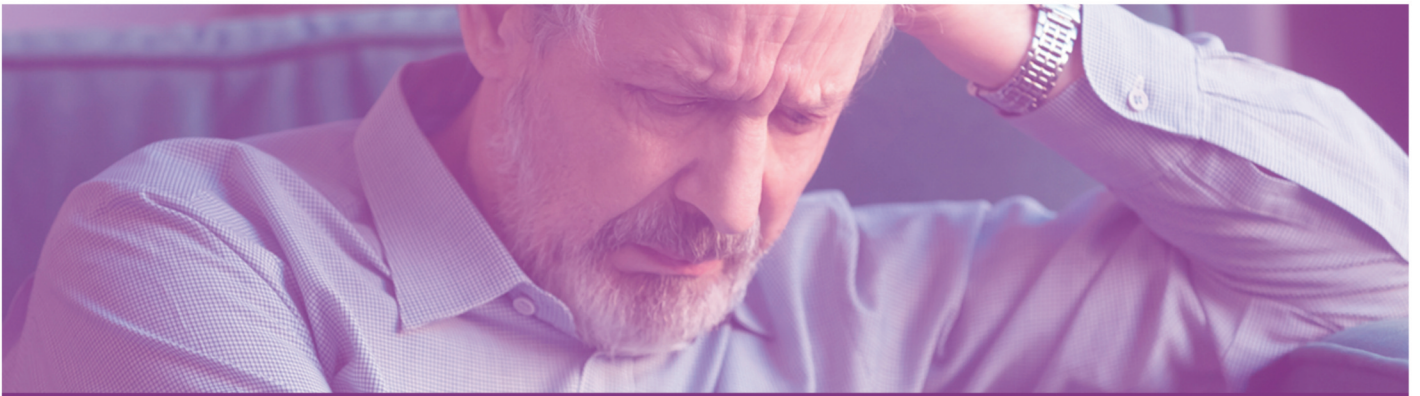




# SHOULD AGE BE A PROTECTED CHARACTERISTIC UNDER HATE CRIME LAW?



Policy Brief

# Should Age Be a Protected Characteristic Under Hate Crime Law?

## Policy Brief

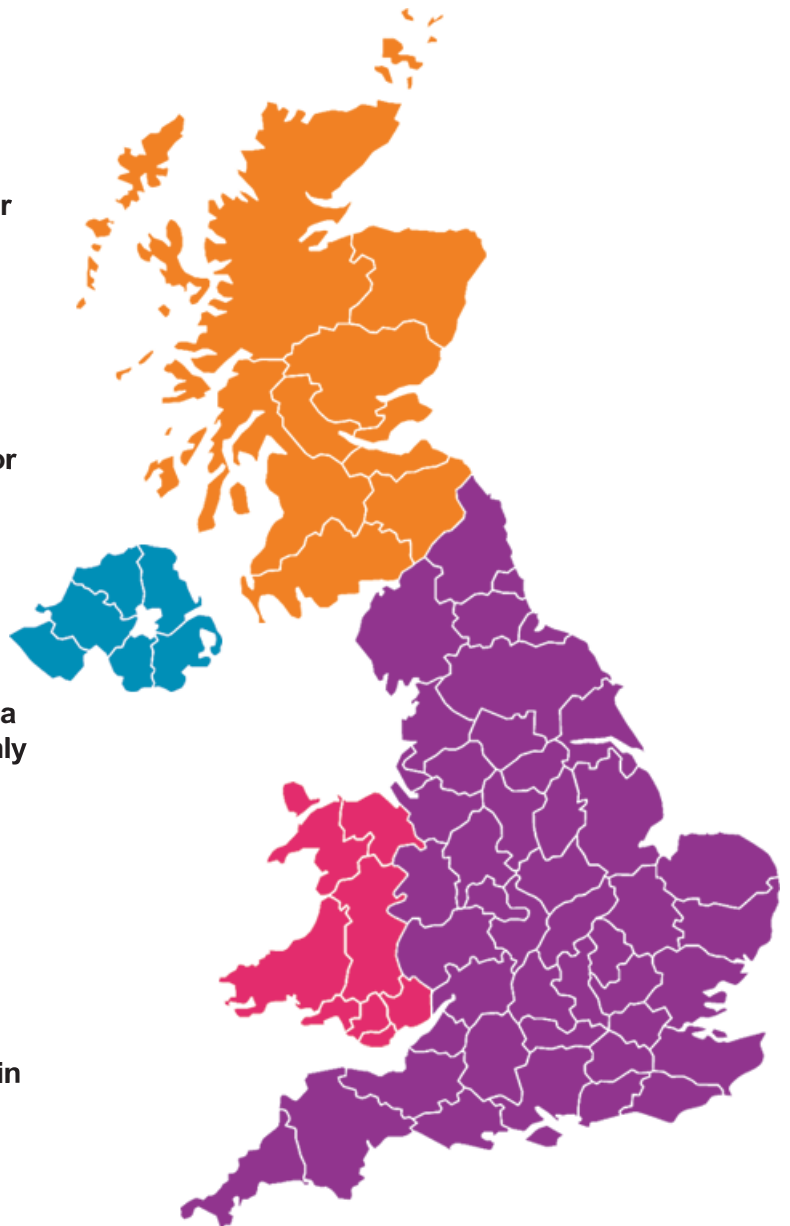
### Key Insights:

