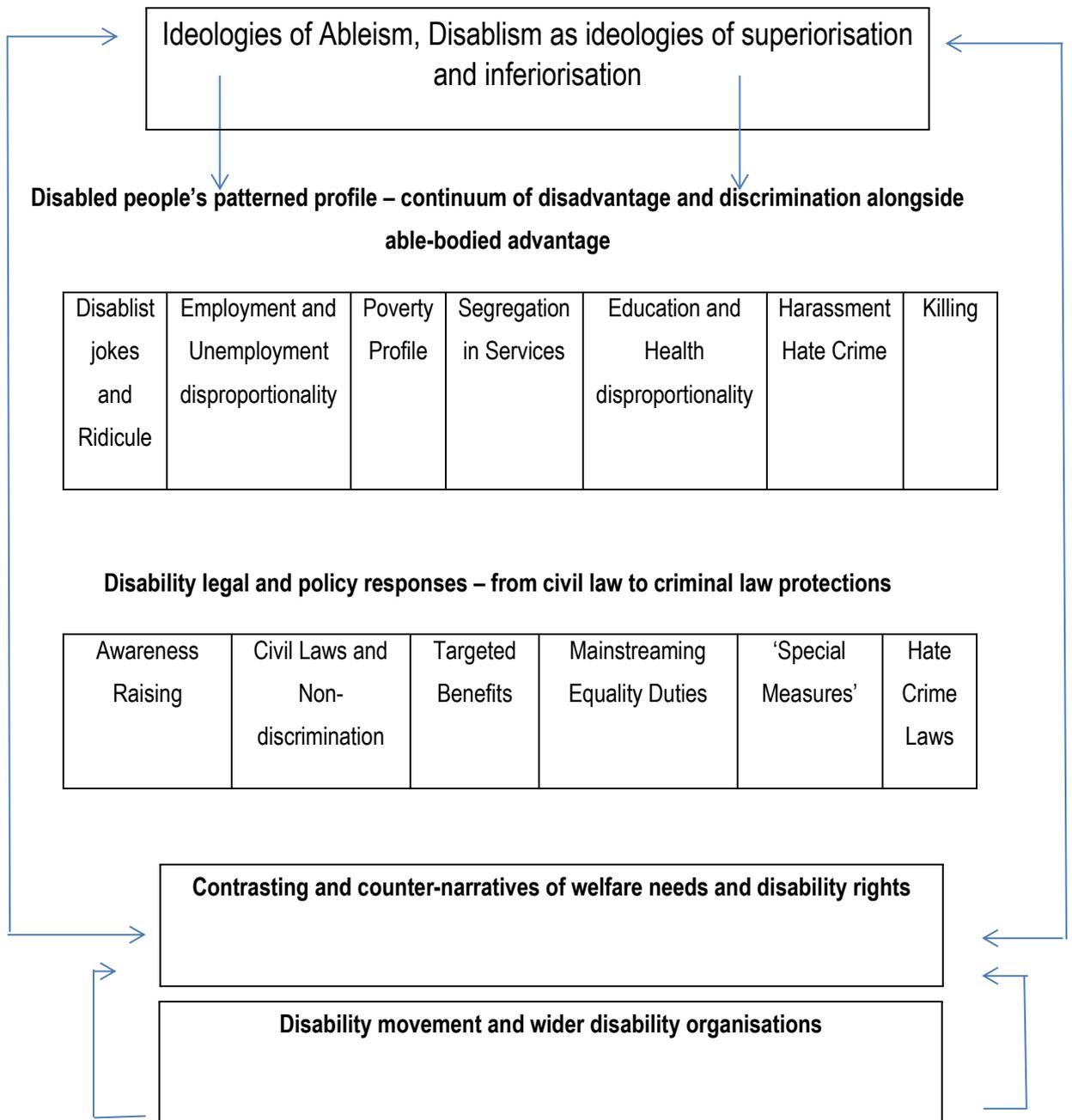
Kumari Campbell argues that some researchers mistakenly use disablism and ableism as interchangeable terms. She views ableism as more deeply embedded and as existing in "the arena of genealogies of knowledge" (Ibid., p. 5). Although she acknowledges that there is limited consensus on what constitutes ableism, she states that ableism "refers to a network of beliefs, processes and practices that produce a particular kind of self and body (the corporeal standard) that is projected as the perfect, species-typical and therefore essential and fully human. Disability then is cast as a diminished state of being human" (Kumari Campbell, 2001, p.44: Ralph, Capewell and Bonnett, 2016). Kumari Campbell regards ableism as having a function in "inaugurating the norm" (Kumari Campbell, 2009, p. 5) where "the essential of ableism is the formation of a naturalised understanding of being fully human" (Ibid., p. 6).

It can be argued that Kumari Campbell rightly shifts the problematisation gaze from disability disadvantage to ableist normativity. She outlines how ableist normativity is so pervasive and naturalised in society, including in the legal system (e.g. the notion of the competent credible victim–witness and initiatives such as special measures that compensate for disability deviance from the able-bodied norm) that it simultaneously constructs disabled people as diminished, different, and deviant and sets them up for disadvantage and discrimination including the violence of hate crime.

Whilst it is clear that disablism and ableism are central issues in developing and articulating a contextual understanding of Disability Hate Crime, it is equally clear that there is significant work yet to be undertaken on both and their inter-relationships. It is also clear from earlier analysis that neither concept has everyday currency in hate crime policy.

In ways, this indicates the evolving adolescent state of analysis in this area. For now, I tend towards the view that the concepts of disablism and ableism, particularly ableism, are helpful in developing a fuller theoretical account and understanding of Disability Hate Crime. This early stage of understanding does not make the challenge of policy making and practice easier. It may be that, in time, the concept of ableism emerges as the more overarching conceptual narrative, it being a 'higher level' ideology within which may be nested meso-level ideologies such as disablism. In this developing context, I tend towards a view of ableism as a prejudicial set of ideas, an ideology which normalises and naturalises an able-bodied norm and inferiorises disabled people who are regarded as not matching up to that able-bodied norm. It embeds an ableist normativity in society that serves to negate disabled identity. It has manifestations and impacts in terms of the advantages experienced by the able bodied and the disadvantage and discrimination experienced by disabled people at structural, cultural, institutional, and individual levels. It is not the primary purpose of this research thesis to articulate in detail an advanced understanding of disablism and

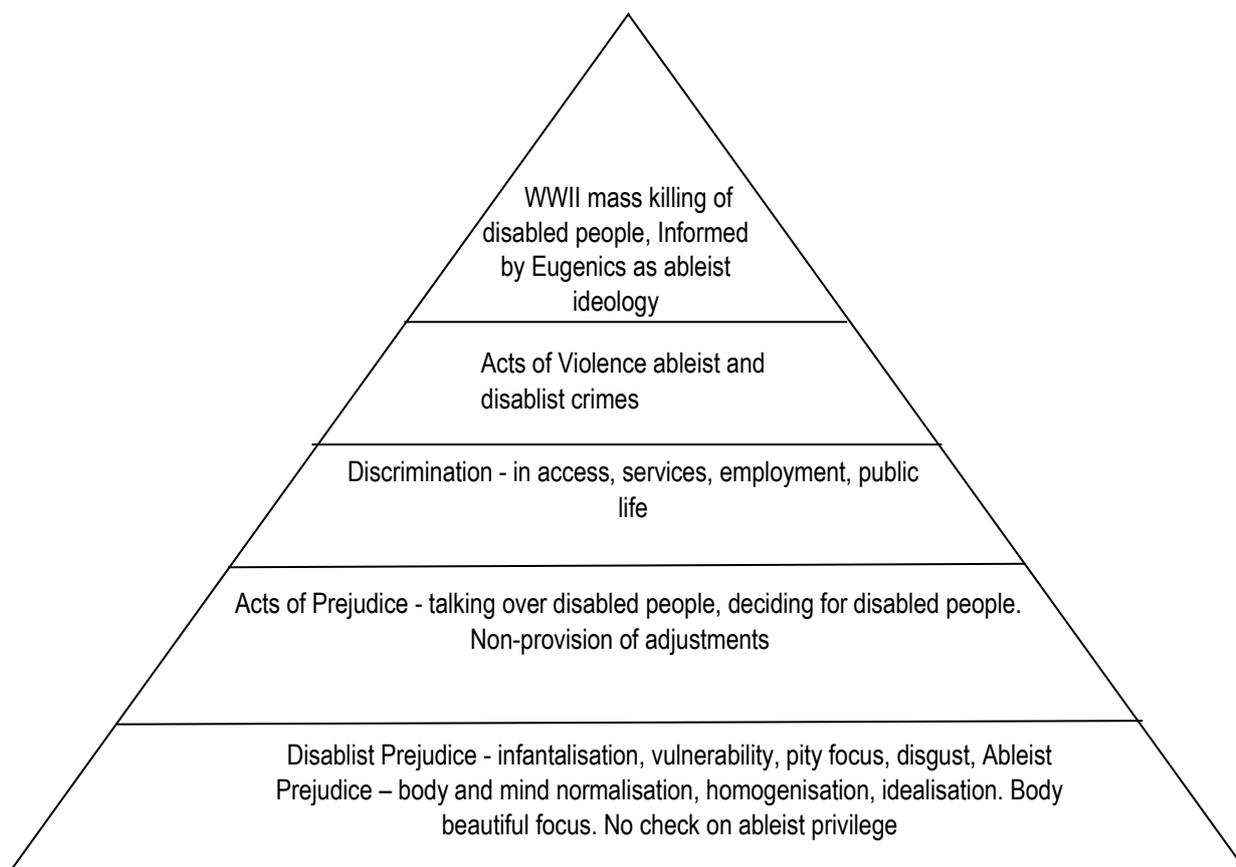
ableism - that is a task for disability studies scholars. However, in advancing an understanding of Disability Hate Crime in terms of this research thesis, I would suggest that much can be gleaned from the work of scholars on identity inequalities and wider equality studies, including the work of Young (1990) in the US context and Thompson (2011) in the British context. Informed by these scholars and based on critical engagement and reflection on the issue, I would proffer the following as tentative building blocks towards a framework of fuller understanding for disability prejudice, disablism, and ableism.



Such a tentative framework for understanding disability prejudice provides a context within which individual Disability Hate Crimes can potentially be more fully contextualised, recognised, and understood. The further development and promulgation of such a framework potentially provides a way forward for identifying and responding to Disability Hate Crime, and further institutionalising Disability Hate Crime in the wider hate crime domain. It may be further enhanced by considering

it alongside an adapted application to Disability Hate Crime of Levin's Pyramid of Hate (Levin, B., 2009) which was itself informed by Allport's earlier work on the scale of prejudice (Allport, 1954).

A disability adapted pyramid of hate reflecting impacts of disablism and ableism may be conceived of as follows:



Why does an existing framework for understanding prejudice warrant consideration anew and adaptation? The research for this thesis has found that there is a need to both state and elaborate on what can be seen as obvious for other prejudices when considering Disability Hate Crime because of the pervasive non-recognition of disability prejudice, disablism, and ableism. Indeed, this was why Mark Sherry decided to title his book on Disability Hate Crime as 'Does anyone really hate disabled people?' (Sherry, 2010) or what Digranes has termed "an unthinkable hatred" (Digranes, 2016). A conceptual analysis which develops a fuller understanding of the nature and manifestations of disability prejudice, disablism, and ableism is an important part of understanding the wider context for Disability Hate Crime. However, it will not in itself provide a full theoretical account and its socio-cultural focus needs to be complemented with a focus on understanding

individual perpetrators or groups of perpetrators and the influence of factors of human agency in hate crime perpetration (Levin, J. and McDevitt, 2002; Iganski and Levin, J., 2015). I would, however, argue that, through pursuing and promulgating such a critical understanding of the context of Disability Hate Crime in terms of wider disability prejudice, disablism, and ableism, the phenomenon can begin to be better recognised as part of the hate crime domain, and policy and practice institutionalisation can potentially progress. To paraphrase Bacchi (2009), it is through pursuing such a wider theoretical framing and problematisation of the Disability Hate Crime problem that the challenges to policy institutionalisation can be questioned. Then, in time, it can be disrupted and replaced by a framing that more appropriately 'fits' the problem to be addressed.

## **8.8 Conclusion**

In this chapter, I have analysed a further aspect of the Disability Hate Crime agenda that is impacting negatively on agenda institutionalisation: the non-articulation and promulgation of an understanding and acceptance of wider disability prejudice, disablism, and ableism. Disablism and ableism are agenda items yet to speak their name in Disability Hate Crime.

This chapter locates its analysis within an up-to-date profile of socially patterned disability disadvantage and discrimination. This yields a picture of disability marginalisation, exclusion, and deprivation. The analysis considers the varied responses to disability disadvantage and focuses on the competing problematisations and paradigmatic responses of Welfare, Care, and Protection and Rights and Justice, and notes the dominance of the Welfare, Care, and Protection paradigm.

The analysis found recognition of institutional disadvantage and discrimination experienced by disabled people, including within the CJS. At the same time, this research found non-recognition of disability prejudice, disablism, or ableism. It noted a missing link between patterned disability disadvantage and discrimination and the recognition of underpinning ideologies of disablism and ableism.

This research concludes that the existing competing paradigms of Welfare and of Rights impact on disability responses and occlude recognition of disablism and ableism and consequent problematisations. The situation is complexified by the simultaneous dominance of the Welfare paradigm and the limited ability of the Social Model counter framework to conceptually and discursively embrace disablism and ableism. An impact of these complexities is that the prejudice in Disability Hate Crime is not recognised for what it is, that is disability hostility. In the absence of a context for understanding disability prejudice, disablism, and ableism, Disability Hate Crime gets lost in individual hate crime cases and, more broadly, as a conceivable form of hate crime.

This research concludes that there is a need for disability studies and the disability movement to articulate and advance an understanding of disability prejudice, disablism, and ableism which provides a fuller theoretical framework for understanding the varied manifestations of disability disadvantage and discrimination, including Disability Hate Crime.

The research notes the small but significant and growing body of understanding articulating the significance of disablism and ableism and their impacts. However, that understanding is at an early stage of development compared to other identity oppressions. There remain issues of conceptual and discursive understandings to be further explored and fleshed out. Notwithstanding this early evolving analysis of disability prejudice, disablism, and ableism, CJS policy and practice is advancing in what is still an area of some contention and contestation.

In this context, I proffer a tentative framework for understanding Disability Hate Crime within wider ideologies of disablism and ableism and, in doing so, link it both to earlier work on identity inequalities and on the Pyramid of Hate. This is a contribution to articulating a link between Disability Hate Crime and theoretical accounts of social patterns of oppression and disability. In doing so, I point towards ways in which both academia and activism might contribute to the further institutionalisation of Disability Hate Crime within the wider hate crime policy and practice domain. In the continuing absence of recognising disability prejudice, disablism, and ableism and their impacts on Disability Hate Crime, there is a risk of failing to recognise and name the issue appropriately. In failing to name all the dimensions appropriately, there is also a risk of failing to deal with Disability Hate Crime justly as evidenced in the cases analysed in this chapter. In this context, it will remain a prejudice that is yet to fully speak its name and remain an unsettled and unsettling agenda.

In this chapter, I have sought to provide the elements of a framework through which disablism and ableism might be better recognised, named, and responded to in Disability Hate Crime, and thereby enhance the delivery of justice for disabled people.

## **Chapter 9: Conclusion – An Unsettled and Unsettling Agenda**

### **9.1 Introduction**

The starting point for this research study was the expansion of the CJS hate crime domain in England and Wales in 2003 to include Disability Hate Crime. While there has been some significant research on the establishment and expansion of the overall hate crime domain as discussed in Chapter 2, prior to the research for this thesis there had not yet been a study devoted specifically to the emergence and development of Disability Hate Crime policy. Two edited collections, a few book chapters, and journal articles have been published on different aspects of Disability Hate Crime in England and Wales to date. Some of these are very insightful, interesting, and valuable, but they do not attempt to provide a comprehensive analysis of the topic as a policy agenda. What the research for this thesis has undertaken, for the first time, is a comprehensive analysis of the emergence and development of Disability Hate Crime as a policy agenda within the CJS in England and Wales over the past 20 years. As outlined in Chapters 1 and 3, this research addressed these questions: How did Disability Hate Crime emerge and develop as an area of policy and practice within the CJS of England and Wales and why did Disability Hate Crime emerge and develop as an area of criminal justice policy as and when it did? In answering these exploratory questions, this study adds to the general field of enquiry that focuses on hate crime studies more broadly and on hate crime policy making in particular.

