

Law Commission

Hate crime laws: a consultation

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Key points and recommendations

- Negative attitudes towards older people and ageing are pervasive in our society. In common with most other forms of discrimination, ageism is based on inaccurate stereotypes.
- It is also clear that older people have faced significant age discrimination, ageism and hostility throughout the Coronavirus pandemic and in the aftermath of the Brexit vote.
- Expressions of ageism and hostility foster an environment in which crimes against older people and in some circumstances, ageist hate crimes become more permissible.
- Age UK recognising age as a protected characteristic for the purposes of hate crime law would fit logically within the broader offences and sentencing framework, prove workable in practice, represent an efficient use of resources, and is consistent with the rights of others.
- As part of this review, the Law Commission should analyse current trends in crime and the prosecution of crimes to help more accurately understand the scale of the problem, reinforced by qualitative research where necessary.

Introduction

Age UK is a national charity that works with a network of partners, including Age Scotland, Age Cymru, Age NI and local Age UKs across England, to help everyone make the most of later life, whatever their circumstances. In the UK, the charity helps more than seven million older people each year by providing advice and support. It also researches and campaigns on the issues that matter most to older people. Its work focuses on ensuring that older people have enough money; enjoy life and feel well; receive high quality health and care; are comfortable, safe and secure at home; and feel valued and able to participate.

The Law Commission has been asked to review the current range of hate crime offences and to make recommendations on the most appropriate ways to ensure that the criminal law provides consistent and effective protection from behaviour motivated by hatred of protected groups or characteristics. Of relevance to Age UK, it has asked whether hate crime legislation should be extended to cover age.

Hate crime and older people

A hate crime is a 'prejudice' motivated crime which occurs when a perpetrator targets a victim because of their membership (or perceived membership) of a specific group of people. Most commonly a particular ethnic, racial or religious group, or a group based on a characteristic such as sexual orientation, transgender or disability.

Negative attitudes towards older people and ageing are pervasive in our society. In common with most other forms of discrimination, ageism is based on inaccurate stereotypes. In the case of older people, they are often portrayed as frail, out of touch, and grumpy. Research has shown that those over 70 are seen as incapable and pitiable, when compared with other groups.¹

¹ D. Abrams, T. Eilola and H. Swift, *Attitudes to Age in Britain 2008–9*, Department for Work and Pensions, 2009

The notion of the older population as a threat is also a component of the prejudice they face. In the immediate wake of the outcome of the EU referendum there was naturally much heated debate about the factors which lead to the success of the 'Leave' campaign. In some quarters this legitimate debate quickly descended into denigration of those who were presumed to be 'to blame' including older people who were described, not only in social media but also in some opinion pieces in the broadsheets, as case 'wrinkly bastards'² or even 'virtual corpses'.³ Although these references may have been intended as 'tongue in cheek', they become less easy to dismiss when coupled with calls to curtail voting rights as in the latter case. It is vital that the right to free speech is protected but ageist media commentary creates an atmosphere where attacks on older people's right to participate in public debate are strengthened.

These concerns have been echoed by then United Nations Independent Expert on the enjoyment of all human rights by older persons, Rosa Kornfeld-Matte who immediately after the Brexit referendum, issued a statement highlighting stating:

We have seen a number of European national newspapers and social media outlets stigmatising older persons as the scapegoats for Brexit and calling for restrictions on 'grey' votes ... One magazine even suggested that the pensioners' right to vote should be taken away, just as their driver's licenses are, after they reach certain age. The impact of ageism should not be underestimated ... Ageism is the root of the marginalization, social exclusion and isolation of older persons. It is also intimately linked to violence and abuse against them in public and private spheres as scapegoating and stereotyping nourish subconscious motives. ⁴

Covid-19

The Government has called Covid-19 a major public health emergency and the most 'significant threat this country has faced for decades.' It is clear older people are very seriously affected by the virus. Hence, the most immediate issue they face during this

² Coren, G. (25 June 2016) *Brexit: The wrinklies have well and truly stitched us up*. The Times, London

³ Paxman, J (19 August 2016), *The Diary: Jeremy Paxman*, Financial Times, London

⁴ OHCHR (July 2016) *UN human rights expert deplors ageist attacks sparked by Brexit*
<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20241&LangID=E> (accessed 07.01.21)

pandemic is the risk of severe illness and death. Older people in need of care and support have been rendered acutely vulnerable by virtue of their circumstances, and there have been high numbers of death arising from Covid-19.

In addition to the loss of life, it is also clear that older people have faced significant age discrimination, ageism and hostility throughout the pandemic including:

- The use of 'blanket' policies being applied to older people, including DNAR orders for care home residents or policies around hospital transfer and admission.
- Access to the help, care and support that many older people need to sustain their health and wellbeing with specific challenges faced by older people in residential care settings, those who live alone and older people who receive care at home.
- With lockdown measures in place, older people have been increased risk of domestic and institutional abuse, and the use of restrictive measures that deprive them of their liberty.