Age should be included as a protected characteristic in hate crime legislation in all four nations of the UK.

Such a step is important to keep the topic of abuse and crime towards older people high on the agenda and provide additional protection for victims.

In order to prove a hate crime has been committed, you would have to show that a perpetrator was motivated by hostility towards a victim specifically because of their age. This only applies in a very small number of cases.

We need a new statutory aggravation that focuses on the idea of actual or perceived vulnerability. This would give victims greater protection and provide a tougher deterrent to would be perpetrators as well as transparency in reporting.



## Recommendations:

**In Westminster:** Depending on the recommendations and findings of the Law Commission consultation, legislators should focus on codifying vulnerability as a statutory aggravation but push for “age” as a characteristic as a supplementary step.

**In Holyrood:** As per Lord Bracadale Review, The Scottish Government should implement a general aggravation covering exploitation and vulnerability.

**In Stormont:** The Northern Ireland Executive should implement the Judge Marrinan review recommendations and identify opportunities for advocating for a general aggravation covering exploitation and vulnerability.

**Criminal justice stakeholders** should work with academics and third sector groups to develop an all-encompassing definition of vulnerability.

## Executive Summary:

**Hourglass recognises the benefits of the inclusion of age as a protected characteristic under hate crime law in all parts of the UK. In particular, this approach could promote further understanding of abuse, greater protection for victim-survivors and a means to keep the abuse of older people a key topic in the public sphere.**

However, in making this argument we also draw attentions to reservations with the functionality and effectiveness of this extension of hate crime legislation to tackling the abuse of older people. We continue to see that the vast majority of abuse that is disclosed on the Hourglass Helpline would fall outside such legislation.

As an overall goal, Hourglass is of the view that legislators seek to put in place a statutory aggravation around the idea of actual or perceived vulnerability.

## Background:

**Hate crime as a publicly understood theme and problem in the United Kingdom first emerged in the late 1970s and early 1980s when violent offences targeted against Black and Asian communities became a visible and public issue in London and across England.**

The murder of Stephen Lawrence and the David Copeland bombings, as well as other instances of prejudice and hostility related crime in the 1990s led to the institution of legislation focused on hate crime with the Crime and Disorder Act in 1998.

This Act created racially aggravated offences covering assaults, criminal damage, harassment, and various public order offences. The Crime and Disorder Act 1998 was followed in 2001 by the amendment of the Crime and Disorder Act with the Anti-terrorism, Crime and Security Act (2001), which incorporated religiously aggravated offences on the same basis as racially aggravated ones.

In recent years, there have been a number of calls for additional characteristics to be protected by hate crime laws, in particular age, and to use hate crime legislation to protect against crimes perpetrated against older people.

All four UK nations have recently consulted on whether age should become a protected characteristic in hate crime legislation. In Scotland, the Hate Crime and Public Order (Scotland) Act (2021) has just been passed at Holyrood. The Act adds age as a protected characteristic, extends statutory aggravations for prejudice to age, creates new offences relating to stirring up of hatred based on age, and also includes protections for a number of other characteristics including disability and religion.

In Northern Ireland, Judge Marrinan's review recommended the inclusion of age as a protected characteristic, and the institution of a Hate Crime Commissioner in Northern Ireland. In England and Wales, the Law Commission has yet to present their findings/recommendations from their recent consultation.