Employing a qualitative methodology, informed by grounded theory, and public policy perspectives on problematisation and agenda setting, this thesis provides a multi-layered and triangulated case study of the ongoing journey of Disability Hate Crime from agenda invisibility towards agenda institutionalisation in the CJS in England and Wales. It draws upon a range of key informant interviews in the fields of activism, policy making, and politics, exploring the factors influencing Disability Hate Crime policy emergence and development, together with an analysis of a range of Disability Hate Crime cases. These are complemented by an interwoven analysis of policy documents which set out CJS policy on Disability Hate Crime.

Existing scholarship on hate crime as discussed in Chapter 2 has tended to find that, once the hate crime domain was established, it was relatively easy to 'add to the list' of protected characteristics. However, this study has found that, after an initial embrace of Disability Hate Crime into the 'hate crime family', this agenda's institutionalisation has faced significant challenges at each stage of agenda triggering, agenda setting, and agenda institutionalisation. The result is that institutionalisation of Disability Hate Crime remains some way off 15 years after the issue was legislated for. Rather than institutionalisation of Disability Hate Crime within the hate crime domain as day-to-day hate crime business, it remains unusual business to this day. Based on this research study, my thesis is that Disability Hate Crime is a case of an unsettled and unsettling policy agenda within the hate crime policy domain in England and Wales.

## **9.2 Unsettled and unsettling agenda**

What does it mean to conclude that Disability Hate Crime is an unsettled policy agenda in the hate crime domain today? This study noted the features that a settled policy agenda is expected to display, including development of the policy domain with shared definitions, shared ways of responding, a shared discourse on the problem, a diminution in the need for strategic action over time, an embedded taken-for-granted approach, and a predictable area of practice which has become routine business for the CJS and other stakeholders. Appraised against these features, the research for this thesis has found that policy making and practice on Disability Hate Crime was - and continues to display - an unsettled approach with limited policy institutionalisation.

As well as displaying features of an unsettled agenda, this study also concludes that the Disability Hate Crime agenda is, in itself, an unsettling agenda. It is unsettling in that it questions and disrupts prevalent constructions of the problem of disability as a welfare issue and seeks to replace them with a construction based on justice and rights. It questions understandings of disability prejudice, disablism and ableism hostility and, indeed, understandings of hostility more widely in the hate crime domain. It shows how non-recognition of disability prejudice, disablism and ableism impacts delivery of justice in hate crime cases. It questions the uncritical use of the vulnerability categorisation in targeted crimes experienced by disabled people and requires a reconceptualisation of what is meant by targeting on the basis of vulnerability. It has pushed at the boundaries of possibility in the hate crime domain. However, whilst it questions and disrupts these prevalent constructions, it is yet to replace them. Thus, it is an unsettling agenda as well as being an unsettled agenda. The unsettled stage of this policy agenda's journey to institutionalisation is inextricably linked to its unsettling features.

In identifying my thesis regarding the unsettled and unsettling features of Disability Hate Crime policy, it begged the question as to what extent, if any, the other hate crime strands are unsettled and unsettling. Respondents in this study highlighted the unsettled and unsettling features of Disability Hate Crime in contrast to how they experienced other hate crime strands as more settled in terms of established shared discourse, ways of working and day-to-day practice. They also highlighted no significant competing problem representations such as a vulnerability focus operating in the other hate crime strands.

## **9.3 Unsettled and unsettling features present from outset and in each stage of the policy process**

The unsettled and unsettling features of the Disability Hate Crime agenda were present from the outset when the agenda was first triggered, as noted in Chapter 4. Agenda triggering for the Disability Hate Crime agenda occurred in 2003 when an alliance of activists, a minister, and the then DRC coalesced around a legislative window of opportunity in the form of an amendment to the CJA 2003 to bring Disability

Hate Crime into the hate crime domain. At that agenda-triggering stage, a temporary policy silence was imposed on a prevalent alternative problem representation. This alternative problem representation was held by policy officials who proffered a view that such targeted crimes were based on vulnerability rather than hostility. Although the agenda was triggered at that time (2003), it was another four years before the policy agenda was set on Disability Hate Crime.

The unsettled and unsettling nature of the Disability Hate Crime agenda was again evident in its agenda-setting journey from 2004 to 2008. The agenda shifted into the policy arena and, crucially, there emerged a new Disability Equality Duty in 2004 which shaped the 'discovery' of Disability Hate Crime as a shared priority of both disability activists and CJS agencies. A coupling of the hate crime solution and the Disability Hate Crime problem occurred using the equality duty as a lever. A largely off-the-shelf hate crime template was placed around Disability Hate Crime, with limited attention paid to disability difference and whilst it's unsettling features were downplayed to secure agenda status.

Policy stream activity on a cross-government programme of work on hate crime and, crucially, a stream of work to agree a common definition of monitored hate crime constituted further steps in the development of the Disability Hate Crime agenda. This study concludes that it marked a very significant moment in the construction of the Disability Hate Crime agenda.

Another significant moment in the construction of the Disability Hate Crime agenda was the development of a CPS Public Policy Statement on Disability Hate Crime (2007). This policy statement again reflected the unsettled and unsettling nature of the agenda through breaking the policy silence on vulnerability and hostility in Disability Hate Crime. It surfaced and fore-grounded vulnerability - a significant challenge and alternative problematisation in the Disability Hate Crime area. In effect, it constructed the Disability Hate Crime agenda as speaking to two problem representations simultaneously, namely hostility and vulnerability. In doing so, it spoke to the heart of the unsettled and unsettling nature of this policy agenda in its attempt to construct the problem. It spoke to the unsettled features through bi-locating targeted disability crimes with some inside and some outside the hate crime domain. It spoke to the unsettling features of Disability Hate Crime through surfacing the issue of vulnerability based targeting.

Alongside these policy stream activities, disability activists were active in exposing the unsettled nature of the Disability Hate Crime agenda. Whilst contributing to developments designed to settle the agenda, they were acutely alert to putting policies to the test. Whilst the CJS was working on settling this new policy agenda, activists spotlighted poor CJS performance on cases, and gained traction with a narrative around a lack of recognition of disability hostility, lack of appropriate responses, and shocking failures to deliver justice in individual cases. This exposed the unsettled nature of the agenda as it was developing. However, in doing so, they contributed to the development of agenda setting at this time.

From 2006–08, the unsettled and unsettling aspects remained present alongside increased coupling of the policy, the activist, and political streams. This coupling was enabled by the influence of a focusing event, albeit a second-order focusing event, the Pilkington case. The aftermath of this case created another policy window of opportunity through which Disability Hate Crime emerged (again) and, this time, policy agenda status was secured. However, the Pilkington case also spoke to the unsettling features of the agenda in that it contained two competing problem representations, namely anti-social behaviour and hate crime.

As the research for this thesis has shown, the unsettled and unsettling nature of Disability Hate Crime was present in this entire policy agenda-setting activity. Competing problem representations of welfare and rights, vulnerability and hostility, breaking policy silences on vulnerability, and the issues of disability difference lurked within all this policy agenda-setting activity. These competing problem representations were to become more prominent as policy stream efforts increasingly turned towards institutionalising this agenda.

#### **9.4 Ongoing journey towards policy institutionalisation**

Efforts to settle Disability Hate Crime within the CJS hate crime domain were well underway in 2009 and continue to this day. These efforts included seeking to implement common definitions, a shared response, annual reporting on performance, an EHRC formal inquiry, a number of CJS system-wide inspections, a Law Commission review, and a revised policy statement on Disability Hate Crime. As noted earlier, institutionalisation of a policy agenda also includes a shared discourse regarding the problem, a diminution in the need for strategic action, and the transition to an embedded taken-for-granted business-as-usual approach. Appraised against these features of a settled policy agenda, there is not yet a single shared discourse regarding the issue; in fact, there are at least two problem discourses in operation. Furthermore, the judiciary are not in any significant way engaged with the Disability Hate Crime discourse whilst increasingly alert to a vulnerability discourse. This thesis concludes that there remains an ongoing need for significant CJS strategic action on Disability Hate Crime. Furthermore, there is an absence of a taken-for-granted business-as-usual approach.

Whilst the police and prosecution leadership nationally have commendably prioritised Disability Hate Crime over a 10-year period, the CJS overall has yet to deliver an agreed settled approach with leadership upstream yet to be reflected in downstream settled practice. The very considerable CJS efforts to institutionalise Disability Hate Crime internally face institutional challenges based on established taken-for-granted constructs of hate crime reflected in law, policy, and practice such that, 15 years on from legislating for Disability Hate Crime, it remains unsettled and unsettling. This is the case, in large part, because of unique challenges around vulnerability and hostility and because Disability Hate Crime requires

that a broader conception of hostility, prejudice, and discrimination be considered to enable settlement within the hate crime domain.

This study has found that the questions posed by the issue of vulnerability are central to the ongoing unsettled and unsettling nature of the institutionalisation of Disability Hate Crime in the hate crime domain. A challenge here is that the legal framework in England and Wales in large part equates disability and vulnerability. In the context of considering Disability Hate Crime, this leads to competing problem representations around vulnerability and hostility. A vulnerability focus has proven to be the most contentious concept in seeking to settle Disability Hate Crime in the CJS. The uncritical application of a vulnerability categorisation to disabled people as if it were an inherent group attribute has served to impede policy and practice progress. Vulnerability floods disability as a policy area, such that we see disability and perceive vulnerability. If, as this study found, the vulnerable-person stereotype is the most pervasive stereotype of disabled people, then it can be viewed that targeting people because of their perceived vulnerability is a hostile act.

This thesis concludes that, whilst benign in intent, a form of 'benevolent prejudice' in the uncritical use of the vulnerability focus has often withheld justice for disabled victims of targeted crime and impedes institutionalisation of the Disability Hate Crime agenda. An undue focus on vulnerability has led to a sense of social justice subordination for disabled people and the denial of substantive justice which marks the gravity of hostility based crimes for disabled victims. This study furthermore concludes that, in the hate crime domain which is marked by victim-centred definitions of hostility, it seems questionable to even benignly impose a vulnerability categorisation on a group of people who reject it and its potentially malign impacts on the delivery of justice. The uncritical focus on vulnerability ensures that Disability Hate Crime remains an unsettled and unsettling agenda.

Notwithstanding this conclusion, it should be recognised that vulnerability, as currently constructed as a minoritised identity, conveying weakness, wound, and deviation from the capable able-bodied norm, is not the only possible construction of vulnerability. There can also be a recognition of vulnerability as part of the human condition for all people – in the longer term, a radical recasting of vulnerability away from a minoritised identity towards a shared human condition identity may be possible (Fineman, 2012). This would require recognition and respect for the vulnerability in all humans, and that vulnerability may be accentuated at different life stages or with different life experiences. Given the current pervasive negative connotations of vulnerability in relation to disability, and given the disability movement's stage on the journey to equality and social justice, such a restructuring is, I suggest, a considerable way off in the area of disability.

### **9.5 Vulnerability and hostility to be interrogated together in order to settle this agenda**

A further conclusion informed by the research for this thesis is that, in Disability Hate Crime, considerations of hostility and vulnerability should not be hermetically sealed off from each other, but should be interrogated together. Vulnerability targeting in criminal acts should be recognised for what it is, as hostile and discriminatory selection and targeting of disabled people. Sustained progress on the challenge of vulnerability in Disability Hate Crime and on resolving the unsettled and unsettling features of Disability Hate Crime are only likely to be realised in the context of moving to a more holistic understanding of disability hostility. This study makes direct recommendations in terms of legislative change to address this issue below.

### **9.6 Identifying and naming the agenda appropriately is needed to settle the agenda effectively**

Alongside the agenda challenge of addressing vulnerability in Disability Hate Crime, there is an inextricably linked agenda item that is yet to fully speak its name in Disability Hate Crime: that is a developed and shared understanding of disability prejudice and discrimination and how they link to ideologies of disablism and ableism. This study found a ready naming of race hate crime as racist crime and of LGB crime as homophobic crime. There was a ready linking of these hate crime strands to ideologies of racism and homophobia. However, the research for this thesis found virtually no identification of Disability Hate Crime as disablist crime or ableist crime, whilst finding an acceptance of institutional disadvantage experienced by disabled people. Notwithstanding this, this study also found an underdeveloped sense of what underpins disability disadvantage and any relationship to prejudicial ideologies. This goes to the heart of the unsettling nature of Disability Hate Crime, and the existence of competing problematisations of disability issues as one of welfare and care or rights and justice. Given the prevalence of the welfare and care problematisation, it is counterintuitive almost to countenance the existence of disability hostility given that the prevalent narrative is one of care, protection, and, at worst, pity. Indeed, viewed critically, the dominant narrative could be described as a 'benevolent prejudice', albeit one that this study demonstrates has significant malign impacts. Crucially, this study has found that the competing problematisations of welfare and care and rights and justice occlude recognition of disability prejudice, disablism, and ableism and that this lack of recognition matters in the delivery of justice in Disability Hate Crime cases. It has led to failures to deliver recognition justice and substantive justice in Disability Hate Crime cases.

### **9.7 Overall assessment – moving beyond dual problematisation to settle this agenda**

The research for this thesis demonstrated the roles played by activism, politics, and policy making in the emergence and development of Disability Hate Crime in England and Wales over the past 20 years. It has demonstrated that activists have contributed significantly to agenda setting and played a larger role

than is often recognised. And it has demonstrated that politicians intervened at strategic moments to 'make it [the agenda] happen' and that, without a significant early political intervention by a senior minister, this agenda might not have emerged as and when it did. This study has demonstrated that policy officials played a particularly significant role in defining and institutionalising the agenda in the hate crime domain and, in very large part, hold the ring on the agenda today. Significantly, this study has demonstrated that the focus on activism, politics, and policy making needs to be underscored by a focus on problematisation to understand the journey towards and the challenges in the institutionalisation of Disability Hate Crime. The fundamental challenge in institutionalising Disability Hate Crime in the CJS is the challenge flowing from the dual and simultaneous problematisation of disability as a welfare, care, and protection issue and as a rights and justice issue.

These two problem representations intersect in the area of Disability Hate Crime where the issue is constructed as two things at once, vulnerability and hostility. The policy domain is unsettled whenever an issue is constructed as two things simultaneously. This study provides an alternative problematisation approach which enables a more overarching problem representation to be considered – a framing of the issue as hostility *including* vulnerability. This alternative framing is not an either/or problematisation of hostility or vulnerability. It is not a problematisation of hostility and vulnerability. This is an alternative problematisation of hostility *including* vulnerability, which recognises the targeting of disabled people for crimes based on vulnerability as a biased hostile act, a discriminatory selection and, in this way, a hate crime.

## **9.8 Overall Contribution of this Study**

Arguably, this thesis makes a number of significant contributions to the field of hate crime studies and hate crime policy making studies in particular.

Firstly, the research addresses a gap in existing hate crime studies, by providing the first comprehensive analysis of policy emergence and development of Disability Hate Crime in England and Wales. It augments earlier work by Mason-Bish who charted the emergence and development of the hate crime domain overall, and who indicated the need for studies in respect of each hate crime strand. That specific knowledge gap in respect of Disability Hate Crime is addressed in this study.

Secondly, the analysis of the focus on vulnerability in the context of Disability Hate Crime is another dimension of the originality of this study. This study addresses the challenge of vulnerability in Disability Hate Crime and provides a unique analysis of a vulnerability focus as a dimension of hostility in Disability Hate Crime. In doing so, it provides a reconceptualisation of disability hostility in a way that can include vulnerability based targeting. It breaks the conceptual and policy logjam posed by this issue, building on this with clear legal and policy recommendations outlined below. These recommendations can contribute

to settling the agenda and resolving its unsettled features within the hate crime domain. This study extends our understanding of hostility in the British legal and policy context by taking hostility beyond a solely motivation–demonstration continuum to also include hostility because of disability. In doing so, this study contributes to our understanding of the case for a varied geometry of legal provisions to reflect different histories, segregations, geographies, and manifestations of the different hate crime strands.