Age UK research has shown that a significant number of older people are finding life incredibly tough, with many enduring increased levels of anxiety and physical decline. On top of this, older people will have read reports, rumours and discussion of age-related restrictions which is often accompanied by references to 'herd immunity', and explicit in this debate was the assumption that Covid-19 should be allowed to run its course. Furthermore, the conversation about how to handle the coronavirus epidemic is often presented as a simple choice, that we can either protect health through societal restrictions, or we can release restrictions to protect the economy, thereby protecting the interests and needs of younger and working age adults. There has been debate regarding whether lockdowns to protect vulnerable people were worth the cost to society.⁵

Age UK believes that such expressions of ageism and hostility foster an environment in which crimes against older people and in some circumstances, ageist hate crimes become more permissible and contribute to the 'dehumanising' of our older citizens, possibly leading to behaviour such as physical abuse in care homes.

⁵ Lichtenstein, B., ['From "Coffin Dodger" to "Boomer Remover": Outbreaks of Ageism in Three Countries With Divergent Approaches to Coronavirus Control'](#), *Journal of Gerontology*, 2020.

Q 1: Do consultees agree that hate crime laws should, as far as practicable, be brought together in the form of a single “Hate Crime Act”?

Yes.

There are differences in the way that hate crime is defined, recorded and prosecuted across different groups, which is in part a result of the way that hate crimes for the groups of people it applies to, have developed. As a result, the implementation of the law leads to unequal charging decisions, prosecution and sentencing outcomes for different groups.

Hate crime laws should apply to all ‘protected’ groups of people in the same way the Equality Act 2010 does. This would lead to equal legal protection and sentencing. Supporters of this approach argue that this would send a message to society that ‘hate crime in any form against any person is unacceptable’.⁶

Q3: We provisionally propose that the criteria that should be considered for the addition of any further characteristics into hate crime laws should be:

- **Demonstrable need: evidence that criminal targeting based on prejudice or hostility towards the group is prevalent.**
- **Additional Harm: evidence that criminal targeting based on hostility or prejudice towards the characteristic causes additional harm to the victim, members of the targeted group, and society more widely.**
- **Suitability: protection of the characteristic would fit logically within the broader offences and sentencing framework, prove workable in practice, represent an efficient use of resources, and is consistent with the rights of others.**

Do you agree?

Yes, criminal targeting based on hostility or prejudice towards older people causes them significant harm, as does the fear of crime. While older people are generally less likely to be victimised than many other age groups, the consequences can be particularly serious in

⁶ Equally Ours (2019), [Hate crime: the case for legal reform](#), p.7.

terms of the impact on health and confidence, sometimes triggering a move into residential care. Fear of crime restricts older people's mobility, which in turn can have an impact on their health and wellbeing outcomes.⁷ They suffer intensively from the emotional, economic, psychological and physical effects of victimisation, and have their lives blighted by worry about being a victim.

Inclusion of age as protected characteristic would fit logically within the broader offences and sentencing framework, prove workable in practice, represent an efficient use of resources, and is consistent with the rights of others. It makes no sense to exclude age as a protected characteristic regarding hate crime, particularly when it is included as a protected characteristic within the Equality Act 2010.

On the issue of demonstrable need, critics have argued that there is very little evidence of violence and abuse against older people being motivated by hatred or hostility and that in reality, the vast majority of violence and abuse committed against older people is caused by exactly the same reasons, i.e., gender inequality, as underlying violence and abuse of younger people.⁸

However, this view does not recognise the fact that research into crime and indeed the collection of data on the incidence of crime that might constitute hate crime against older people is lacking. For example, Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS) and Her Majesty's Crown Prosecution Service Inspectorate's (HMCPPI) report into crimes against older people found that:

Crime against older people isn't well understood, despite the vulnerability of older people and the importance that society attaches to looking after people in their old age. There has been little police analysis of the problem, including the links to disability hate crime and domestic abuse. We found that police forces had only a superficial understanding of the problems, although all had recognised that fraud was an increasingly common concern for older victims. No single national group or body

⁷ LLOYD-SHERLOCK, P., AGRAWAL, S., & MINICUCI, N. (2016). Fear of crime and older people in low- and middle-income countries. *Ageing and Society*, 36(5), 1083-1108.

⁸ Hannah Bows (2019), *Prosecution of Elder Abuse: submission to the Scottish Justice Committee inquiry into elder abuse*, p.3.

