



HIV-RELATED HATE CRIME: THE NEED TO UPDATE THE LAW

The case for amending the Criminal Justice Act 2003 to achieve a consistent definition of disability in statute and provide effective protection for people living with HIV from hate crime.

The reality of HIV-related hate crime

Stigma and discrimination remain a distressing and sometimes dangerous reality for many people living with HIV in the UK. Research suggests that one in three people with HIV have experienced discrimination linked to their HIV positive status. It would almost certainly be a much higher percentage were it not for the fact that most do not disclose their HIV status to many other people. When an individual's HIV status does become known to others in the community it can often lead to various forms of abuse and harassment.

The recent Stephen Fry documentary '*HIV and Me*' described some examples of hate crime experienced by those he interviewed. Below we give just two further examples taken from cases that have come to the attention of the Crusaid Hardship Fund.

John's story

John is 36 years-old and lives in the Midlands on a housing estate. He's been diagnosed HIV positive for four years.

After a fall-out with his long term partner, John's status and home address were exposed when a card appeared in his local shop window, warning parents that he was an "AIDS carrier" and that they should keep their children away from him.

A few days later, John came home from work to find two guys in his flat. They beat him with chair legs, putting him in hospital for six days.

John was frightened to go home but the hospital could not keep him in due to a lack of beds. His hospital nurse called an HIV telephone helpline and was given Crusaid's number.

John was clear that he did not want to be hounded out of his flat, which he loved, but was still scared and in need of additional support to help him feel safe again and settle back into his home.

Working with the nurse and a local social work agent, The Hardship Fund fitted new door and window locks around the flat, and paid for John to have a period of Respite Care to give him some breathing space.

John recalled: "I spent years coming to terms with living with HIV, then just one person turned my life around through pure spite."

He added: "Luckily for me Crusaid's help meant I could take back control of my situation and move on. I have now made new friends locally and am enjoying life again".

Fay's story

Fay lives in London. She is originally from the Democratic Republic of Congo. She arrived in the UK in 2006 and has requested right to residency based on an Article 3 application. Fay speaks very little English and has two children under 4. Her journey to arrive in the UK took her around 9 months and was traumatic for both her and her children. Fay's first medical appointment upon arriving in the UK revealed a CD4 count of below 60.

A local authority social worker worked with medical teams and children & families teams to find a couple of rooms for her in a house whilst her application was investigated. The worker felt she needed to break an isolation based depression that was becoming apparent and arranged for her to attend a group at a local centre that was for women from DRC and was particularly focussed on childcare and emotional support.

Fay attended for three weeks, twice a week and started to make friends and feel a bit safer, she told the social worker that she recognised another women in the group from the hospital she was attending for her HIV so was happy she was not alone.

A couple of weeks later in one of the childcare groups she made a comment about her status. The group became very hostile to her and one of the women there grabbed Fay's youngest child physically and threw her out of the room, telling Fay to leave as she would give everyone in the room AIDS. Fay became very distressed and left the group. A week or so later she saw the woman she had recognised from the hospital in the street. The woman asked Fay to go with her to talk and took her to a quiet part of the shopping street. The woman then held her against a wall and told her if she went back to the group she would hurt her, she did not want anyone knowing her status and she "had friends" who would hurt Fay's children if she did not comply.

Fay asked the worker to move her because she was scared and an application was made to the Hardship Fund for relocation costs. On the night before they moved her, two people pushed her door in and threw pieces of wood and dirt at her in front of her children saying she was dirty and should go back home to Africa to die of AIDS.

Fay has now been moved to a new city and is apparently doing well, however will not under any circumstances discuss with anyone her HIV status so as to protect her children.

Legal protections against hate crime

In recent years the Government has legislated to deter hate crime. Section 146 of the Criminal Justice Act 2003 (CJA 2003), 'Increase in sentences for aggravation related to disability or sexual orientation', requires courts to treat as an aggravating factor in sentencing the fact that the crime was motivated by, or the perpetrator demonstrated, hostility based on the disability of the victim.

This important legislative provision clearly signals the unacceptability of disability-related and sexual orientation-related hate crime in our society and establishes the importance of the issue for police, the Crown Prosecution Service and the courts.

The CJA 2003 was enacted before the changes in disability discrimination law introduced by the Disability Discrimination Act 2005 (DDA 2005). Therefore, the definition of disability in the CJA 2003 is that of 'physical or mental impairment'. The DDA 2005 extended the definition of disability to include people with HIV effectively from the moment of diagnosis, irrespective of whether the illness had progressed to the point where physical impairment had occurred [see DDA 2005 s 18]. There were important reasons to extend disability discrimination law in this way – the discrimination experienced by people living with HIV has little on the whole to do with the degree or visibility of impairment, but simply with the fact of infection and related social stigma. This is as true of hate crime as it is of other less extreme forms of discrimination.

The CJA 2003 does not therefore at present provide for HIV-related hostility to be an aggravating factor in sentencing in the majority of cases (since a high percentage of people living with HIV respond well to anti-retroviral treatment and do not experience physical or mental impairment). It is a loophole in the law which simply needs tidying up. When the DDA 2005 was introduced, the need to amend the CJA 2003 was presumably overlooked.

The need to update the law is not just a technical or minor matter. At present we have two 'classes' of disabled person – those protected in law against hate crime and those who are not. HIV-related hate crime is a real social evil, and the Government would be taking forward its commitment to tackling HIV stigma and discrimination in supporting a relevant amendment to the current Criminal Justice and Immigration Bill.

The role of the police and the Crown Prosecution Service

People with HIV need to know that hate crime against them will be taken seriously, recorded and monitored, investigated and prosecuted appropriately. A legal framework which ignores HIV-related hate crime is unlikely to motivate an effective response from law enforcement authorities.

It is striking to note that the current Guidance on Hate Crime published by the Association of Chief Police Officers (ACPO) makes no mention of HIV-related hate crime in its 104 pages.¹

The Crown Prosecution Service recently engaged in a consultation on disability-related hate crime, and it was during this consultation that NAT identified the loophole in the law and brought it to the attention of the CPS.

¹ *'Hate Crime: Delivering A Quality Service – Good Practice and Tactical Guidance'* ACPO March 2005

The consultation process resulted in both a Policy Statement and Guidance for Prosecutors. In response to submissions from NAT, the CPS do state in the Guidance for Prosecutors at para.2.11 'Whilst for the purposes of section 146, 'disability' does not include those people living with HIV or AIDS unless there is a physical or mental impairment, under the Disability Equality Duty prosecutors must record, monitor and address proactively instances of hate crime against people living with HIV or AIDS, whether or not an impairment is involved'.

This sentence in the Guidance is welcome. But it does not alter the fact that such hostility will have no impact on the prosecution case presented or on sentencing. Furthermore, the CPS Policy Statement, to which most people will refer, makes no mention of HIV-related hate crime, apart from clarifying in a footnote that the definition of disability does not extent to HIV except where there might be physical or mental impairment involved. In fact the policy statement says that it focuses on disability hate crime 'as defined by the Criminal Justice Act 2003' [para.1.4].

It is hard to believe that effective, streamlined procedures responding appropriately to HIV-related hate crime are possible as long as it is ignored in law.

It is for this reason that it is proposed that an amendment be introduced to the Criminal Justice and Immigration Bill to end the current loophole and update this area of law.

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