Thirdly, this study augments the body of case studies on the public policy making process, through a refinement of the policy stream’s emphasis on activism, politics, and policy making with the fundamental emphasis placed here on problematisation and also through uniquely introducing the pre-policy agenda-setting phase which I termed ‘agenda triggering’. In doing so, this study addresses a shortcoming in Kingdon’s policy stream approach which focuses on the role that streams play in policy agenda setting, and how it may pay limited attention to problem definition and problem representation. Thus, this study strikes a balanced understanding between agenda setting and the social construction of the problem of Disability Hate Crime by underscoring the role played by problematisation in this domain, as informed by Bacchi’s concept of problematisation as a continuous process of construction (Barbehan, Munch, and Lamping, 2015). This study refines the policy stream heuristic with the addition and foregrounding of problematisation and, in doing so, reflects calls in critical public policy studies to build on existing understandings of agenda setting. Uniquely, I also introduce the concept of agenda triggering as a refinement of the policy streams approach to help capture those policy situations where an issue is formally triggered but does not yet constitute an active policy agenda and the distinction between these. This was devised as a way of understanding what occurred in relation to targeted disability victimisation which I argue was ahead of its time in 2003 when the agenda was triggered and whose time was to come – four years later - with active agenda setting.

Fourthly, the study addresses the influence of wider equality law on the development of the Disability Hate Crime agenda, especially the public sector positive duties’ approach to equality. In particular, it provides an insight into the influence of the Disability Equality Duty on the CJS. This gap was identified in earlier scholarship (Mason-Bish, 2009) and is addressed by this study. This study’s findings of the influence of the Disability Equality Duty as a positive lever for agenda development contrast with the disability movement’s scepticism about the impacts of this duty. This positive influence was largely due to the equality receptive climate in the CJS in the early 2000s following the Lawrence Inquiry. This analysis provides a unique insight into how these statutory duties to mainstream equality worked positively in practice in some parts of the CJS, in particular the police and prosecution services in the early to mid-2000s. This research demonstrates how, at a moment in time, the specific duty to involve disabled people in policy consultation enabled a coupling of disabled people’s priorities along with public sector organisations duties, and for Disability Hate Crime to emerge.

## 9.9 Limitations

As with any research study, it should be recognised that this study has a number of limitations:

- It focused on policy emergence and policy making on Disability Hate Crime. Its focus is on the policy process, not on different victim groups that may experience Disability Hate Crime. In this regard, there is a need to consider research which focuses on the experience of Disability Hate Crime by different impairment groups, namely learning-disabled people, physically disabled people, and people experiencing mental health difficulties. Some of this research is underway and is to be encouraged and supported in order to develop a fuller understanding of the phenomenon.
- The possibility of researcher bias exists in that I was a policy contributor to the hate crime policy domain in England and Wales between 2004 and 2009. I have been explicit about this in Chapter 3. On balance, I believe this earlier professional involvement has been a positive feature in that it has enabled me, as a researcher, to have unique access to a range of stakeholders in activism, politics, and policy making, including elite interviewees within the CJS and political arena. My professional background has helped secure a comprehensive rounded account of the phenomenon from a range of perspectives.
- The fieldwork interviews were conducted over a four-and-a-half-month period, mainly in London and across other parts of England and Wales. The interviews were often held close together in terms of timing as I am based outside of Britain and travelled there to conduct the research interviews. The transcripts were produced immediately after the interviews and reflection undertaken to inform subsequent interviews. However, even more time to reflect and analyse following each interview would have been valuable, given the ground theory approach used.

## 9.10 Recommendations

Based on this research study, I make two sets of recommendations: for further research and legal and policy change.

### 9.11.1 Future Research Recommendations

I would recommend that research is undertaken on:

- (1) The experience of Disability Hate Crime by a range of impairment groups including learning-disabled people, physically disabled people, and people experiencing mental health difficulties.
- (2) The profile and social situation of perpetrators in Disability Hate Crime cases to identify possible early interventions with those identified as at risk of such offending and thereby help inform strategies to reduce the risks of targeted disability victimisation.

- (3) The emergence and development of policy agendas in respect of each of the hate crime strands, namely case studies in the areas of racist and religious crimes policy development, homophobic and transphobic crimes policy development.

#### 9.11.2 Legal and Policy Recommendations

- (4) That the government amend the hate crime legal provisions addressing disability hostility, namely Section 146 of the Criminal Justice Act 2003. In doing so, that the government introduce a legal provision on disability hostility which recognises that disability hostility can be identified on the basis of a demonstration of hostility, a hostility motivation, and/or targeting because of a person's disability.
- (5) That policy statements and guidance within the CJS be reviewed following on such change in legal provision to reflect the range of grounds impacting disability hostility.
- (6) That the Judicial College engages with the Disability Hate Crime agenda, collaborates with the police and prosecution services in developing a shared understanding, embarks on judicial training on Disability Hate Crime, and reflects best practice guidance on Disability Hate Crime in the Equal Treatment Bench Book.

#### 9.12 Concluding Comments

Throughout this research study, there has been one overall aim in the exploration of activist, political, and policy stream contributions and strengthened by the focus on problematisation in the analysis of cases and policy statements: to provide an analysis of the emergence and development of Disability Hate Crime in the CJS hate crime domain in England and Wales.

Through the application of my hybridic framework of agenda setting and problematisation, this study has shown how Disability Hate Crime emerged and developed. It has shown how Disability Hate Crime remains an unsettled and unsettling agenda arising from its dual construction as either hostility or vulnerability which itself flows from the wider dual problematisation of disability as either an issue of welfare, care and protection or an issue of justice and rights.

This study provides a way through this either/or problematisation in the hate crime domain, specifically through an alternative construction of Disability Hate Crime as disability hostility including vulnerability. This alternative construction has practical legal and policy implications. In doing so, this study has made a contribution to empirical reality and existing theory. There remain many issues for further exploration in relation to Disability Hate Crime but this study should make it possible to deepen both the theoretical and empirical investigation of other aspects of this topic, perhaps not only in the context of England and Wales, but more generally.

Disability Hate Crime has emerged into the hate crime domain in England and Wales and developed within it – it is now a firm policy agenda. However, it is yet to become settled as part of consistent day-to-day practice in the delivery of justice to disabled people. Nonetheless, a way forward is possible, within the hate crime domain and with active judicial engagement, through a legislative change and building on the considerable efforts of police and prosecutors spurred on and supported by activists and politicians. That said, whilst progress in the Disability Hate Crime domain is required, it is not going to significantly disrupt and replace the wider dual problematisation of disability as issues of welfare, care, and protection or an issue of rights and justice. That is a wider challenge of which the challenges in relation to institutionalising Disability Hate Crime are simply manifestations.

Recognising and responding to Disability Hate Crime - one element in a wider strategy required to deliver social justice for disabled people in England and Wales. Taken alone, a Disability Hate Crime focus or, indeed, almost any hate crime focus is, in a sense, a tertiary social policy intervention. It is not a primary social policy intervention (as in education) or a second-level social policy intervention (as in welfare benefits). It is attempting laudably, to secure an element of justice far along the human need and discrimination continuums. Pursued in isolation, it risks becoming an over-individuated response to wider social injustices.

This study has pointed to clear evidence of Disability Hate Crime existing within the wider context of disabled people's experience of disadvantage and discrimination across most areas of social life. When located within an understanding of disability prejudice, ableism and disablism and within the context of a rights and justice-focused national strategy to advance disabled people's social situation in England and Wales, a Disability Hate Crime focus, underpinned by appropriate legal provisions, can contribute to realising a society where disabled people can live more dignified lives, freer from fear, and with the potential for enhanced human flourishing based simultaneously on recognition of human difference and common humanity.

## Bibliography

- Abberley, P. (1987a) *Disability and oppression*. Warwick Working Papers on Sociology. University of Warwick: Department of Sociology.
- Abberley, P. (1987b) 'The concept of oppression and the development of a social theory of disability', *Disability, Handicap and Society*, 2(1), pp. 4-13.
- Abberley, P. (1999) 'The significance of work for the citizenship of disabled people' [Paper], *Conference*. University College Dublin.
- Abrams, D. and Houston, D.M. (2006) *Equality, diversity and prejudice in Britain. Results from a 2005 national survey, report for Cabinet Office Equalities Review October 2006*. England: University of Kent.
- Adam, R., Reiss, B., and Serlin, D. (2015) *Keywords for disability studies*. New York: New York University Press.
- Adams, M., Bell, L.A., and Griffin, P. (eds.) (2007) *Teaching for diversity and social justice*. New York: Routledge.
- Adams, M., Blumenfeld, W.J., Casaneda, C., Hackman, H., Peters, M. and Zuniga, X. (eds.) (2013) *Readings for diversity and social justice*. New York: Routledge.
- Albrecht, G.L., Seelman, K.D., and Bury, M. (eds.) (2001) *Handbook of disability studies*. Thousand Oaks, California: Sage Publications Inc.
- Alcoff, L., Homes-Garcia, M., Mohanty, S., and Moya, P. M. L. (eds) (2006) *Identity Politics Reconsidered*, New York: Palgrave Macmillan.
- Allport, G. (1954) *The nature of prejudice*. Reading, MA: Addison–Wesley Publishing Co.
- Althusser, L. (1969) *Lenin and philosophy and other essays*. Michigan: Monthly Review Press.
- Asquith, N.L., Barthowiak, T.I. and Roberts K.A. (eds.) (2017) *Policing encounters with vulnerability*. Cham: Palgrave Macmillan.
- Association of Chief Police Officers (ACPO) (2005) *Hate crime in delivering a quality service – good practice and tactical guidance*. London: Home Office Police Standards Unit.
- Association of Chief Police Officers (ACPO) (2010) *ACPO Hate crime manual 2010*. London: Home Office Police Standards Unit.

Association of Chief Police Officers (ACPO) (2014) *ACPO Hate crime manual 2014*. London: Home Office Police Standards Unit.

Attorney General's Office (AGO) (2006) *Race for justice taskforce*. London: Attorney General's Office.

Bacchi, C. (1999) *Women, policy and politics – the construction of policy problems*. London: Sage Publications Ltd.

Bacchi, C. (2009) *Analysing policy: What's the problem represented to be?* French Forest, New South Wales: Pearson.

Bacchi, C. (2012) 'Why study problematisations? Making politics visible', *Open Journal of Political Science*, 2(1), pp. 1-8.

Bacchi, C. and Eveline, J. (eds.) (2010) *Mainstreaming politics: gendering practices and feminist theory*. Adelaide: University of Adelaide.

Bagihole, B. (2009) *Understanding equal opportunities and diversity*. Bristol: Policy Press.

Balderston, S. (2012) 'After disablist hate crime: Which interventions really work to resist victimhood and build resilience with survivors?' in Roulstone, A. and Mason-Bish, H. (eds.) *Disability, hate crime and violence*. London: Routledge.

Balderston, S. (2013) 'Victimised again? Intersectionality and Injustice in disabled womens lives after hate crime and rape: Advances in gender research, 18, pp17-51.

Barbehon, M., Munch, S. and Lamping, W. (2015) 'Problem definition and agenda setting in critical perspective', in Fischer, F., Torgerson, D., Durnova, A., Orsini, M., (eds.) *Handbook of critical policy studies*. Cheltenham: Edwar Elgar Publishing, pp. 241-258.

Barnes, C. and Mercer, G. (2003) *Disability, key concepts*. Cambridge: Polity Press.

Barnes, C. and Mercer, G. (2010) *Exploring disability*. Second edition. Cambridge: Polity Press.

Barnes, C. and Oliver, M. (1998) *Disabled people and social policy - from exclusion to inclusion*. Essex: Longman.

Batavia, A.I. (2001) 'The new paternalism: Portraying people with disabilities as an oppressed minority', *Journal of Disability Policy Studies*, 12, pp. 107-113.

Beadle-Brown, J., Richardson, L, Guest, C., Malovic, A., Bradshaw, J., Himmerich, J., (2014) *Living in fear: better outcomes for people with learning disabilities and autism*. Canterbury: Tizard Centre University of Kent.

- Bennett, A. E. (2017) 'Live streamed hate crime against disabled man prompts national outrage' in *Family and Intimate partner violence quarterly*, spring vol 9 issue 4, pp47-52.
- Beresford, P., Fleming, J, Glynn, M., Bewley, C., Croft, S., Branfield, F., and Postle, K. (2011) *Supporting people – towards a person centred approach*. Bristol: Policy Press.
- Berger, P. and Luckmann, T. (1967) *The social construction of reality: A treatise in the sociology of knowledge*. New York: Anchor.
- Best, J. (1999) *Random violence – how we talk about new crimes and new victims*. California: University of California Press.
- Best, J. (ed.) (2001) *How claims spread: cross-national diffusion of social problems*. New York: Aldine De Gruyter.
- Best, J. (ed.). (2009) *Images of issues*. Second edition. New Jersey: Aldine Transaction.
- Blackabay, D., Leslie, D, and Murphy, P. (1999) *Earnings and employment opportunities of disabled people*. Research Report. London: DFEE.
- Bletsas, A. and Beasley, C. (eds.) (2012) *Engaging with Carol Bacchi - strategic interventions and exchanges*. Adelaide: University of Adelaide.
- Boffey, D. (2013) 'Labour to create new offence of disability hate crime', *The Guardian*, 21 September.
- Borsay, A. (2005) *Disability and social policy in Britain since 1750*. Basingstoke: Palgrave Macmillan.
- Bowling, B. (1999) *Violent racism*. Oxford: Oxford University Press.
- Braddock, D.L. and Parish, S.L. (2001) 'An institutional history of disability', in Albrecht, G., Seelman, K.D., and Bury, M. (eds.) *Handbook of disability studies*. Thousand Oaks, California: Sage Publications Inc, pp. 11-68.
- Brown, K. (2011) 'Vulnerability: Handle with care', *Ethics and Social Welfare*, 5(3), pp. 313-321.
- Brown, K. (2014) 'Questioning the vulnerability zeitgeist: care and control practices with 'vulnerable' young people', *Social Policy and Society*, 13(3), July 2014, pp. 371-387.
- Brown, K. (2014b) 'Beyond protection: "the vulnerable" in the age of austerity', in Harrison, M. and Sanders, T. (eds.) *Social policies and social control*. Bristol: Policy Press.

- Brown, K. (2016) *Vulnerability and young people – care and control in policy and practice*. Bristol: Policy Press.
- Bryant, A. and Charmaz, K. (eds.) (2007) *The Sage handbook of grounded theory*. London: Sage.
- Bryman, A. (2012) *Social research methods*. Fourth edition. Oxford: Oxford University Press.
- Burawoy, M. (1998) 'The extended case method', *Sociological Theory*, 16(1), pp. 4–33.
- Burch, L., (2018) ' You are a parasite on the productive classes: online disablist hate speech in austere times' in *Disability and society*, vol 33, issue 3 pp 392-415.
- Burstein, P. (1991) 'Policy domains: Organization, culture and policy outcomes', *Annual Review, Sociology*, 17, pp. 327–350.
- Burton, F. and Carlen, P. (2006) 'Official discourse', in Scott, J. (ed.) *Documentary Research*, 4. London: Sage.
- Butler, J., Gambetti, Z., and Sabsay, L. (eds.) (2016) *Vulnerability in resistance*. Durham, NC: Duke University Press.
- Byrne, L. MP (2013) 'Labour's commitments on disability'. *Labour Party conference*. London.
- Capewell, C., Ralph, S and Bonnett, L., (2015) 'The continuing violence towards disabled people' in *Journal of research in Special Educational Needs*. Issue June 2015.
- Cairney, P. (2012) *Understanding public policy, theories and issues*. Basingstoke: Palgrave Macmillan.
- Cairney, P. (2013) 'Standing on the shoulders of giants: how do we combine the insights of multiple theories in public policy studies?' *Policy Studies Journal*, 41(1), pp. 1-21.
- Campbell, F.K. (2008) 'Refusing able (ness): a preliminary conversation about Ableism', *M/C Journal*, 11(3), pp. 1-12.
- Campbell, J. and Oliver, M. (1996) *Disability politics, understanding our past, changing our future*. London: Routledge.
- Cameron, C. (2014) *Disability studies*. London: Sage.
- Chakraborti, N. (2010) 'Crimes against the "other": Conceptual, operational and empirical challenges for hate studies', *Journal of Hate Studies*, 8(1, 9 September 2010).