*exists to co-ordinate the work of criminal justice agencies to monitor and improve the response to crimes against older people (in the same way as there are, for example, joint policing and CPS working groups). This affects the understanding and grip on crimes against older people nationally. For example, we were concerned to find that the number of crimes against older people referred by the police to the CPS has declined for two consecutive years, but there has been no co-ordinated action to find out why and what should be done.*⁹

We also know that when it comes to other types of crime, such as domestic abuse, there are big gaps in knowledge about the incidence of type of crime against older people. With domestic abuse, this is because the Crime Survey for England and Wales, conducted by the Office of National Statistics (ONS), does not collect data on adults over the age of 74. The result is that while we know that older victims and survivors exist, we do not know the true prevalence of domestic abuse among the older population. Because ‘what gets counted gets done’, this lack of representation of older people within the data collection completely scuppers the appropriate allocation of resources to help them.

The ONS have now committed from next year to collecting data on the incidence of domestic abuse against people of all ages. This is an important step towards making our society a safer and more supportive one for very old people who experience domestic abuse. However, the point remains that just because there is very little apparent evidence of crime against older people, this does not mean that it does not exist.

Older people face many barriers to reporting crime, such as lack of physical and mental capacity and a lack of access to services, or fear of reporting. These barriers are also likely to affect the evidence and knowledge base of crimes against older people, including potential hate crime. For example, when we look at safeguarding claims, there is a stark difference between the abuse prevalence figures and the figures for successful prosecutions of crimes against older people which suggest there is a serious under-reporting of such crimes, due to fear, embarrassment and a lack of access to trusted people to whom older

⁹ Her Majesty’s Inspectorate of Constabulary and Fire & Rescue Services and Her Majesty’s Crown Prosecution Service Inspectorate, [The poor relation: the police and CPS response to crimes against older people](#), p.5.

people can report their experiences. It is estimated that only 6% of older victims report abuse to the police.¹⁰

Q 15: We invite consultees' views on whether age should be recognised as a protected characteristic for the purposes of hate crime law?

Yes.

At Age UK, we believe it is important that the characteristic of “age” be added to the characteristics protected by hate crime laws. We hear regularly via our helpline from older people who feel discriminated against, verbally abused or harassed and bullied because of their age. Whilst the Equality Act 2010 protects people from age discrimination in particular settings, it is important that older people are also recognised as a group who may experience hostility due to their age; indeed, as may younger people. There is a strong argument that the criminal justice system needs to recognise more openly the direct and indirect discrimination that older people face at a societal level, as a result of stereotyping and all too often, attaching lesser value to them as human beings, reinforcing the message that violence against older people, whether it be because of hatred or because of their presumed vulnerability through age is wholly unacceptable.

However as noted above, hate crime legislation does not currently cover older people. Sections 145 and 146 of the Criminal Justice Act 2003, which provide for a sentencing uplift apply only to cases of racist and religious crime, homophobic and transphobic crime and disability hate crime. While sentencing guidelines do invite courts to increase the sentence for offences against older people on the basis that their perceived vulnerability is an aggravating factor increasing the seriousness of the crime, this does not specifically address the issue of ageist hate crime.

The positive implications of extending hate crime legislation to age include:

- increased reporting and recognition of hate crime against people on the basis of ageism;

¹⁰ UK Study of Abuse and Neglect of Older People Prevalence Survey Report, Department of Health and Comic Relief, 2007

- enhanced sentencing; and,
- ultimately deterrence:

There would be value in highlighting that both crime itself, and the fear of crime can increase feelings of isolation and decrease community involvement. There is also evidence that hate crime law implementation and pro-equality policies lead to lower hate crime in the United States.¹¹

There are concerns that there is currently a lack of reliable research and evidence about the numbers of crimes against older people which are motivated by ageism and could therefore be considered as hate crimes. Certainly, there are strong indications that hostility and prejudice on the grounds of age *do* play a role in at least some cases of criminal abuse and neglect, domestic violence and frauds and scams.

In some instances, crimes against older people will be motivated by hostility and ageist prejudice while others will not. In its policy on prosecuting crime against older people the CPS recognises this, suggesting that the crimes that this group experience can be divided into the following, potentially overlapping, categories:

- a) criminal abuse or neglect of older people where there is a relationship and an expectation of trust (for example domestic violence and where older people are targeted because they are either perceived or known to lack mental capacity); or criminal abuse or neglect of older people living either temporarily or permanently in care settings, whether these settings are regulated or un-regulated;
- b) crimes which are specifically targeted at older people because they are perceived as vulnerable or potentially easy to steal from (for example, financial abuse or theft, muggings of older people, doorstep theft, distraction burglary or rogue traders);
- c) crimes against older people which are not initially related to their age but may later become so (for example, a burglary where the burglar does not know the age of the

