



# **Women's Policy Group NI**

## **Hate Crime Legislation in Northern Ireland Independent Review – Consultation Response**

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Full consultation response of the Women's Policy Group NI

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# Hate Crime Legislation Review Consultation Response

## Introduction:

The [Women's Policy Group Northern Ireland](#) (WPG) is a platform for women working in policy and advocacy roles in different organisations to share their work and speak with a collective voice on key issues. It is made up of women from trade unions, grassroots women's organisations, women's networks, feminist campaigning organisations, NGOs, LGBT+ organisations, support service providers, human rights and equality organisations and individuals.

Over the years this important network has ensured there is good communication between politicians, policy makers and women's organisations on the ground. This has been our approach to the Hate Crime Legislation Review Consultation, as members of the WPG have worked collaboratively on this response over the past six months. This has included creating a sub-group to collate the information in this response, create guidance for women answering the shorter, online survey, attending public events, private meetings and groups calls with Judge Marrinan and much more. This response reflects the key asks from the women's sector relating to hate crime legislation in Northern Ireland, as the experts and community-based organisations that have been working with women in Northern Ireland for decades.

Several members of the WPG are also submitting responses on behalf of their own organisations, including: Women's Resource and Development Agency, Raise Your Voice, Northern Ireland Women's European Platform, Women's Regional Consortium, Here NI, Transgender NI, CAJ and more. We welcome this review and hope to see our consultation response reflected in the final recommendations made.

## Response Summary

The key asks from the WPG are:

- Introduce of an adequate working definition of hate crime,
- Create a consolidated hate crime legislation model for Northern Ireland,
- Replacing the enhanced sentencing model with the statutory aggravation model,
- Apply the statutory aggravation model to all protected characteristics,
- Introduce specific guidelines and extensive programmes of training and education on any new model of hate crime legislation; including what the protected characteristics are and the consequences of committing a hate crime,
- Recognise gender, specifically misogyny, as a protected characteristic,
- Recognise transgender identity a protected characteristic,
- Recognise intersex identity as a protected characteristic,
- Consider recognising sex workers as a protected characteristic,
- Create a legal framework that recognises the importance of intersectionality to adequately reflect the experiences and identities of victims and motivations of perpetrators,
- Require the court to state if offences are aggravated, reflect this on court records and outline the difference the aggravation had on sentencing,
- Record aggravated offences on criminal justice records,
- Do not introduce a “by reason of” threshold,
- Create a statutory legal definition of “hostility”,
- Add equivalent provisions to Sections 4, 4A and 5 of the Public Order Act 1986 to the Public Order (Northern Ireland) Order 1987,
- Remove “dwelling” defences,
- Include all protected groups under the stirring up provisions of the Public Order (NI) Order 1987,
- Recognise the severe harm caused by online hate speech against women,

- Update and amend existing legislation dealing with public order, malicious communications and harassment to reflect the changing nature of communications due to social media,
- Ensure online harm is fully covered within hate crime legislation,
- Strengthen law relating to public authorities tackling hate expressions in public spaces,
- Implement victim-led restorative justice programmes in collaboration with community-based organisations,
- Commission extensive research specific to Northern Ireland to tackle the under-reporting of hate crime and mistrust from minorities in reporting services,
- Adequately fund and expand the Hate Crime Advocacy Scheme,
- Restrict the press reporting of hate crime victims where appropriate,
- Create measures for legislative consolidations and scrutiny.

## Additional Comments

The Women’s Policy Group would like to echo comments made by some of our membership organisations in their responses:

### The Extent of Misogyny in Society

Misogyny is endemic in society both locally and internationally. New analysis released by the United Nations Development Programme (UNDP)<sup>1</sup> shows how social beliefs obstruct gender equality. Nearly 90% of all people have a ‘deeply ingrained bias’ against women. Violence against women is driven by gender norms that normalise and justify gender inequality and violence. This pervasive bias and prejudice against women held by both men and women worldwide must be tackled in order to prevent and respond to gender-based violence.

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<sup>1</sup> Tackling Social Norms, A game changer for gender inequalities, UNDP, March 2020  
[http://hdr.undp.org/sites/default/files/hd\\_perspectives\\_gsni.pdf](http://hdr.undp.org/sites/default/files/hd_perspectives_gsni.pdf)

A report from the House of Commons Women and Equalities Committee<sup>2</sup> found evidence of ‘routine and sometimes relentless’ harassment of women and girls on the street, in parks, on public transport, in bars, clubs and universities, and online. Surveys in the report found that 64% of women, including 85% of 18-24-year olds had experienced unwanted sexual attention in public places with 35% reporting unwanted touching. More than 60% of girls and young women did not feel safe walking home and growing numbers said they felt unsafe online. Incidents ranged from wolf-whistling to unwanted sexual comments, groping and sexual rubbing on public transport, upskirting, rape threats and men exposing themselves.