- Chakraborti, N. and Garland, J. (2009) *Hate crime - impact, causes and responses*. London: Sage.
- Chakraborti, N. and Garland, J. (2012) 'Reconceptualising hate crime victimization through the lens of vulnerability and 'difference'', *Theoretical Criminology*, 16(4), pp. 499–514.
- Chaplin, E and Mukhopadhyay S., (2018), 'Autism spectrum disorder and hate crime' in *Advances in Autism* vol 4, issue 1 pp 30-36.
- Charmaz, K. (2006) *Constructing grounded theory*. London: Sage.
- Charmaz, K. (2014) *Constructing grounded theory*. Second edition. London: Sage.
- Chouniard, V. (1997) 'Making space for disabling difference: challenges of ableist geographies', *Environment and Planning D: Society and Space*, 15, pp. 379-387.
- Clapham, A. (2007) *Human rights*. Oxford: Oxford University Press.
- Clement, S., Brohan, E., Sayce, L., Pool, J. and Thornicroft, G. (2011) 'Disability hate crime and targeted violence and hostility: a mental health and discrimination perspective', *Journal of Mental Health*, 20(3), pp. 219-225.
- Cohen, M.D., March Jones, G., and Olsen, J.P. (1972) 'A garbage can model of organizational choice', *Administrative Science Quarterly*, 17(1), pp. 1–25.
- Coleman, N., Sykes, W., (2016), *Crime and disabled people: measures of disability related harassment*. Equality and Human Rights Commission: London EHRC.
- Collins, J. (1992) *When the eagles fly: A report on the resettlement of people with learning difficulties from long-stay institutions*. London: Values into Action.
- Collins, J. (1993) *The resettlement game: policy and procrastination in the closure of mental handicap hospitals*. London: Values into Action.
- Collins, J. (1994) *Still to be settled: Strategies for the resettlement of people from mental handicap hospitals*. London: Values into Action.
- Conrad, R. (ed.) (2014) *Against equality, queer revolution not mere inclusion*. Oakland CA: AK Press.
- Cresswell, J. (2007) *Qualitative inquiry and research design: Choosing among five approaches*. Thousand Oaks, California: Sage.

Cresswell, J. (2009) *Research design, qualitative, quantitative and mixed methods approaches*. Third edition. London: Sage.

Crown Prosecution Service (CPS) (2001) *The Denman report into racial discrimination in the Crown Prosecution Service*. London: Crown Prosecution Service.

Crown Prosecution Service (CPS) (2002) *Racist and religious crimes policy*. London: Crown Prosecution Service.

Crown Prosecution Service (CPS) (2003) *Race for justice report*. London: Crown Prosecution Service.

Crown Prosecution Service (CPS) (2004) *Homophobic crime policy*. London: Crown Prosecution Service.

Crown Prosecution Service (CPS) (2006) *Single equality scheme*. London: Crown Prosecution Service.

Crown Prosecution Service (CPS) (2007) *CPS Legal guidance on disability hate crime*. London: Crown Prosecution Service.

Crown Prosecution Service (CPS) (2007) *CPS policy for prosecuting cases of disability hate crime*. London: Crown Prosecution Service.

Crown Prosecution Service (CPS) (2008) *Hate crime report 2007-08*. London: Crown Prosecution Service.

Crown Prosecution Service (CPS) (2009a) *Hate crime report 2008-09*. London: Crown Prosecution Service.

Crown Prosecution Service (CPS) (2009b) *Public policy statement on victims and witnesses who have learning disabilities*. London: Crown Prosecution Service.

Crown Prosecution Service (CPS) (2009c) *Public policy statement on victims and witnesses who have mental health issues*. London: Crown Prosecution Service.

Crown Prosecution Service (CPS) (2010a) *Victims and witnesses who have mental health issues and/or learning disabilities – prosecution guidance*. London: Crown Prosecution Service.

Crown Prosecution Service (CPS) (2010b) *Disability hate crime – guidance on the distinction between vulnerability and hostility in the context of crimes committed against disabled people*. London: Crown Prosecution Service.

Crown Prosecution Service (CPS) (2010c) *Hate crime and crimes against older people report, 2009–10*. London: Crown Prosecution Service.

- Crown Prosecution Service (CPS) (2011) *Hate crimes and crimes against older people report, 2010–11*. London: Crown Prosecution Service.
- Crown Prosecution Service (CPS) (2012) *Hate crimes and crimes against older people report, 2011–12*. London: Crown Prosecution Service.
- Crown Prosecution Service (CPS) (2013) *The code for crown prosecutors*. London: Crown Prosecution Service.
- Crown Prosecution Service (CPS) (2015) *Revised draft public policy statement on crimes against disabled people for consultation*. London: Crown Prosecution Service.
- Crown Prosecution Service (CPS) (2015) *Annual hate crime report*. London: Crown Prosecution Service.
- Crown Prosecution Service (CPS) (2016) *Annual hate crime report*. London: Crown Prosecution Service.
- Crown Prosecution Service (CPS) (2017) *Public policy statement on disability hate crimes and other crimes against disabled people*. London: Crown Prosecution Service.
- Department of Health (2001) *No secrets*. London: Department of Health.
- Department of Health (2009) *Valuing people now: A new three-year strategy for people with learning disabilities*. London: Department of Health.
- Department for Work and Pensions (2002) *Disabled for life? Attitudes towards and experiences of disability in Britain, Research Report No. 173*. Norwich: HMSO.
- De Vaus, D. (2001) *Research design in social research*. London: Sage.
- Digranes, C., (2016), *Disabled Justice: A qualitative case study on the barriers to registration of disability hate crime within the Norwegian criminal justice system*. Oslo: University of Oslo.
- Dimock, S. and Al-Hakim, M. (2012) 'Hate as an aggravating factor in sentencing', *New Law Review*, 15(4), pp. 572-611.
- Disability Now (2007) *The hate crime dossier*. London: Disability Now Magazine.
- Disabled People's Council (2010a) *The bigger picture – UK disabled people's council's report to the EHRC*. London: UKDPC.
- Disabled People's Council (2010b) *Snapshot of targeted hostility towards disabled people in the UK*. London: UKDPC.

- Disability Rights Commission (DRC) (2005) *Shaping the future of equality*. London: Disability Rights Commission.
- Disability Rights Commission (DRC) (2007a) *Creating an alternative future*. London: Disability Rights Commission.
- Disability Rights Commission (DRC) (2007b) *Changing Britain for good: Putting disability at the heart of public policy*. London: Disability Rights Commission.
- Disability Rights Commission England and Wales (2006) *Equal treatment: Closing the gap: A formal investigation into physical health inequalities experienced by people with learning disabilities and/or mental health problems*. London: Disability Rights Commission.
- Disability Rights Commission Scotland and Capability Scotland (2004) *Hate crime against disabled people in Scotland*. Edinburgh: Disability Rights Commission and Capability Scotland.
- Disability Rights UK (in association with Office for Disability Issues) (2012a) *Let's stop hate crime – a guide for setting up third party reporting centres*. London: Disability Rights UK.
- Disability Rights UK (in association with Office for Disability Issues) (2012b) *Let's stop disability hate crime – a guide for disabled people*. London: Disability Rights UK.
- Disability Rights UK (in association with Office for Disability Issues) (2012c) *Let's stop disability hate crime – a guide for non-disabled people*. London: Disability Rights UK.
- Dole, B., Senator (1994) 'Are we keeping America's promises to people with disabilities?' *Iowa Law Review*, 79 (3, March 1994), pp. 925–933.
- Donnelly, J. (2003) *Universal human rights in theory and practice*. New York: Cornell University Press.
- Drake, R. F. (1999) *Understanding disability policies*. Basingstoke: Palgrave Macmillan.
- Driedger, D. (1989) *The last civil rights movement: Disabled peoples' international*. London: Hurst Publishers.
- Dunn, M.C, Clare, I.C., and Holland, A. J. (2008) 'To empower or to protect? Constructing the vulnerable adult in English law and public policy', *Legal Studies*, 28 (2), pp. 234-253.
- Durant, R.F. and Diehl, P.F. (1989) 'Agendas, alternatives and public policy: Lessons from the US foreign policy arena', *Journal of Public Policy*, 9(2), pp. 179-205.
- Dye, T.R. (2011) *Understanding public policy*. Thirteenth edition. London: Pearson.

- Eisenhardt, K.M. (1989) 'Building theories from case study research', *The Academy of Management Review*, 14(4), pp. 532-550.
- Eller, W. and Krutz, G. (2009) 'Policy process, scholarship and the road ahead: an introduction to the 2008 policy shootout', *Policy Studies Journal*, 37(1), pp. 1-4.
- Emerson, E. and Roulstone, A. (2014) 'Developing an evidence base for violent and disablist hate crime in Britain', *Journal of Interpersonal Violence*, 29(17), pp. 3086–3104.
- Equality and Human Rights Commission (EHRC) (2009) *Disabled people's experiences of targeted violence and hostility*. London: Equality and Human Rights Commission.
- Equality and Human Rights Commission (EHRC) (2011a) *Disability-related harassment: the role of public bodies, research report 78*. London: Equality and Human Rights Commission.
- Equality and Human Rights Commission (EHRC) (2011b) *Hidden in plain sight, inquiry into disability-related harassment*. London: Equality and Human Rights Commission.
- Equality and Human Rights Commission (EHRC) (2012) *Out in the open, tackling disability related harassment, a manifesto for change*. London: Equality and Human Rights Commission.
- Equality and Human Rights Commission (EHRC) (2013) *Crime and disabled people, baseline statistical analysis of measures from the formal legal inquiry into disability-related harassment, research report 90*. London: Equality and Human Rights Commission.
- Equality and Human Rights Commission (EHRC) (2016) *EHRC response to the report of the House of Lords Select Committee on the Equality Act 2010 and disability: the impact on disabled people*.
- Equality and Human Rights Commission (EHRC) (2017a) *Being disabled in Britain: a journey less equal*. London: Equality and Human Rights Commission.
- Equality and Human Rights Commission (EHRC) (2017b) *Tackling disability related harassment: Final progress report* London: Equality and Human Rights Commission.
- Evans, S.E. (2004) *Forgotten crimes – the Holocaust and people with disabilities*. Chicago: Ivan R. Dee.
- Faye Waxman, B. (1991) 'Hatred: The unacknowledged dimension in violence against disabled people', *Sexuality and Disability*, 9(3), pp. 185–199.
- Ferrier, L. and Muller, V. (2008) 'Disabling able', *M/C Journal*, 11(3), pp. 1-6.

- Fineman, M. (2008) 'The vulnerable subject: anchoring equality in the human condition', *Yale Journal of Law and Feminism*, 20(1), pp. 1–23.
- Fineman, M. (2012) 'Elderly as vulnerable: Rethinking the nature of individual and societal responsibility', *The Elder Law Journal*, 20(2), pp. 71-111.
- Fischer, F., Torgerson, D., Durnova, A., and Orsini, M. (eds.) (2015) *Handbook of critical policy studies*. Cheltenham: Edward Elgar Publishing.
- Flick, U. (2009) *An introduction to qualitative research*. London: Sage.
- Flick, U., von Kordoff, E., and Stienke, I. (2004) *A companion to qualitative research*. London: Sage.
- Flyvbjerg, B. (2006) 'Five misunderstandings about case-study research', *Qualitative Inquiry*, 12(2), pp. 219-245.
- Foucault, M. (1973) *The birth of the clinic*. London: Penguin.
- Foucault, M. (1981) 'Questions of method: an interview with Michel Foucault', *I and C*, Spring, 8, pp. 3-14.
- Foucault, M. (1997) 'The birth of biopolitics', in Rainbow, P. (ed.) *The Essential Works of Michel Foucault 1954-1984, Ethics, Subjectivity, Truth (1)*. New York: New Press.
- Fraser, N. (1997) *Justice interruptus, critical reflections on the 'post socialist condition*. Abingdon: Routledge.
- Fraser, N. (1999) *Adding insult to injury*. New York: Verso Press.
- Fraser, N. (2003) *Recognition or redistribution*. New York: Verso Publishers.
- Fraser, N. and Olsen, K. (eds.) (2008) *Adding insult to injury: Nancy Fraser debates her critics*. New York: Verso.
- Fredman, S. (2000) *Discrimination law*. Oxford: Oxford University Press.
- Fredman, S. (2008) 'Making a difference: the promises and perils of positive duties in the equality field', *European Anti-Discrimination Law Review*, (6), pp. 43-52.
- Fredman, S. and Spencer, S. (2006) 'Delivering equality: Towards an outcome focused positive duty'. Submission to the Cabinet Office *Equality Review* and to the *Discrimination Law Review*, June 2006.
- Freeman, M. (2002) *Human rights*. Cambridge: Polity Press.
- Fundamental Rights Agency (FRA) (2015a) *Equal protection for all victims of hate crime - the case of people with disabilities*. Vienna: Fundamental Rights Agency.

- Fundamental rights Agency (FRA) (2015b) *Violence against children with disabilities: Legislation, policies and programmes in the EU*. Vienna: Fundamental Rights Agency.
- Furedi, F. (2004) *Therapy culture: Cultivating vulnerability in an uncertain age*. Abingdon: Routledge.
- Gallagher, H. (2001) 'What the Nazi "euthanasia program" can tell us about disability oppression', *Journal of Disability Policy Studies*, 12, pp. 96-99.
- Galtung, J. (1969) 'Violence, peace and peace research', *Journal of Peace Research*, 6(3), pp. 167-191.
- Galtung, J. (1990) 'Cultural violence', *Journal of Peace Research*, 27(3), pp. 291-305.
- Garthwaite, K. (2011) 'The language of shirkers and scroungers? Talking about illness, disability and coalition welfare reform', *Disability and Society*, 26(3), pp. 369-373.
- Gates, T. (2010) 'The problem, policy and political streams of the Employment Non-Discrimination Act of 2009: Implications for social work practice', *Journal of Gay and Lesbian Social Services*, 22(3), pp. 354-369.
- Gerring, J. (2007) *Case study research, principles and practice*. Cambridge: Cambridge University Press.
- Giannasi, P. (2015a) 'The criminal justice system response to disability hate crime', in Shah, R. and Giannasi, P. (eds.) *Disability hate crime*. London: NCB.
- Giannasi, P. (2015b) 'The narrative for change', in Shah, R. and Giannasi, P. (eds.) *Disability hate crime*. London: NCB.
- Gilbert, N. (ed.) (2008) *Researching social life*. Third edition. London: Sage.
- Glaser, B.G. and Strauss, A.L. (1967, 1979 printing) *The discovery of grounded theory: Strategies for qualitative research*. Chicago: Aldine Publishers.
- Godley, D. (2014a) *Dis/Ability studies: Theorising disablism and ableism*. London: Routledge.
- Godley, D. (2014b) *Disability studies*. London: Sage Publications.
- Godley, D. and Runswick-Cole, K. (2011) 'The violence of disablism', in *Sociology of Health and Illness*, 33(4), pp. 602-617.
- Gomm, R. (2008) *Social research methodology, a critical introduction*. Second edition. Basingstoke: Palgrave Macmillan.
- Government Equalities Office (GEO) (2010) *Equality strategy*. London: Government Equalities Office.