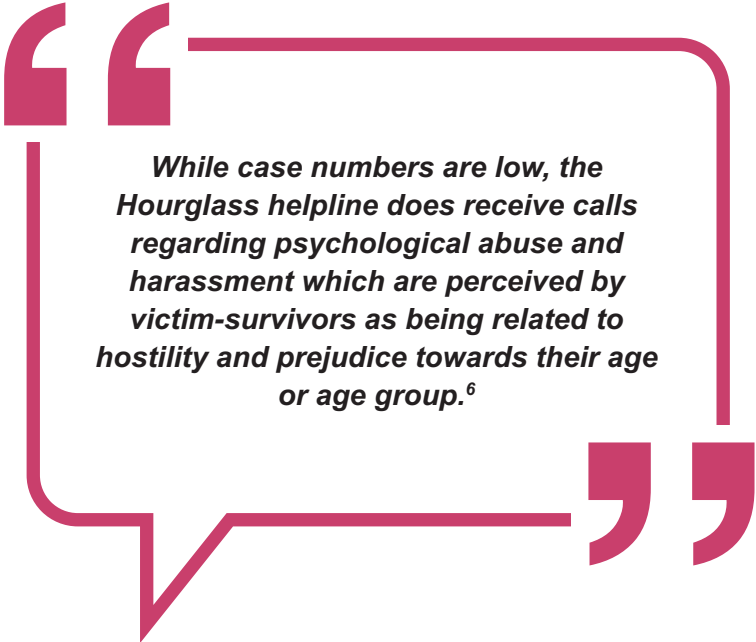
## Context: Age and Hate

On the issue of hate crime, there is a tension between the knowledge that older people can experience crime in specific ways that relate to their membership of the 'older people' group and the need for evidence under hate crime legislation that the crime is motivated by hostility.

Hate crimes are committed by "ingroups," who seek through the means of targeted violence to subordinate the designated "other" in order to confirm the ingroups privileged access to resources and their dominant ingroup position. Victims of hate crimes as members of an "outgroup" are socially stigmatised, marginalised, and lack recourse to political power, which makes them increasingly vulnerable to harassment or violence. Ingroup perpetrators may attempt to punish members of the outgroup for their different appearance, cultural norms, or values, and through the performance of violence, may attempt to intimidate and frighten not just the victim but the wider community or group they belong to.<sup>1</sup>

Ideas of ageism which place older people on a pedestal of burden, incompetence, and unattractiveness may represent a devaluing, othering, or stigmatisation of older people by the mainstream ingroup and their marginalisation from mainstream society, in much the same way as other traditional hate crime victim groups.<sup>2</sup> As the recent Bracadale hate crime inquiry in Scotland noted, the elderly also fulfil Christie's notion of an "ideal victim",<sup>3</sup> one who "not only...needs legal protection but also one who is judged to be vulnerable, weak, respectable and blameless for their victimisation."<sup>4</sup>

As Lord Bracadale further notes in his review of hate crime legislation in Scotland, "there is sufficient evidence of hostility-based offences against the elderly...to include age as a protected characteristic based on the current model of hostility."<sup>5</sup>



***While case numbers are low, the Hourglass helpline does receive calls regarding psychological abuse and harassment which are perceived by victim-survivors as being related to hostility and prejudice towards their age or age group.<sup>6</sup>***

As Garland and Wolhunter note, another similarity between abuse and violence against older people and other more recognised forms of hate crimes is its lack of effective reporting.<sup>7</sup> The abuse of older people is a phenomenon that takes place "behind closed doors," it is highly unreported and underreported, with this being down both to its hidden nature and the numerous factors that make it difficult for older people to get outside help (poor physical health, normalisation of abuse, lack of knowledge of available provisions, cultural stigma, and fear of external help).<sup>8</sup>

As such, Hourglass believes that including “age” as a protected characteristic within hate crime legislation is a key way to keep the topic of abuse and crime towards older people in the public sphere, will allow for further understanding of the phenomena, and will ideally provide additional protections to victims. With the recent inclusion of age as a protected characteristic within the Hate Crime and Public Order (Scotland) Act (2021), and recommendations in Judge Marrinan’s review in Northern Ireland, Hourglass takes the view that in all four nations ‘age’ should be included as a characteristic under hate crime law.

Nevertheless, broad questions remain over the functionality and effectiveness of additional age related hate crime legislation, as well as the relatively small proportion of crimes or abuse relating to malice and hatred towards a person because of their age.