¹¹ Walters, M.A., Wiedlitzka, S, Owusu Bempah, A. and Goodall, K. (2018) *Hate crime and the legal process: Options for law reform*, University of Sussex, p.57.

householder but later exploits the situation on discovering that the householder is an older person); and

- d) *crimes against older people which are in part, or wholly motivated by hostility based on age, or perceived age, (for example, an assault, harassment or antisocial behaviour, involving derogatory statements associated with the victim's age).*¹²

There is currently a lack of reliable research evidence about the numbers of crimes against older people which fall into category (d) and could therefore be considered as hate crimes. However, there are indications that hostility and prejudice on the grounds of age may play a role in at least some cases of criminal abuse and neglect, domestic violence and frauds and scams. Older people who have been victims of perpetrators who have used coercion and undue pressure over time, may have particular difficulties in defining the point at which the behaviour has become abusively hostile.

In most reported cases of abuse of older people there is little evident consideration of the fact that perpetrators may have been motivated, at least in part, by hostility or prejudice towards victims because of their age. This is despite the fact that in some cases abuse is overtly linked to the victims' ages, such as the violent and cruel crimes inflicted on older residents living with dementia at Roundstones Care Home in Filey. In one instance of cruelty Siobhan Koralewski, who was convicted of ill treatment of a person who lacks capability, is reported to have taken her top off, showing her vest and shouting: "Do you like that you dirty old man?" she then slapped him across the face four times and pulled him by his leg. As he fell on the floor she sat astride him and bounced on top of him before squeezing and biting his leg so he cried out in pain.¹³ It appears that in cases such as these ageist attitudes are contributing to the dehumanisation of the older person making it easier to maltreat them without feeling guilt or remorse.

The Crown Prosecution Service (CPS) also recognises the link between crime and ageism in its 'crimes against older people prosecution' policy. In this document it states:

¹² CPS (2008) *Crimes against older people - prosecution policy*

¹³ <http://www.telegraph.co.uk/news/uknews/crime/11304361/Bullying-care-worker-jailed-after-attacking-dementia-patients.html> (accessed 18.08.16)

We understand that racist crime has a link to racism as a prejudicial set of ideas; just as sexual crime or domestic violence has a link to sexism and the application of power and control. Some crimes against the older person have a link to ageism as a prejudicial set of ideas. The CPS acknowledges that ageism may provide the backdrop where crimes against older people are tolerated.¹⁴

Q 16: We invite consultees' views as to whether any age-based hate crime protection should be limited to "older people" or include people of all ages.

It should include people of all ages so there is parity with the Equality Act 2010.

Q 23: We invite consultees' views as to whether the current motivation test should be amended so that it asks whether the crime was motivated by hostility or prejudice towards the protected characteristic.

Yes. In some instances, crimes against older people will be motivated by hostility and or ageist prejudice.

Q 24: We provisionally propose that both specified aggravated offences and statutory enhanced sentencing should be retained in the law of England and Wales. Do you agree?

Yes

Q 25: We provisionally propose that aggravated offences should apply to all five of the current characteristics equally, and any further characteristics that are added. Do you agree?

Yes

¹⁴ <https://www.cps.gov.uk/publication/policy-guidance-prosecution-crimes-against-older-people-0>

Q 26: We provisionally propose that the decision as to whether an aggravated version of an offence should be created be guided by:

- **The overall numbers and relative prevalence of hate crime offending as a proportion of an offence;**
- **The need to ensure consistency across the criminal law;**
- **The adequacy of the existing maximum penalty for the base offence; and**
- **Whether the offence is of a type where the imposition of additional elements of the offence requiring proof before a jury may prove particularly burdensome**

Underreporting of crimes against older people should be factored in.

Q 30: We invite consultees' views on whether any property or fraud offences should be included within the specified aggravated offences.

The majority of recorded hate crimes against people are 'crimes against the person' which includes a broad array of criminal offences which usually involve bodily harm, the threat of bodily harm, or other actions committed against the will of an individual.¹⁵ However, a higher percentage of 'public order offences' (that is, offences that include the use of or threat of violence or harassment towards someone else, in a public place) are committed against the LGBT community, whilst people with a disability experience a higher percentage of theft, robbery, fraud and sexual offences compared to religious and racial groups.¹⁶

Older people are also likely to experience **property or fraud offences** committed against them because they are perceived as vulnerable or potentially easy to steal from (for example, financial abuse or theft, muggings of older people, doorstep theft, distraction burglary or rogue traders)

¹⁵ Walters, M.A., Wiedlitzka, S, Owusu Bempah, A. and Goodall, K. (2018) *Hate crime and the legal process: Options for law reform*, University of Sussex, p.57.

¹⁶ Walters et al. (2018), p.57.