- Government Statistics Collective (2006) 'How official statistics are produced: Views from the inside', in: Scott, J. (ed.) *Documentary research*, 4. London: Sage.
- Grattet, R. and Jenness, V. (2001a) 'Examining the boundaries of hate crime law: disabilities and the "dilemma of difference"', *Iowa Journal of Criminal Law and Criminology*, 91(3), pp. 653–697.
- Grattet, R. and Jenness, V. (2001b) 'The birth and maturation of hate crime policy in the United States', *American Behavioural Scientist*, 45, pp. 668–696.
- Grattet, R., Jenness, V., and Curry, T.R. (1998) 'The homogenization and differentiation of hate crime laws in the United States', in *American Sociological Review*, 63(2), pp. 286–307.
- Gravell, C. (2012) *Loneliness and cruelty: People with learning disabilities – their experience of harassment, abuse and related crime in the community*. London: Lemos and Crane.
- Gray, V. and Lowery, D. (2000) 'Where do policy ideas come from? A study of Minnesota legislators and staffers', *Journal of Public Administration Research and theory*, 10(3), pp. 573-597.
- Greenwood, R. and Hinings, C.R. (1996) 'Understanding radical organizational change: bringing together the old and new institutionalism', *Academy of Management Review*, 21(4).
- Grewal, I., Joy, S., Lewis, J., Swales, K. and Woodfield, K. (2002) *Disabled for life, research report no. 173*. Leeds: Department of Work and Pensions.
- Grover, C. and Piggott, L. (2007) 'Social security, employment and incapacity benefit: Critical reflections on a new deal for welfare', *Disability and Society*, 27(7), pp. 733-746.
- Haines, S. and Ruebain, D. (2011) *Education, disability and social policy*. Bristol: Policy Press.
- Hall, N. (2013) *Hate crime*. Second edition. Abingdon: Routledge.
- Hall, N. (2014) 'The adventures of an accidental academic in 'policy-land': a personal reflection on bridging academia, policing and government in a hate crime context', in Chakraborti, N. and Garland, J. (eds.) *Responding to hate crime: The case for connecting policy and research*. Bristol: Policy Press, pp. 13 -26.
- Hall, N., Corb, A., Giannasi, P., and Grieve, J. (2015) *The Routledge International handbook on hate crime*. Abingdon: Routledge.
- Hakim, C. (2006) 'Research based on administrative records', in Scott, J. (ed.) *Documentary Research*, Volume 4. London: Sage.

Hamilton, P. and Trickett, L. (2015) 'Disability hostility, harassment, and violence in the UK: A "motiveless" and "senseless" crime?' in Hall, N., Corb, A., Giannasi, P., and Grieve, J. (2015) *The Routledge International handbook on hate crime*. Abingdon: Routledge.

Hanimaki Jussi, M. (2008) *The United Nations*. Oxford: Oxford University Press.

Hansard (HL) Deb 5 Nov 2003.

Heilporn, A., Andre, J.M, Didier, J.P., and Chamberlain, M.A. (2006) 'Violence and maltreatment of people with disabilities, a short review', *Journal of Rehabilitative Medicine*, 38, pp. 10-13.

Herek, G.M. and Berrill, K.T. (1992) *Hate crimes – confronting violence against lesbians and gay men*. California: Sage Publications.

Her Majesty's Crown Prosecution Service Inspectorate (HMCPSP), *Her Majesty's Inspectorate of Constabulary (HMIC)*, *Her Majesty's Inspectorate of Probation (HMIP)* (2013) *Living in a different world: Joint review of disability hate crime*. London: Her Majesty's Crown Prosecution Service Inspectorate.

Her Majesty's Crown Prosecution Service Inspectorate (HMCPSP), *Her Majesty's Inspectorate of Constabulary (HMIC)*, *Her Majesty's Inspectorate of Probation (HMIP)* (2015) *Joint review of disability hate crime follow-up*. London: Her Majesty's Crown Prosecution Service Inspectorate (HMCPSP), Her Majesty's Inspectorate of Constabulary (HMIC), Her Majesty's Inspectorate of Probation (HMIP).

Her Majesty's Government (2009-10) *Hate crime – the cross-government action plan*. London: Her Majesty's Government.

Her Majesty's Government (2010) *Challenge it, report it, stop it - delivering the government's hate crime action plan*. London: Her Majesty's Government.

Her Majesty's Government (2012a) *Challenge it, report it, stop it: The government's plan to tackle hate crime*. London: Her Majesty's Government.

Her Majesty's Government (2012) *Government response to hidden in plain sight, the Equality and Human Rights Commission report on disability related harassment*. London: Her Majesty's Government.

Her Majesty's Government (2016) *Action against hate 2016 -2020*. London: Her Majesty's Government.

Hilgartner, S. and Bosk, C.L. (1988) *The Rise and Fall of Social Problems: A Public Arena Model*, 94(1), pp. 53–78.

Hill, M. (2013) *The public policy process*. Sixth edition. Essex: Pearson.

- Hollomotz, A. (2013) 'Disability and the continuum of violence', in Roulstone, A. and Mason-Bish, H. (eds.) *Disability, hate crime and violence*. Abingdon: Routledge.
- Holloway, I. and Todres, L. (2003) 'The status of method: Flexibility, consistency and coherence', *Qualitative Research*, 3(3), pp. 345-357.
- Home Office and Association of Chief Police Officers (2008) *The agreed definition of monitored hate crime for England, Wales and Northern Ireland*. London: Home Office.
- Home Office, Office for National Statistics (ONS), and Ministry of Justice (MOJ) (2013) *Crime survey for England and Wales 2011-12*. London Home Office.
- House of Commons Justice Committee (2009) *The CPS – gatekeeper of the criminal justice system*. Ninth report. London: The Stationery Office.
- House of Lords and House of Commons Joint Committee on Human Rights (2008) 'A life like any other? Human rights of adults with learning disabilities', *Session 2007-08*. Seventh report. Volume 1. London: The Stationery Office.
- Howlett, M. (2002) 'Do networks matter? Linking policy network structure to policy outcomes: Evidence from four Canadian policy sectors 1990 – 2000', *Canadian Journal of Political Science*, 35(2), pp. 235–267.
- Hudson, J. and Lowe, S. (2009) *Understanding the policy process*. Bristol: The Policy Press.
- Hughes, K., Bellis, M.A., Jones, L., Wood, S., Bates, G., Eckley, L., Mc Coy, E., Mikton, C., Shakespeare, T. and Officer, A (2012) 'Prevalence and risk of violence against adults with disabilities: a systematic review and meta-analysis of observational studies'. *The Lancet*. Available from doi: 10.1016/S0410-6736(h) 61851-5.
- Iganski, P. (1999) 'Why make "hate" a crime?' *Critical Social Policy*, 19(3), pp. 386-395.
- Iganski, P. (ed.) (2002) *The hate debate: Should hate be punished as a crime?* London: Profile Books.
- Iganski, P. (2008) *'Hate crime' and the city*. Bristol: The Policy Press.
- Iganski, P. (2010) 'Hate crime', in: Brookman, F., Maguire, M., Pierpoint, H., and Bennett, T. (eds.) *Handbook on crime*. Devon: William Publishing.
- Iganski, P., Botcherby, S., Glen, F., Jochelson, K. and Lagou, S. (2011) *Equality groups perceptions and experience of crime: Analysis of the British crime survey 2007-08 and 2009-10*. London: Equality and Human Rights Commission.
- Iganski, P. and Levin, J. (2015) *Hate Crime: A global perspective*. New York: Routledge.

Iganski, P., Nicon, A. and Lagou, S. (2011) *Disabled people's experiences and concerns about crime: Analysis of the British crime survey 2007-08, 2008-09 and 2009-10*. London: Equality and Human Rights Commission.

Independent Police Complaints Commission (IPCC) (2011) *Report into the contact between Fiona Pilkington and Leicestershire Constabulary, 2004-07*. Final Report. London: Independent Police Complaints Commission.

Institute of Conflict Research (ICR) (2009) *Disability and hate crime in Northern Ireland*. Belfast: Office of the First Minister and Deputy First Minister, Northern Ireland Executive.

Jacobs, J.B. and Potter, K. (1998) *Hate crimes – criminal law and identity politics*. Oxford: Oxford University Press.

Jenness, V. and Broad, K.L. (1997) *Hate crimes, new social movements and the politics of violence*. New Jersey: Aldine Transaction.

Jenness, V. and Broad, K. (2005) *Hate crimes - new social movements and the politics of violence*. Piscataway NJ: Aldine Transaction.

Jenness, V. and Broad, K.L. (2007) 'The emergence, content and institutionalization of hate crime law: How a diverse policy community produced a modern legal fact', *Annual Review of Law and Social Science*, 3, pp. 141–160.

Jenness, V. and Grattet, R. (1996) 'The criminalization of hate: A comparison of structural and polity influences and the passage of 'bias-crime' legislation in the United States', *Sociological Perspectives*, 39(1), pp. 129–154.

Jenness, V. and Grattet, R. (2001) *Make hate a crime*. New York: Russell Sage Foundation.

John, P. (2003) 'Is there life after policy streams, advocacy coalitions and punctuations: Using evolutionary theory to explain policy change?' *Policy Studies Journal*, 31(4), pp. 481-498.

Jones, T. and Newburn, T. (2002) 'Policy convergence and crime control in the USA and the UK: Streams of influence and levels of impact', *Criminology and Criminal Justice*, 2(2), pp. 173-203.

Jones, T. and Newburn, T. (2007) *Policy transfer and criminal justice*. Maidenhead: McGraw Hill.

Jones, L., Bellis, M.A., Wood, S., Hughes, K., McCoy, E., Eckley, L., Bates, G., Mikton, C., Shakespeare, T. and Officer, A. (2012) 'Prevalence and risk of violence against children with disabilities: A systematic review

and meta-analysis of observational studies'. *The Lancet*. Available from doi: 10.1016/S0140-6736 (12) 60692-8.

Judicial College (2018) *Equal treatment bench book*. Updated edition. London: Judicial College.

Judicial Studies Board (2008) *Equal treatment bench book*. London: Judicial Studies Board.

King Braydon, G., Bentele, K.G., and Soule, S.A. (2007) 'Protest and policymaking: Explaining fluctuation in congressional attention to rights issues 1960-1986', *Social Forces*, 80(1), pp. 137-163.

Kingdon, J.W. (2001) 'A model of agenda setting with applications', *The Law Review*, Michigan State University, 2, pp. 331-337.

Kingdon, J.W. (2011) *Agendas, alternatives and public policies*. Updated second edition. Illinois: Pearson.

Knill, C. and Tosun, J. (2012) *Public policy, a new introduction*. Basingstoke: Palgrave Macmillan.

Koppelman, K. and Lee, R. (2010) *Ableism: Disability does not mean inability in understanding human differences, multicultural education for a diverse America*. Fourth edition. MA: Allyn and Bacon.

Kristiansen, K., Vehmas, S. and Shakespeare, T. (2010) *Arguing About disability, philosophical perspectives*. Abingdon: Routledge.

Kumari Campbell, F. (2001) 'Inciting legal fictions - disability's date with ontology and the ableist body of law', *Griffith Law Review*, 10(1), pp. 42-62.

Kumari Campbell, F. (2005) 'Legislating disability: Negative ontologies and the government of legal identities', in Tremain, S. (ed.) *Foucault and the government of disability*. Michigan, US: University of Michigan Press, pp. 108-132.

Kumari Campbell, F. (2008) 'Refusing Able (ness): A preliminary conversation about ableism', *M/C Journal of Media and Culture*, 11 (3).

Kumari Campbell, F. (2009) *Contours of ableism – the production of disability and ableness*. Basingstoke: Palgrave Macmillan.

Kumari Campbell, F. (2012) Stalking ableism: 'Using disability to expose "abled" narcissism', in Godley, D., Hughes, B., and Davis, L. (eds.) *Disability and social theory, new developments and directions*. Basingstoke: Palgrave Macmillan, pp. 212-232.

Kumari Campbell, F. (2015) 'Ability', in Adams, R., Reiss, B., Serlin, D. (eds.) *Keywords for disability studies*. New York: New York University Press, pp. 46–51.

Kvale, S. (2007) *Doing Interviews*. London: Sage.

Kvale, S. and Brinkmann, S. (2009) *Interviews, learning the craft of qualitative research interviewing*. Second edition. CA: Sage.

Labour (1997) *The Labour Party manifesto*. London: Labour.

Labour (2013) *Making rights a reality for disabled people. A report by the shadow DWP team to Labour's national policy forum*. London: Labour.

Landman, R. A., (2014) 'A counterfeit friendship: mate crime and people with learning disabilities.' *Journal of Adult Protection*. Vol 16, pp 355-366.

Lane, F.J. (2006) *Law enforcement officers' endorsement of the bias categorization of crime scenarios: A prospective study of differences between disability and other protected statuses*. PhD Thesis. University of Florida.

Law Commission (2013) *Hate crime: The case for extending the existing offences. Consultation paper number 213*. London: Law Commission.

Law Commission (2014) *Hate crime: Should the current offences be extended? Report number 348*. London: Law Commission.

Lawrence, F.M. (1999) *Punishing hate, bias crimes under American law*. Cambridge: Harvard University Press.

Levin, B. (2009) 'The long arc of justice', in Levin, B. (volume ed.) and Perry, B. (series ed.) *Hate crime: understanding and defining hate crime*, 5(1), pp. 1-22.

Levin, J. and McDevitt, J. (2002) *Hate crimes revisited – America's war on those who are different*. US: Peruses Books Group.

Levin, J. and Nolan, J. (2011) *The violence of hate*. Third edition. Boston: Allyn and Bacon.

Levitas, R. (2005) *The inclusive society? Social exclusion and new Labour*. Second edition. Basingstoke: Palgrave Macmillan.

Liberal Democrats (2010) *Liberal Democrats manifesto*. London: Liberal Democrats.

Lincoln, Y. and Guba, E. (1985) *Naturalistic inquiry*. Beverly Hills, California: Sage Publications Inc.

Lister, R. (2010) *Understanding theories and concepts in social policy*. Bristol: The Policy Press.

- Lipsky, M. (2010) *Street – Level Bureaucracy*. New York: Russell Sage Foundation.
- Liu, X., Lindquist, E., Vedlitz, A., and Vincent, K. (2010) 'Understanding local policy making: Policy elites' perceptions of local agenda setting and alternative policy selection', *Policy Studies Journal*, 38(1), pp. 69-91.
- Macciarone, G. (1992) 'The garbage can model and the study of policy making: A critique', *Polity*, 24(3), pp. 459–482.
- Macdonald, K., Queen's Counsel (2008) 'Prosecuting disability hate crime', *Joint Bar Council and equality and diversity forum seminar*. Keynote speech by Director of Public Prosecutions. London, October 2008: Crown Prosecution Service.
- MacDonald, S. J., Donovan, C. and Clayton, J., (2017) '*The disability bias: understanding the context of hate in comparison with other minority populations.*' *Disability and Society*. Vol 32 issue 4 pp 483-499.
- Marley, J.A. and Biula, S. (2001) 'Crimes against people with mental illness: Types, perpetrators and influencing factors', *Social Work*, 46(2), pp. 115-124.
- Marshall, T.H. (1950) *Citizenship and social class and other essays*. Cambridge: Cambridge University Press.
- Martin, P.Y. and Turner, B.A. (1986) 'Grounded theory and organisational research', *The Journal of Applied Behavioral Science*, 22(2), pp. 141.
- Mary, P.J., Sapotichne, J. and Warkman, S. (2006) *Policy Coherence and Policy Domains*, 34(3), pp. 381–403.
- Mason, G. (2015) 'Legislating against hate', in Hall, N., Corb, A., Giannasi, P. and Grieve, J. (eds.) *Routledge International Handbook on Hate Crime*. London: Routledge, pp. 59-68.
- Mason-Bish, H. (2009) *Establishing, exploring and expanding hate crime as a policy domain*. PhD Thesis. University of Essex.
- Mason-Bish, H. (2012) 'Examining the boundaries of hate crime policy: Considering age and gender', *Criminal Justice Policy Review*, 20(10), pp. 1–20.
- May, T. (2001) *Social research, issues, methods and process*. Third edition. Buckingham: OUP.
- McCrudden, C. (1999) 'Mainstreaming equality in the governance of Northern Ireland', *Fordham International Law Journal*, 22(4), pp. 1696-1741.
- McDonnell, P. (2007) *Disability and society – ideological and historical dimensions*. Dublin: Blackhall Publishing.