Regarding prosecution, potential difficulties arise in proving hostility or prejudice in cases of the abuse of older people may also be an issue. As academic Hannah Bowes notes, in jurisdictions where the abuse of older people is codified under hate crime legislation such as Florida or New York State, convictions continue to be low.<sup>9</sup> Disability hate crimes also suffer from a low level of conviction and this is likely to be a concern if age were instituted as a protected characteristic in hate crime legislation. However, the symbolic nature of the inclusion of age as a protected characteristic within hate crime legislation will ideally send a clear message to perpetrators and wider society that those crimes and abuse against older people related to hostility and prejudice will not be tolerated and will be treated seriously by the judicial system.

## Policy Alternatives:

Hourglass views the inclusion of age as a protected characteristic within hate crime legislation as an initial step towards a larger purpose. As an overall goal, Hourglass seeks new legislation, specifically statutory aggravation that focuses on the idea of actual or perceived vulnerability. There is already some precedent for this. Exploitation of a vulnerable victim is already part of the sentencing guidelines and an aggravating feature on the part of sentencing. Guidance for England and Wales details that culpability will be increased if the offender targeted a victim because of an actual or perceived vulnerability.

However, the 2019 HM Crown Prosecution Service Inspectorate and HM Inspectorate of Constabulary and Fire & Rescue Services “The Poor Relation” report noted these guidelines are underused at present by the Crown Prosecution Service (CPS).<sup>10</sup> As such advocating for vulnerability to be laid out in legislation may provide an impetus for existing sentencing guidelines to either be more effectively or regularly used or allow for a better avenue for the conviction of abuse based crimes.

Scholars such as Chakraborti and Garland also advocate for reconceptualising hate crime victimisation through the lens of vulnerability and difference, “a vulnerability-based approach acknowledges the heightened level of risk posed to certain groups or individuals’ that can arise through a complex interplay of different factors, including hate, prejudice, hostility, unfamiliarity, discomfort or simply opportunism or convenience”.<sup>11</sup>

While there is some tension in the notion of vulnerability, not least many older people’s dissatisfaction and concern with the term, and the need to move away from age-based conceptions of it, viewing older victims through a vulnerability lens may allow for both easier understanding of the particular nuances of crimes against older people and the intersectionality with other crimes.

Hourglass seeks a broadening of the framework that vulnerability covers. Vulnerability needs to be understood as structural (impact of poverty in old age), contextual (for example, features of abuse of an older person such as repeat victimisation and dependence on the perpetrator), and demographic (older age specific factors). This definition would be useful for dealing with the complex nature of vulnerability in cases of abuse in older age. Lawmakers should work to embed this definition of vulnerability in legislation. Alongside the addition of age as a protected characteristic this will provide legal protections for older victims of harm and abuse.

## Recommendations:

**In Westminster:** Depending on the recommendations and findings of the Law Commission consultation, legislators should focus on codifying vulnerability as a statutory aggravation but push for “age” as a characteristic as a supplementary step.

**In Holyrood:** As per Lord Bracadale Review, The Scottish Government should implement a general aggravation covering exploitation and vulnerability.

**In Stormont:** The Northern Ireland Executive should implement the Judge Marrinan review recommendations and identify opportunities for advocating for a general aggravation covering exploitation and vulnerability.

**Criminal justice stakeholders** should work with academics and third sector groups to develop an all-encompassing definition of vulnerability.



## Appendix A: the landscape in the nations.

**The trend in hate crimes over the past few years in the United Kingdom has been of rising numbers of hate crimes being reported. In 2019/20, there were 105,090 hate crimes recorded by the police in England and Wales, this represented an increase of 8% on the numbers from 2018/19 (97,446) and a more than 50% increase since 2012/13 (42,255).**

While the Home Office and the police note that these increases in reporting have been mainly driven by improvements in crime recording, there have been significant spikes following the Brexit referendum in June 2016, and the 2017 Manchester Stadium Terror Attacks.

Worries about rising levels of hate crime, the complexity and clarity of the current laws on hate crimes in England and Wales, as well as specific concerns in challenging disability hate crimes, and the necessity of protecting specific subgroups, have led to the Law Commission having recently launched a consultation on potential reforms to hate crime laws in England and Wales. Within this is the question of whether age as a protected characteristic should be enshrined within hate crime legislation.

In Scotland too, as a follow up to the Independent Advisory Group on Hate Crime, Prejudice and Community Cohesion, published in 2016, Lord Bracadale was appointed to conduct an independent review of hate crime legislation. Two of his subsequent recommendations are linked to the potential question of whether “age” related crimes should exist under the hate crime legislative umbrella.

- Recommendation 10 “There should be a new statutory aggravation based on age hostility.
- Recommendation 11 “The Scottish Government should consider the introduction, outwith[sic] the hate crime scheme, of a general aggravation covering exploitation and vulnerability.”



## Consulted or recommended resources

[Crime and Disorder Act 1998](#)

[Racist and Religious Hate Crime - Prosecution Guidance](#)

Barbara Perry, "The Sociology of Hate: Theoretical Approaches," in *Hate Crimes Volume 1: Understanding and Defining Hate Crime* (Westport CT: Praeger, 2009)

Nils Christie, "The Ideal Victim," Revisiting the "Ideal Victim," April 2018 <https://doi.org/10.1332/policypress/9781447338765.003.0002>

Jon Garland, "Difficulties in Defining Hate Crime Victimization," *International Review of Victimology* 18, no. 1 (September 2011): pp. 25-37, <https://doi.org/10.1177/0269758011422473>.

Lorraine Wolhuter, *Victimology: Victimisation and Victims' Rights* (London: Routledge-Cavendish, 2016).

YouGov *How Britain Voted at the 2017 Election*. <https://yougov.co.uk/topics/politics/articles-reports/2017/06/13/how-britain-voted-2017-general-election>

Jon Garland, "Difficulties in Defining Hate Crime Victimization," *International Review of Victimology* 18, no. 1 (September 2011)

Neil Chakraborti and Jon Garland, "Reconceptualizing Hate Crime Victimization through the Lens of Vulnerability and 'Difference,'" *Theoretical Criminology* 16, no. 4 (2012):

[Independent Review of Hate Crime Legislation in Scotland: Final Report](#)

[Hate crime, England and Wales, 2019 to 2020 - GOV.UK](#)

<sup>1</sup> Barbara Perry, *In the Name of Hate: Understanding Hate Crimes* (New York: Routledge, 2001)

<sup>2</sup> Jon Garland, "Difficulties in Defining Hate Crime Victimization," *International Review of Victimology* 18, no. 1 (September 2011): pp. 25-37, <https://doi.org/10.1177/0269758011422473>.

<sup>3</sup> Nils Christie, "The Ideal Victim," Revisiting the "Ideal Victim," April 2018, pp. 11-24, <https://doi.org/10.1332/policypress/9781447338765.003.0002>

<sup>4</sup> Quoted in Jon Garland, "Difficulties in Defining Hate Crime Victimization," *International Review of Victimology* 18, no. 1 (September 2011): pp. 25-37, <https://doi.org/10.1177/0269758011422473>.

<sup>5</sup> Lord Bracadale, "Independent Review of Hate Crime Legislation in Scotland – Final Report" (31 May 2018.)

<sup>6</sup> Hourglass Internal Helpline Data

<sup>7</sup> Lorraine Wolhuter, *Victimology: Victimisation and Victims' Rights* (London: Routledge-Cavendish, 2016). Jon Garland, "Difficulties in Defining Hate Crime Victimization," *International Review of Victimology* 18, no. 1 (September 2011): pp. 25-37, <https://doi.org/10.1177/0269758011422473>.

<sup>8</sup> Richard L. Beaulaurier et al., "Internal Barriers to Help Seeking for Middle-Aged and Older Women Who Experience Intimate Partner Violence," *Journal of Elder Abuse & Neglect* 17, no. 3 (2005): pp. 53-74, [https://doi.org/10.1300/J084v17n03\\_04](https://doi.org/10.1300/J084v17n03_04)

<sup>9</sup> Hannah Bows, "Is more law the answer? A review of proposed reforms to address victimisation of older adults," Scottish Parliament Report. (2019.)

<sup>10</sup> "The poor relation: The police and Crown Prosecution Service's response to crimes against older people" HM Crown Prosecution Service Inspectorate and HM Inspectorate of Constabulary and Fire & Rescue Services. (2019) <https://www.justiceinspectorates.gov.uk/hmicfrs/publications/crimes-against-older-people/>

<sup>11</sup> Neil Chakraborti and Jon Garland, "Reconceptualizing Hate Crime Victimization through the Lens of Vulnerability and 'Difference,'" *Theoretical Criminology* 16, no. 4 (2012): pp. 499-514, <https://doi.org/10.1177/1362480612439432> 500-510



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