- McLaughlin, E. (2007) 'From negative to positive equality duties: The development and constitutionalisation of equality provisions in the UK', *Social Policy and Society*, 6(1), pp. 111-121.
- McLoughlin, E. and Muncie, J. (2006) *The Sage dictionary of criminology*. London: Sage.
- McLoughlin, E. and Newburn, T. (2010) *The Sage handbook of criminological theory*. London: Sage.
- McMahon, B.T., West, S.L., Lewis, A.N., Armstrong, A.J., Conway, J.P. (2004) 'Hate crimes and disability in America', *Rehabilitation and Counselling Bulletin*, 47(2), pp. 66-75.
- McVeigh, R. (2017) 'Hate and the State: Northern Ireland, sectarian violence and perpetrator-less crime', in Haynes, A., Schweppe, J. and Taylor, S. (eds.) *Critical perspectives on hate crime: Contributions from the island of Ireland*. Basingstoke, UK: Palgrave Macmillan, pp. 393-417.
- Mencap (1999) *Living in fear*. London: Mencap.
- Mencap (2007) *Bullying wrecks lives: The experiences of children and young people with a learning disability*. London: Mencap.
- Mencap (2010) *Don't stand by – hate crime research report*. London: Mencap.
- Messerschmidt, J.W. (1997) *Crime as structured action, gender, race and class in the making of crime*. US: Sage.
- Metropolitan Police Service (MPS) (2006) *Disability equality scheme*. London: Metropolitan Police Service.
- Millar, S. (2010) 'Disability and inequality', in Thane, P. (ed.) (2010) *Unequal Britain*. London: Continuum, pp. 163-188.
- Miller, P., Parker, S. and Gillinson, S. (2004) *Disablism - how to tackle the last prejudice*. London: Demos.
- Mind (2007) *Another assault*. London: Mind.
- Moran, M., Rein, M. and Goodin, R.E. (2006) *The Oxford handbook of public policy*. Oxford: Oxford University Press.
- Morris, J. (1991) *Pride against prejudice, transforming attitudes to disability*. London: The Women's Press.
- Nacro (2002) *Community safety guidance for crime and disorder reduction partnerships*. London: Nacro.
- Nathwani, A., Schneider, R., Ollereanshaw, S., Angoy, S., McLellan, J., and Walmsley, A. (2007) *The public sector equality duties: Making an impact*. Andover: Schneider Ross.

- National Disability Authority (2006) 'Literature review on attitudes towards disability', *Disability Research Series*, 9. Dublin: National Disability Authority.
- Neier, A. (2012) *The international human rights movement – a history*. Princeton: Princeton University Press.
- Nocon, A., Iganski, P., Lagou, S. (2011) *Disabled people's experiences and concerns about crime, analysis of the British crime survey, 07-08, 08-09*. Briefing Paper 3. London: Equality and Human Rights Commission.
- O'Connor, M.K. and Netting, F.E. (2011) *Analyzing social policy*. New Jersey: Wiley and Sons Inc.
- Office for Criminal Justice Reform (OCJR) (2009) *Victims and witnesses: Early special measures meetings between CPS and vulnerable or intimidated witnesses*. London: Office for Criminal Justice Reform.
- Office for Disability Issues (ODI) (2017) *Disabled people's rights: Information for the UK's first periodic review*. London: Office for Disability Issues.
- Office for Disability Issues (ODI) (2008) *Experiences and expectations of disabled people*. London: Office for Disability Issues.
- Office for Disability Issues (ODI) (2012) *Government response to hidden in plain sight*. London: Office for Disability Issues.
- Ogden, C. A., (2016), "Disability hate crime" in Corten, K, Moxley, S, Taylor, P., Turner, J., eds. *A companion to crime, harm and victimisation*. Bristol: Policy Press.
- Office for Security and Co-operation in Europe (OSCE) (2017) *Hate crime against people with disabilities*. Warsaw: Office for Security and Co-Operation in Europe
- Office for Security and Co-Operation in Europe (OSCE) (2009) *Hate crime: A practical guide*. Warsaw: Office for Security and Co-Operation in Europe.
- Office for Security and Co-Operation in Europe (OSCE) (2012) *Hate crimes in the OSCE region: Incidents and responses annual report for 2011*. Warsaw: Office for Security and Co-Operation in Europe.
- Ollereanshaw, S., Schneider, R., Jackson, G., and Iqbal, K. (2003) *An evaluation of the public duty to promote race equality and good race relations in England and Wales*. London: CRE.
- Oliver, M. (2009) *Understanding disability – from theory to action*. Second edition. Basingstoke: Palgrave Macmillan.
- Oliver, M. and Barnes, C. (2012) *The new politics of disablement*. Basingstoke: Palgrave Macmillan.

- Outshoorn, J. (2004) 'Pragmatism in the polder: Changing prostitution policy in the Netherlands', *Journal of contemporary European studies*, 12(2) September 2004.
- Palacio, R.J. (2012) *Wonder*. London: Corgi Books.
- Palmer, M. (2011) 'Disability and poverty: A conceptual overview', *Journal of Disability Studies*, 21(4), pp. 210-218.
- Pearson, C., Watson, N., Stabler, K., Lerpiniere, J., Patersen, K., and Ferree, J. (2011) 'Don't get involved: An examination of how public sector organisations in England are involving disabled people in the disability equality duty', *Disability and Society*, 26(3), pp. 255–268.
- Perry, B. (2001) *In the name of hate - Understanding hate crimes*. New York: Routledge.
- Perry, B. (ed.) (2003) *Hate and bias crime, a reader*. New York: Routledge.
- Perry, B. (ed.) (2009a) *Hate crimes, Volumes 1 to 5*. Westport, Connecticut: Praeger.
- Perry, B. (2009b) 'The sociology of hate: theoretical approaches', in Perry, B. (volume ed.) *Hate crime and the victims of crime*. Westport, Connecticut: Praeger.
- Perry, J. (2008) 'The perils of an identity politics approach to the legal recognition of harm', *Liverpool Law Review*, 29, pp. 19-36.
- Perry, J. (2013) 'The wrong war? Critically examining the fight against disability hate crime', in Roulstone, A. and Mason-Bish, H. (eds.) *Disability, hate crime and violence*. Abingdon, Oxford: Routledge.
- Petersilla, J.R. (2000) 'Invisible victims: Violence against persons with developmental disabilities', *Human rights*, American Bar Association, Chicago.
- Petrosino, C.T. (2009) 'Historical lessons: What's past may be prologue', in Levin, B. (volume ed.) and Perry, B. (series ed.) *Hate Crime Vol. 1, Understanding and Defining Hate Crime*. Westport, Connecticut: Praeger.
- Piggott, L. (2011) 'Prosecuting disability hate crime', in *People, Place and Policy*, online journal, 5(1), pp.25-34.
- Powell, W. and DiMaggio, P. (eds.) (1991) *The new institutionalism in organizational analysis*. Chicago: University of Chicago Press.
- Pring, J. (2017) 'Welfare reforms and the attack on disabled people', in Cooper, V. and Whyte, D. (eds.) *The violence of austerity*. London: Pluto Press, pp. 51-58.

- Pump, B. (2011) 'Beyond metaphors: New research on agendas in the policy process', *Policy Studies Journal*, 39(51), pp. 1-12.
- Putnam, M. (2005) 'Conceptualizing disability', *Journal of Disability Policy Studies*, 16(3), pp. 188-198.
- Quarmby, K. (2010) *A tipping point for disability hate crime?* London: Prospect.
- Quarmby, K. (2011) *Scapegoat – how we are failing disabled people*. London: Portobello Books.
- Quinn, G. (2015) *Current Research on Disability Seminar*, University College Dublin. Keynote address. Dublin: October 16, 2015: University College Dublin.
- Quinn, S. and Redmond, B. (2007) *Disability and social policy*. Dublin: UCD Press.
- Ragin, C. (1992) *What is a case?* Cambridge: Cambridge University Press.
- Ralph, S., Capewell, C. and Bonnett, E. (2016) 'Disability hate crime: persecuted for difference.' *British Journal of Special Education*. vol 43 issue 3, pp 209-223.
- Ramesh, M. and Howlett, M. (1996) *Studying public policy: Policy cycles and policy sub systems*. Oxford: Oxford University Press.
- Rees, T. (2002) *The changing politics of gender equality in Britain*. Basingstoke: Palgrave.
- Richardson, N. and Locks, A. (2014) *Body studies*. Abingdon: Routledge.
- Riddle, V. (2009) 'Policy implementation in an African state: An extension of Kingdon's multiple-streams approach', *Public Administration*, 87(4), pp. 938-954.
- Robinson, S.E. and Eller, W. (2010) 'Participation in policy streams: testing the separation of problems and solutions in subnational policy systems', *Policy Studies Journal*, 38(2), pp. 199-215.
- Rollock, N. (2010) *The Stephen Lawrence inquiry report – ten years on*. London: The Runnymede Trust.
- Roulstone, A. and Mason-Bish, H. (eds.) (2013) *Disability, hate crime and violence*. Abingdon: Routledge.
- Roulstone, A. and Prideaux, S. (2012) *Understanding disability policy*. Bristol: The Policy Press.
- Roulstone, A. and Sadique, K. (2013) 'Vulnerable to misinterpretation', in
- Roulstone, A., Thomas, P., and Balderstone, S. (2011) 'Between hate and vulnerability: Unpicking the British criminal justice system's construction of disablist hate crime', *Disability and Society*, 26(3, May 2011), pp. 351-364.

- Russell, M. (2001) 'Disablement, oppression and the political economy', *Journal of Disability Policy Studies*, 2(2), pp. 87-95.
- Ryan, G.W. (2003) 'Techniques to identify themes', *Field Methods*, 15(1), pp. 85-109.
- Sabatier, P.A. (1991) 'Towards better theories of the policy process', *Political Science and Politics*, 24(2), pp. 147–156.
- Sabatier, P.A. (1998) 'The advocacy coalition framework: Revisions and relevance for Europe', *Journal of European Policy*, 5(1), pp. 98–130.
- Sabatier, P.A. (2007) *Theories of the policy process*. Cambridge, MA: Westview Press.
- Sabatier, P. and Weible, C. (eds.) (2014) *Theories of the policy process*. Third edition. Colorado: Westview Press.
- Schmied Blackman, V. (2005) 'Putting policy theory to work: Tobacco control in California', *Policy, Politics and Nursing Practice*, 6(2), pp. 148–155.
- Schneider, A. and Ingram, H. (1993) 'Social construction of target populations: Implications for politics and policy', *American Political Science Review*, 87(2), pp. 334–347.
- Schweppe, J. and Walters, M. (2016) *The globalisation of hate: Internationalizing hate crime?* Oxford: Oxford University Press.
- Scope (2007) *Unequal citizenship: The personal is political*. London: Scope.
- Scope (2008) *Getting away with murder*. London: Scope.
- Scotland, P. Baroness (2007) *European Hate Crime Conference*. Keynote speech, London, 2007: Her Majesty's Government (Home Office).
- Scott, J. (1990) *A matter of record*. Cambridge: Polity Press.
- Scott, J. (ed.) (2006) *Documentary research volumes 1-4*. London: Sage.
- Sentencing Guidelines Council (SGC) (2004) *The Sentencing Council's overarching principles, seriousness*. London: Sentencing Guidelines Council.
- Shah, R. and Giannasi, P. (eds.) (2015) *Tackling disability discrimination and disability hate crime – a multi-disciplinary guide*. London: Jessica Kingsley Publishers.
- Shakespeare, T. (2000) *The disability reader: Social sciences perspectives*. London: Bloomsbury.

- Shakespeare, T. (2005) 'Disability studies today and tomorrow', *Sociology of Health and Illness*, 27(1), pp. 138-148.
- Shakespeare, T. (2006) *Disability rights and wrongs*. First edition. Abingdon: Routledge.
- Shakespeare, T. (2010) *Disability rights and wrongs*. Oxford: Routledge.
- Shakespeare, T. (2012) 'Blaming the victim: Disability hate crime', *The Lancet*, 8 September 2012.
- Shakespeare, T. (2017) *Disability, the basics*. Abingdon: Routledge.
- Sherry, M. (2000) 'Hate crimes and disabled people', *Social Alternatives*, 19(4), pp. 23–30.
- Sherry, M. (2000) *Hate crimes against people with disabilities*. Brisbane: Women with Disabilities Australia.
- Sherry, M. (2003) *Don't ask, tell or respond: Silent acceptance of disability hate crime*. Ontario: Disabled Women's Network.
- Sherry, M. (2004) 'Exploring disability hate crimes', *Review of Disability Studies*, 1(1), pp. 51–59.
- Sherry, M. (2010) *Disability hate crimes, does anyone really hate disabled people?* Burlington: Ashgate Publishing.
- Siebers, T. (2006) 'Disability studies and the future of identity politics.' in Alcoff, L., Homes-Garcia, M., Mohanty, S., and Moya, P.M.L (eds) New York: Palgrave Macmillan.
- Sin, C.H. (2013) 'Making disablist hate crime visible: Addressing the challenges of improving reporting', in Mason-Bish, H. and Roulstone, A. (eds.) *Disability, hate crime and violence*. Abingdon: Routledge, pp.147-165.
- Sin, C.H. (2014a) 'Hate crimes against people with disabilities', in Hall, N., Corb, A., Giannasi, P. and Grieve, J. (eds.) *The Routledge International handbook on hate crime*. Abingdon: Routledge, pp. 193-206.
- Sin, C.H. (2014b) 'Using a layers of influence model to understand the interaction of research, policy and practice in relation to disablist hate crime', in Chakraborti, N. and Garland, J. (eds.) *Responding to hate crime: The case for connecting policy and research*. Bristol: Policy Press, pp. 99-112.
- Sin, C.H., Hedges, A., Cook, C., Comber, N. (2010a) 'Targeted violence and hostility against people with mental health conditions', in *Mental Health Today*, January, pp. 26-30.
- Sin, C.H., Hedges, A., Cook, C., Comber, N. (2010b) 'Targeted violence, harassment and abuse against people with learning disabilities in Great Britain', in *Tizard Learning Disability Review*, 15(1), pp. 17-27.

- Sin, C.H., Hedges, A., Cook, C., Mjini, N., and Comber, N. (2011) 'Adult protection and effective action in tackling violence and hostility against disabled people: Some tensions and challenges', in *Journal of Adult Protection*, 13(2), pp. 63-75.
- 6, P. and Bellamy, C. (2012) *Principles of methodology – research design in social science*. London: Sage.
- Slorach, R. (2016) *A very capitalist condition – a history and politics of disability*. London: Bookmarks Publications.
- Smith, K. (ed.), Lader, D., Hoare, J., and Lau, I. (2012) *Hate crime, cyber security and the experience of crime among children: Findings from the 2010/11 British crime survey, supplementary volume 3 to crime in England and Wales 2010/11, Home Office statistical bulletin*. London: Home Office.
- Smith, M. (2015) 'Disability hate crime - a call for action', in Shah, R. and Giannasi, P. (eds.) *Tackling disability discrimination and disability hate crime*. London: Jessica Kingsley Publishers.
- Sobsey, D. (1994) *Violence and abuse in the lives of people with disabilities, the end of silent acceptance?* Baltimore: Paul H Brookes Pub Co.
- Sorensen, D.D. (2001) *Hate crimes against people with disabilities*. California: Coalition on Crime against People with Disabilities.
- Spalek, B. (2006) *Crime victims – theory, policy and practice*. Basingstoke: Palgrave Macmillan.
- Spalek, B. (2008) *Communities, identities and crime*. Bristol: The Policy Press.
- Spicker, P. (2006) *Policy analysis for practice - applying social policy*. Bristol: The Policy Press.
- Spicker, P. (2008) *Social policy: Themes and approaches*. Bristol: The Policy Press.
- Stake, R.E. (1995) *The art of case study research*. London: Sage.
- Stake, R.E. (2005) 'Case studies', in Denzin, N.K. and Lincoln, Y.S. (eds.) *The Sage handbook of qualitative research*. Third edition. California: Sage.
- Stanton-lfe, J. (2013) 'Criminalising conduct with special reference to potential offences of stirring up hatred against disabled or transgendered persons' [Paper]. London: Law Commission.
- Starmer, K. Queen's Counsel (2011) 'Prosecuting disability hate crime: The next frontier'. Keynote speech by Director of Public Prosecutions. University of Sussex, 2 March 2011: Crown Prosecution Service.
- Stone, D.A. (1989) 'Casual stories and the formation of policy agendas', *Political Science Quarterly*, 104 (2, Summer 1989), pp. 281–300.

- Strauss, A. and Corbin, J. (1998) *Basics of qualitative research: Techniques and procedures for developing grounded theory*. Thousand Oaks, California: Sage.
- Sunsklere, E. (2017) 'Disability hate crime: the overlooked consequence of the deinstitutionalization of care' *Social Theory, Empiricism, Policy and Practice*. Issue 15 pp- 70-79. University of Vilnius.
- Swain, J., French, S., Barnes, C., and Thomas, C. (2004) *Disabling barriers – enabling environments*. Second edition. London: Sage.
- Swinbourn, P. (2010) *Case study research*. London: Sage.
- Switzer Vaughn, J. (2003) *Disabled rights, American disability policy and the fight for equality*. Washington: Georgetown University Press.
- Taylor, C. (1994) 'The politics of recognition', in Guttman, A. (ed.) *Multiculturalism*. Princeton: Princeton University Press, pp. 25-74.
- Taylor, S. (2009) 'The Crown Prosecution Service and race equality', in Bhui Singh, H. (ed.) *Race and the criminal justice system*. London: Sage Publications, pp. 66-82.
- Taylor, S.J. and Bogdan, R. (1984) *Introduction to qualitative research methods: The search for meanings*. New York: Wiley.
- Thane, P. (ed.) (2010) *Unequal Britain*. London: Continuum.
- Thomas, G. (2011) *How to do your case study, a guide for students and researchers*. London: Sage.
- Thomas, G. and James, D. (2006) 'Reinventing grounded theory: Some questions about theory, ground and discovery', *British Educational Research Journal*, 32(6), November 2006.
- Thompson, N. (2011) *Promoting equality*. Third edition. Basingstoke: Palgrave Macmillan.
- Thornberg, R. (2012) 'Informed grounded theory', *Scandinavian Journal of Educational Research*, 56(1), pp. 243-259.
- Thornycroft, R and Asquith, N. (2015). 'The dark figure of disabilist violence.' *Howard Journal of Criminal Justice*. Vol 54 issue5, pp 489-507.
- Thornycroft, R and Asquith, N (2017). 'Figurehead hate crime cases: developing a framework for understanding and exposing the 'problem' with 'disability'.' *Journal of Media and Cultural Studies*. vol31 issue3, pp 482- 494.

- Thornycroft, R. (2017) 'Problematising and reconceptualising "vulnerability" in the context of disablist violence', in Asquith, N.L., Barthowiak, T.I. and Roberts, K.A. (eds.) *Policing encounters with vulnerability*. Cham: Palgrave Macmillan.
- Torrance, H. (2008) 'Building confidence in qualitative research', *Qualitative Inquiry*, 14 (4), pp. 507-527.
- Travis, R. and Zahariadis, N. (2002) 'A multiple streams model of US foreign aid policy', *Policy Studies Journal*, 30(4), pp. 495-514.
- Tyson, J., Giannasi, P. and Hall, N. (2014) 'Johnny come lately? The international and domestic policy context of disability hate crime', in Shah, R. and Giannasi, P. (eds.) *Tackling disability discrimination and disability hate crime: A multi-disciplinary guide*. London: Jessica Kingsley Publishers, pp. 20-35.
- Tyson, J. and Hall, N. (2015) 'Perpetrators of disability hate crime', in Shah, R. and Giannasi, P. (eds.) *Tackling disability discrimination and disability hate crime: A multi-disciplinary guide*. London: Jessica Kingsley Publishers, pp. 69-89.
- United Kingdom. HM Government. Youth Justice and Criminal Evidence Act. (1999). London: Her Majesty's Government.
- United Kingdom. HM Government. The Criminal Justice Act. (2003). London: Her Majesty's Government.
- United Kingdom. HM Government. The Care Act. (2014). London: Her Majesty's Government.
- United Kingdom. Home Office (1997a) *Racial violence and harassment: A consultation document*. London: Home Office.
- United Kingdom. Home Office (1997b) *Responses to the Home Office consultation paper: Racial violence and harassment*. London: Home Office.
- United Kingdom. Home Office (2007) *Learning disability hate crime: Good practice guidance for crime and disorder reduction*. London: Home Office.
- United Kingdom. Home Office (2010) *Home Office structural reform plan*. London: Home Office.
- United Kingdom. Home Office (2012) *Hate crime, cyber security and the experience of crime among children. Findings from the 2010/11 British crime survey*. London: Home Office.
- Values into Action (1999) *Living with fear*. London: Values into Action.
- Values into Action (2001) *Just gateways*. London: Values into Action.

- Values into Action (2002) *Opening the gateways*. London: Values into Action.
- Walters, M.A. (2011) 'A general theory of hate crime? Strain, doing difference and self-control', *Critical Criminology*, 19(4), pp. 313-330.
- Walters, M., Wienditzka, S., and Owusu-Bempah, A. (2017) *Hate crime and the legal process: Options for law reform*. Project Report. Brighton: University of Sussex.
- Watermeyer, B. (2013) *Towards a contextual psychology of disablism*. Abingdon, Oxford: Routledge.
- Weimer, D.L. (2008) 'Theories of and in the policy process,' *Policy Studies Journal*, 36(4), pp. 489-495.
- West, C. and Fenstermakers, S. (1995) 'Doing difference', *Gender and Society*, 9(1), pp. 8-37.
- Williams, F. (1989) *Social policy: A critical introduction*. Cambridge: Polity Press.
- Wolff, S. (2004) 'Analysis of documents and records', in Flick, U., von Kordorff, E. and Stienke, I. (eds.) *A companion to qualitative research*. London: Sage, pp. 284-290.
- Wood, D. and Doan A. (2003) 'The politics of problem definition: Applying and testing threshold models', *American Journal of Political Science*, 47(4), pp. 640-653.
- World Health Organisation (WHO) (2011) *World report on disability*. Geneva: World Health Organisation.
- Yin, R.K. (2009) *Case study research: Design and methods*. Fourth edition. Thousand Oaks, California: Sage.
- Young, I.M. (1990) *Justice and the politics of difference*. Princeton: Princeton University Press.
- Zahariadis, N. (1996) 'Selling British Rail, an idea whose time has come?' *Comparative Political Studies*, 29(4), pp. 400-422.
- Zahariadis, N. (2008) 'Ambiguity and choice in European public policy', *Journal of European Public Policy*, 15(4), pp. 514-530.
- Zahariadis, N. and Allen C. (1995) 'Ideas, networks and policy streams: Privatization in Britain and Germany', *Review of Policy Research*, 4(1-2), pp. 71-98.
- Zizek, S. (2008) *Violence*. London: Profile Books.

## **Appendix A: PhD Research Study, Information Sheet**

**Research Topic: an analysis of the emergence and development of Disability Hate Crime policy and practice in England and Wales**

### **1. *What is the purpose of this sheet?***

The purpose of the information sheet is to provide you with essential information on this research study to facilitate you in reaching a decision to participate in this study.

### **2. *What is the aim of the research?***

The overall aim of this research study is to provide an analysis of the emergence and development of policy and practice on Disability Hate Crime in England and Wales.

Within this overall aim the study is seeking to build an understanding of contributory factors within the criminal justice system, wider government and politics, disabled peoples organisations, the independent sector and individuals that led to these policy and practice developments.

### **3. *What are the overall research questions and focus?***

The overall research questions which guide the study are:

How did Disability Hate Crime emerge and develop as an area of policy and practice within the criminal justice system of England and Wales?

Why did Disability Hate Crime emerge and develop as an area of criminal justice policy and practice when it did?

### **4. *What will the study involve? How will it be conducted?***

The study will comprise three methods namely:

Key informant interviews: the interviews will last 1 to 1.5 hours. They will, with informed consent be digitally recorded, transcribed and analysed. Transcripts will be checked for accuracy with each interviewee. Final transcripts will be securely and confidentially stored.

Documentary analysis: a number of key policy related documents from different sectors relevant to the emergence and development of Disability Hate Crime policy and practice will be analysed as part of this study.

Analysis of individual case histories: a selection of individual cases will be analysed. Analysis of individual cases can shed light on policy in practice and also can help bring out different facets of the range of Disability Hate Crime cases.

### **5. *Why have you been asked to take part?***

You have been asked to take part because based on my research to date you have been identified as someone

who can provide insights relevant to the study.

**6. Do you have to take part?**

No you do not have to take part in this study.

Participation in this research is completely voluntary.

If you decide to participate you will be invited to sign a consent form (copy attached).

You have the option of not participating at all; withdrawing before the study commences or discontinuing after data collection has started.

If you decide to participate your interview will be anonymised.

**7. Will your participation in the study be kept confidential?**

Yes.

The thesis will be written in a way that provides for anonymity of interviewees or any extracts or references to what you say in the thesis can be anonymised.

**8. What will happen to the information you give?**

It will be kept confidential throughout the duration of the study. On completion of the thesis the data will be securely retained for a further four years and then destroyed.

**9. What will happen with the results?**

The results will be presented in the thesis.

They will be seen by my PhD supervisor and by the final panel of examiners. The thesis may be read by future researchers. Aspects of the study may be published in research journals or in books.

**10. Who has reviewed the study?**

The research study has been considered and approved by Lancaster University.

**11. If you have any concerns regarding this study**

If you have any further concerns or complaints regarding this research study at any stage you can raise them with Professor Paul Iganski, Professor of Criminology and Criminal Justice at Lancaster University. You can contact Professor Iganski as follows: email :[p.iganski@lancaster.ac.uk](mailto:p.iganski@lancaster.ac.uk) .You can contact Professor Iganski by phone on (01524) 594121 .You can write to Professor Iganski at: Lancaster University Law School, Bowland North, Lancaster University, Lancaster LA1 4 YN

**Any further queries?**

If you need any further information, you can contact me via email at [seamus.taylor@nuim.ie](mailto:seamus.taylor@nuim.ie) or via mobile 353 87 215 8955.

Seamus Taylor CBE, July 2014

## Appendix B: Research Consent Form

I ..... agree to participate in Seamus Taylor's PhD research study on the emergence and development of Disability Hate Crime policy and practice in England and Wales.

The purpose and nature of the study has been explained to me in writing.

I am participating voluntarily.

I give permission for my interview to be digitally – recorded.

I understand that I can withdraw from the study, without repercussions, at any time, whether before it starts or while I am participating.

I understand that I can withdraw permission to use the data within one month of the interview, in which case the material will be deleted.

I understand that anonymity will be ensured in the write-up by anonymising my identity.

I understand that anonymised extracts from my interview may be quoted in the thesis and any subsequent publications if I give permission below.

Please tick one box

I agree to quotation/publication of extracts from my interview.

I do not agree to quotation/publication of extracts from my interview.

Signed ----- Date -----

## Appendix C (1) Research Method 3: Policy documents analysed as part of this study

The policy documents analysed as part of the research for this thesis were:

- CPS Public Policy Statement for prosecuting cases of Disability Hate Crime, 2007
- CPS legal guidance on Disability Hate Crime, 2007
- CPS Disability Hate Crime – guidance on the distinction between vulnerability and hostility in the context of crimes committed against disabled people, 2010.
- CPS Public Policy Statement on Disability Hate Crime and other crimes against disabled people, 2017.
- EHRC, Hidden in Plain Sight, Inquiry into disability related harassment, 2011.
- HMCPSSI, HMIC, HMIP, Living in a different world: joint review of Disability Hate Crime, 2013.
- HMCPSSI, HMIC, HMIP Joint review of Disability Hate Crime follow – up, 2015.
- HM Government Hate Crime – the cross – government action plan 2009-10.
- HM Government Challenge it, report it, and stop it, delivering the governments hate crime action plan, 2010.
- HM Government Action against hate 2016 – 2020, 2016.
- Judicial Studies Board, Equal Treatment Bench Book 2008.
- Scope, Getting away with murder 2008.
- UK HM Government (1999) Youth Justice and Criminal Evidence Act.
- UK HM Government The Care Act 2014

## Appendix C (2) Code to key Informant Interviewees

Code to Key Informant	Role Descriptor
Respondent 1 (R1)	Director, Disability NGO
(R2)	National Disability Activist
(R3)	Former NGO & CJS Official
(R4)	Senior Staff, LGB NGO
(R5)	Cabinet Minister, HM Government
(R6)	Senior Official, DRC
(R7)	Senior Manager, DRC
(R8)	Hate Crime Policy Official, HM Government
(R9)	Member, House of Lords
(R10)	National Disability Activist

(R11)	Senior Manager, London Met Police
(R12)	National Disability Activist
(R13)	Top Tier Civil Servant, Hate Crime
(R14)	Senior Independent Researcher
(R15)	Former Senior CJS, Manager
(R16)	Policy Official, CJS
(R17)	Policy Official, CJS
(R18)	Former Senior Manager, CJS
(R19)	Former CJS Leader 1
(R20)	Senior EHRC Official
(R21)	Director, National Disability NGO
(R22)	Hate Crime Champion 1, CJS
(R23)	Inspector, HMIC
(R24)	National Disability Activist
(R25)	Hate Crime Champion 2, CJS
(R26)	Former Director, Disability NGO
(R27)	Senior Leader Equality Rights
(R28)	EHRC Commissioner
(R29)	Chief Prosecutor, CPS
(R30)	Former CJS Leader 2
(R31)	District Judge
(R32)	Judge, Central Criminal Court
(R33)	Judge, Crown Court
(R34)	Senior Policy Official, DOH
(R35)	Senior Independent Researcher
(R36)	ACPO Hate Crime Lead
(R37)	National Disability Activist
(R38)	Senior Official, Welsh Govt
(R39)	Policy Officer, Welsh NGO
(R40)	Policing Hate Crime Adviser
(R41)	NGO Case Worker
(R42)	Policy Official Disability, HM Government
(R43)	Policy Officer, Disability NGO
(R44)	Policy Official VAW, CJS
(R45)	Member of Parliament
(R46)	Policy Official, CPS

(R47)	National Disability Activist
(R48)	Policy Officer, Disability NGO, Wales
(R49)	Senior Policy Official, CJS
(R50)	Senior Prosecutor, CPS
(R51)	Director, National NGO
(R52)	National Disability Activist, Wales
(R53)	Member, House of Lords
(R54)	Inspector, HMCPSI
(R55)	Appeal Court Judge

## Appendix D: Illustrative extract from NVivo data analysis Code Book

- Codebook Phase 1 - Generating Initial Codes (Open Coding)
- Codebook Phase 2 – Axial Coding (Developing Core Categories)
- Codebook Phase 3 – Focused Coding

### Codebook\\Phase 1 - Generating Initial Codes (Open Coding)

Phase 1 – 171 open codes developed	Code Definitions for Coding Consistency	Interviews Coded	Units of Meaning Coded
Disability movement use competing frames of disability	This refers to perceptions that for a variety of reasons the disability movement use competing frames of disability in particular a pity/vulnerable frame and a rights frame.	5	9
Disability raises difference principle and substantive equality	This refers to perceptions that disability raises the difference principle in equality and linked to this raises substantive equality and these pose challenges for the development of the DHC policy and practice agenda.	1	2
disabled people fear consequences of reporting DHC	This refers to the perceptions that disabled people can fear the consequences for their independence if they report DHC.	1	2
Disablism and Ableism - issues and concepts	This refers to perceptions that the issues of Disablism and or Ableism are significant in understanding the experience of DHC and the development of the DHC policy agenda.	16	31
DPOs raise awareness	the role played by disabled people organisations in raising awareness of Disability Hate Crime	39	74
early origins of hate crime agenda in Britain	This refers to the early origins of the hate crime legislative, policy and practice agenda in Britain	1	8

Phase 1 – 171 open codes developed	Code Definitions for Coding Consistency	Interviews Coded	Units of Meaning Coded
EHRC Inquiry Issues and Impacts	This refers to perceptions of the issues raised and the impacts of the EHRC Inquiry into Disability Related Harassment.	21	77

### Codebook\\Phase 2 – Axial Coding (Developing Core Categories)

Phase 2 - Axial Coding - 171 Open Codes Collapsed and Mapped to 6 Axial codes (Core Categories) supported by 26 subcategories	Code Definitions for Coding Consistency	Interviews Coded	Units of Meaning Coded
1.0 - DHC and the wider Hate Crime domain	This refers to the overall hate crime domain and how disablist hate crime relates to that domain.	50	536
Adopting Hate Crime language enabled progress	This refers to perceptions that the adoption by disability activists of the language of DHC enabled progress on the emergence and development of the DHC policy and practice agenda.	3	4
developments in human rights and equality thinking and law	This refers to the perception that developments in human rights thinking and law in recent decades enabled progress to occur on the DHC policy and practice agenda.	6	9
Differences between DHC and other Hate Crimes	This refers to the perception of differences between DHC and other Hate Crimes.	19	30
Disability Hate Crime similarities to VAW	The refers to the perceptions that there are similarities between Disability Hate Crime and Violence against women as well as similarities to other Hate Crimes.	15	20

Phase 2 - Axial Coding - 171 Open Codes Collapsed and Mapped to 6 Axial codes (Core Categories) supported by 26 subcategories	Code Definitions for Coding Consistency	Interviews Coded	Units of Meaning Coded
disability hostility can vary by impairment	This refers to the perception that disability hostility can vary by impairment, that is whether an impairment is a physically disabled person, a learning disabled person or a mentally disabled person.	1	1
disability lags behind other equality strands	This refers to the perception that disability equality lags behind other equality strands in terms of protection.	10	16
Disability raises difference principle and substantive equality	This refers to perceptions that disability raises the difference principle in equality and linked to this raises substantive equality and these pose challenges for the development of the DHC policy and practice agenda.	1	2
Hate Crime domain existed and DHC perceived to fit	This refers to the perception that a Hate Crime domain is firmly established in Britain and DHC when it emerged was perceived to fit into that policy domain alongside racist, religious and homophobic crimes.	38	78
Hate Crime focus shifts minorities relationship with CJS	This refers to the ways in which a policy and practice focus on Hate Crime can shift minorities' wider relationships with the CJS.	1	2
Hate Crime most associated with racist crimes historically	This refers to the phenomenon historically of thinking and considering hate crime as equating to racist crime.	33	64
Hostility, a daily occurrence	This refers to the ongoing day to day experience of hostility by disabled people	9	14

### Codebook\\Phase 3 – Focused Coding <sup>2</sup>

Phase 3- Focused Coding – 6 Core Categories & 26 Sub-categories Conceptually Mapped and Collapsed to 6 Themes (Focused Codes)	Interviews Coded	Units of Meaning Coded
<i>T1 - From Hate Crime to Disability Hate T1Crime</i>	50	536
<i>1.0 - DHC and the wider Hate Crime domain</i>	50	536
<i>T2 - Agenda Triggering - Agenda Setting</i>	48	1423
<i>2.0 - Contributory Factors to Policy Development on DHC</i>	48	1423
<i>T3 - Agenda Challenge Vulnerability in Disability Hate Crime</i>	49	402
<i>3.0 - Vulnerability label is problematic</i>	49	402
<i>T4 - Competing framings of the disability experience</i>	44	759
<i>T4.1 - 6 Towards agenda Institutionalisation</i>	40	207
<i>T4.2 - Agenda Challenge – vulnerability in Disability Hate Crime</i>	32	101
<i>T4.3 - Agenda Item yet to come – Ableism, Disablism and Disability Hate Crime</i>	24	125
<i>T4.4 - An unsettled and unsettling agenda</i>	44	326
<i>T5 - Challenges to Policy development and implementation on DHC policy development</i>	45	399
<i>T5.10 - Challenges to Policy development and implementation on DHC policy development</i>	45	399
<i>T6 - Agenda Item yet to come – Ableism, Disablism and Disability Hate Crime</i>	41	206
<i>T6.1 - Disability Discrimination and Disablism - issue, challenges and concepts</i>	41	206

<sup>2</sup> Codebook – Phase 3 – Focused Coding involved conceptually mapping and collapsing categories into a broader thematic framework.

# Appendix E: Sample Analytical Memo

The screenshot displays the NVivo Plus interface. The top menu includes FILE, HOME, CREATE, DATA, ANALYZE, QUERY, EXPLORE, LAYOUT, and VIEW. The main workspace is titled 'Phase 3 - Focused coding (theoretical coding)'. A table lists various nodes with their names, source counts, and reference counts. Node T6 is highlighted, and its corresponding analytical memo is shown on the right. The memo discusses the discourse of discrimination and the experience of disability, specifically focusing on ableism and disablism. A text box at the bottom left explains that analytical memos were used for a systematic review of a thematic framework.

Name	Sources	Referen
T1 - From Hate Crime to Disability Hate T1 Crime	50	536
T2 - Agenda Triggering - Agenda Setting	48	1423
T3 - Agenda Challenge - Vulnerability in Disability Hate Cri	49	402
T4 - Competing framings of the disability experience	44	759
T4.1 - 6 Towards agenda Institutionalisation	40	207
T4.2 - Agenda Challenge - vulnerability in Disability H	32	101
T4.3 - Agenda Item yet to come - Ableism, Disablism a	24	125
T4.4 - An unsettled and unsettling agenda	44	326
T5 - Challenges to Policy development and implementati	45	399
T6 - Agenda Item yet to come - Ableism, Disablism and	41	206

**Analytical memos were used to conduct a systematic review of the thematic framework developed from the primary data**

**Ableism, Disablism, the discourse of discrimination and the experience of disability – a prejudice that's yet to fully speak its name**

**Context**

As part of the fieldwork interviews for this research study and as interviews were underway, I explored with interviewees the issue of naming race hate crime as racist crime and naming LGB hate crime as homophobic crime and how there appeared to be an automatic linking back from race hate crime and LGB hate crime to the underpinning prejudicial ideologies of racism and homophobia. I also explored how in contrast in the area of disability hate crime we almost always talk about disability hate crime and very seldom talk about disablism. In stark contrast to the other two areas identified there is no linking back to an underpinning prejudicial ideology of disablism. I explored with interviewees why this might be. Almost all interviewees responded that they thought this was a very significant aspect of the research study whilst almost all said with a few exceptions they did not know why this was the situation. In this context I have decided to begin to analyse this aspect of the research topic.

**My developing thoughts on this issue**

In the area of identity inequalities, both in terms of scholarship and activism the concepts of racism, sexism and increasingly homophobia have relatively common currency and understanding. They conjure up prejudicial ideologies that interiorize groups of people based on their race, gender or sexuality and provide a perverse rationale for acts of discrimination ranging from jokes, ridicule and discriminatory treatment through to harassment, hostility and violence. They are now integral to theoretical understandings of prejudice and discrimination experienced by women, ethnic minorities and LGBT people and their wider social positioning. In contrast the concepts of Ableism or Disablism have neither common currency nor widespread understanding. This research has found that the concepts are met with non-recognition and certain ridicule linked to what is justified as *ism* fatigue. Yet even a cursory consideration of the experiences of disabled people over time and in contemporary society provides substantial evidence of

## **Appendix F: Illustrative sample of Individual Hate Crime cases**

### **Case 4. Common assault on a disabled man and wheelchair user in Oldtown**

#### ***The context***

Lenny Judd is a disabled man who lives in Oldtown and uses a motorised wheelchair. His friend, Mike White, is also a disabled man who uses crutches to walk. They knew each other through attending the same day centre. They sometimes met in the street and chatted on days when they were not going to the day centre together.

#### ***What happened***

Mike was on his way to the day centre when he stopped for a chat with Lenny. A young man was cycling towards them. When he was a few feet away, he stopped and made a noise in his throat. He then spat into Lenny's face, the spit landing on Lenny's left cheek. The young man shouted at Lenny, "You're a fucking mong", and cycled off.

Both men were shaken up and outraged that someone would deliberately spit and abuse someone in a wheelchair who was unable to defend himself, and whose friend was also, in this situation, unable to defend his friend. Both viewed this as a targeted act.

#### ***What was the response and outcome, if any?***

The men reported this incident to the police and it was flagged as involving a vulnerable victim. The CPS flagged the case as a Disability Hate Crime.

The defendant, Brian Flint, denied the charge of common assault. He stated that, as he was cycling past the two disabled men, he sneezed because the sun was in his eyes and this was why his spit landed on Lenny.

The defendant was found guilty after trial. The judge accepted the relevance of disability hostility and passed a sentence of 8 weeks and a two-year restraining order preventing contact with the victim. The judge stated that if this had not been aggravated by disability hostility, the sentence would have been a community penalty.

### **Case 5. Attack on a learning-disabled man in a skate park in Midtown**

#### **The Context**

Fred Soames is a 29-year-old learning-disabled man living in Midtown. He has physical and learning impairments. Fred lived with his mother, and frequently went for a walk in the local skate park, sometimes alone and sometimes with his mother.

### ***What happened***

One evening, Fred was walking in the park and some young people began verbally abusing him and swearing. Fred remonstrated with them and became upset. A short time later, three young men came into the skate park in a van. Eddie Jenkins, the defendant, and Martin Dias approached Fred. Eddie proceeded to assault Fred by punching and kicking him, causing bumps, cuts and bruising over his body. Fred got away and, although injured, was able to get home. He told his mother who contacted the police.

Fred was able to identify his attackers because one of them had assaulted him previously. He was able to identify the second man through a social media account.

### ***What was the response and outcome, if any?***

The police and the CPS identified this as a case involving a vulnerable victim. The CPS also identified this as a Disability Hate Crime.

The main defendant, Eddie Jenkins, admitted travelling with others to the park and that one of these males assaulted Fred, but refused to name the others. He admitted punching the victim twice about the head and shoulder.

Jenkins appeared in Court on a charge of common assault. The other defendant received a police caution. The judge found Jenkins: guilty of assault, and sentenced him to eight weeks' custodial detention in a young offenders' institution, and not to contact Fred Soames for two years.

The judge did not accept the disability hostility aggravation raised at sentencing. He stated this was not a Disability Hate Crime and that he knew what type of individual the defendant was. He said the defendant knew the victim was a vulnerable person (i.e. disabled person) and there was a previous incident where this defendant targeted a vulnerable victim. He indicated that this was an attack on a vulnerable person and 'not your argument' of hostility.

## **Case 8. Enslavement of a young disabled woman in Manchester**

### **The Context**

Fatima Saeed was born in Pakistan and brought to England aged nine. She was made go to England with a local family who lived in Liverpool. Fatima has a range of physical impairments. She is deaf and does not speak. Furthermore, Fatima had not been taught to read or write but had developed her own basic sign language. She had a false passport which indicated she was much older and she was sponsored by the Siddiqi family as a family help.

Fatima lived with the Siddiqi family for 15 years. Living in the same house was the father, Khalid (aged 80), his wife, Leyla (aged 65), and their daughter, Mussarat (aged 45). Fatima was kept in a cellar accessible under the stairs and bolted from outside. In the cellar was a single bed, an ironing board, and an iron. She lived there, unnoticed by the public authorities until, one day, local Trading Standards officers came to visit the property and undertook an investigation.

### ***What happened***

Trading Standards officers became aware that counterfeit football shirts were being sold online. A search warrant was obtained to search the Siddiqi home and on entry, the Trading Standards officers noticed Fatima entering the cellar. They established that she was deaf and without speech. Through basic signing, Fatima was able to convey that she was 25, had been in the country a number of years, and was unpaid domestic help. Police were informed but not concerned at this stage.

Investigations uncovered a series of concerning accounts, including an online website sales account linked to the clothing business in the name of Fatima. The officers returned to the address and arrested Fatima.

The bank account in Fatima's name was also in the joint name of the mother. Fatima was used as part of an attempt to launder monies obtained fraudulently from customers online. Investigations revealed this family was involved in complex fraud. In interviews, Fatima was able to indicate that she was taught her name by the family and made to write her name onto documents.

Fatima was de-arrested and a sign language interpreter was engaged. She was placed in safe accommodation whilst attempts were made to build a relationship of trust. She revealed how she was kept in the cellar, and allowed out to cook, clean, wash cars, or pack goods for sale online. Fatima indicated she had been regularly physically assaulted by members of the family. The interpreter and a specialist intermediary met with Fatima over a three-month period for 11 video interviews. Fatima revealed how, from an early age, she had been sexually assaulted including raped within this family.

The Siddiqi family contacted the authorities demanding Fatima's return. Once, when the police came to obtain Fatima's passport, the mother asked "Why do you want it? She is my property, she belongs to us. I brought her over here". When reminded that Fatima was a person, not property, the family became irate.

### ***What was the response and the outcome, if any?***

The police and the CPS identified this as a case involving a vulnerable victim with emphasis placed on Fatima's vulnerable status. This was understandable given the supports required to communicate with and enable Fatima to give best evidence. There was no identification of the case by the police or by the CPS as a Disability Hate Crime.

This case took significant time to bring to trial. There was a strategic approach adopted involving close collaboration between Greater Manchester Police, the CPS, and social services.

The sentences imposed included: false imprisonment, placement on the sex offenders' register, community orders involving unpaid voluntary work. There was no consideration of disability hostility aggravation at sentencing stage.

### **Case 9. Sunset View Care Home – targeted ill-treatment of learning-disabled residents revealed through undercover reporter**

#### ***The context***

Sunset View was a care home providing residential care for learning-disabled adults in the South West. It was owned by Towerhouse Ltd, and the Care Quality Commission had expressed concern about the low training threshold in another of their homes, an issue that also featured in Sunset View.

The people living in Sunset View had been placed there through families and Adult Social Care in neighbouring local authorities and they required continuous support.

#### ***What happened***

In late 2010, a former nurse at Sunset View, contacted a TV station as a whistle blower and raised concerns about the care provided. Nothing had been done about concerns he raised internally. The TV station decided to undertake an investigative programme. Over two months, undercover reporter Kevin Daley, who secured a job there as a care worker, used a hidden camera to record what took place in terms of care practices.

Daley recorded a range of ill-treatment and abuse of the learning-disabled residents by 11 care workers. The behaviour included assault, bullying, potential asphyxiation, physical ill-treatment, unnecessary restraint, verbal abuse including goading a resident into jumping out a window, as their "life was useless anyway".

The police obtained the programme footage ahead of the broadcast and placed the staff on bail; they were questioned again once the programme material was further analysed.

#### ***What was the response and the outcome, if any?***

Both the police and the CPS identified this as a case involving vulnerable victims. The CPS also identified this as a case of Disability Hate Crime. However, the focus was placed on prosecutions under the Mental

Health Act. Such prosecutions were considered appropriate given that the TV material showed physical ill-treatment that could amount to ill-treatment under the Mental Health Act.

Video footage constituted the primary evidence and was put to the defendants in police interviews. Defendants accepted the video footage as largely accurate. However, they questioned the interpretation of their actions as offences of ill-treatment.

Section 127 of the Mental Health Act created offences of ill-treatment or wilful neglect of patients. It includes deliberate and reckless conduct that amounts to ill-treatment. Once this set of offences were deemed appropriate, it guided the prosecutions. The various aspects of ill-treatment listed earlier featured in the defendants' interviews and then at court in early 2013, the defendants were found guilty of offences including ill-treatment of residents of Sunset View. The prosecuting counsel opened and closed the case by identifying this as a case motivated by disability hostility.

The range of sentences included: six staff were jailed, the longest sentence being for a period of two years; five staff were given suspended sentences. Convictions included ill-treatment, abuse, and wilful neglect of disabled residents of Sunset View. The judge did not respond to the issue of disability hostility in sentencing and sentenced solely in relation to ill-treatment under the Mental Health legislation. However, in a media statement after the trial, the prosecuting lawyer and police lead officer referred to the case as a Disability Hate Crime.