Despite the prevalence of this kind of behaviour society continues to underplay harassment and violence against women and girls. Normalisation of this type of misogynistic behaviour has made it almost invisible in everyday life so that many people fail to recognise it. This makes it even more difficult to see full nature and pervasiveness of this misogyny.

*“Part of the idea of ‘patriarchy’ is that this oppression of women is multi-layered. It operates through inequalities at the level of the law and the state, but also through the home and the workplace. It is upheld by powerful cultural norms and supported by tradition, education and religion. It reproduces itself endlessly through these norms and structures, which are themselves patriarchal in nature; and thus it has a way of seeming natural or inevitable, or else, in a liberal context, it is obscured by piecemeal advances in gender equality.”<sup>3</sup>*

While research shows that sexual harassment is a huge problem many women do not report such incidents. Reporting levels for misogynistic crimes are low and many of these crimes go unreported. There are many reasons why this might be the case not least of these the ‘normalisation’ of these incidents in wider society. The impact of these incidents on victims is

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<sup>2</sup> Sexual harassment of women and girls in public places, Women and Equalities Committee, House of Commons, October 2018

<https://publications.parliament.uk/pa/cm201719/cmselect/cmwomeq/701/701.pdf>

<sup>3</sup> The age of patriarchy: how an unfashionable idea became a rallying cry for feminism today, Charlotte Higgins, The Long Read, The Guardian, 22 June 2018

<https://www.theguardian.com/news/2018/jun/22/the-age-of-patriarchy-how-an-unfashionable-idea-became-a-rallying-cry-for-feminism-today>

often long-term with many victims changing their behaviour as a consequence, feeling the impact on their freedom of movement in public places and increasing their fear of crime. That is why it is so important that action needs to be taken on this issue.

Northern Ireland is a very patriarchal society. *“While the Good Friday Agreement did undoubtedly provide the potential for a new era of gender relations, 20 years on Northern Irish society exhibits all the trademarks and insidious characteristics of a patriarchal society that has yet to undergo a genuine transformation in gender relations.”*<sup>4</sup>

The Troubles have had a profound impact on Northern Ireland and continue to do so long after the ceasefire. Militarism has permeated Northern Irish society so that *“violence and its effects have worked their way into the very fabric of society and become part of normal life so that (people) become accustomed to the routine use of violence to determine political and social outcomes.”*<sup>5</sup> This normalisation of violence and inequality is an important consideration for Northern Ireland emerging from a conflict with an armed patriarchy.

The now infamous ‘rugby rape trial’ has showed the extent to which misogyny is embedded and accepted in our society. The case and its aftermath revealed chauvinistic and misogynistic views about women. The trial forced many awkward conversations around the issues of rape, misogyny and attitudes towards women in Northern Ireland. The lack of legislation to deal with misogynistic crime and the lack of associated quantitative evidence means that its true nature and extent cannot be adequately captured. Available statistics do not illustrate the pervasiveness of this issue and can only give a snapshot of the problem here:

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<sup>4</sup> Gendering the ‘post-conflict’ narrative in Northern Ireland’s peace process, Niall Gilmartin, Trinity College Dublin, December 2018

<sup>5</sup> J. Darby and R. McGinty, *The Management of Peace Processes: Coming Out of Violence Project*, Darby and McGinty, (London: Macmillan 2000) p.260

- In 2019 there were 31,705 domestic abuse incidents recorded by the police in Northern Ireland, an increase of 399 (1.3%) on the previous 12 months and one of the highest 12 month periods recorded since the start of the data series in 2004/05.<sup>6</sup>
- In 2019 the number of domestic abuse crimes recorded by the police reached 18,033 an increase of 2,322 (14.8%) on the previous 12 months and the highest of any 12-month period recorded since 2004/05.<sup>7</sup>
- From October 2018 to September 2019 the PSNI recorded 2,423 sexual offences and 1,023 reports of rape.<sup>8</sup>
- More than a quarter of students at universities or colleges in Northern Ireland have experienced unwanted sexual behaviour during their studies however only 5% had reported this to the police.<sup>9</sup>
- There have been 1,220 reports of online violence towards women in Northern Ireland since 2015 (the total could be even higher than the figures suggest as not all crimes specified the gender of the victim). In 2017-18 the PSNI saw the highest annual figure ever recorded with 433 women feeling so threatened they reported to the police – 30 of these involved death threats with another 394 constituting harassment.<sup>10</sup>

## Gender and Hate Crime

This consultation is considering whether new categories of hate crime should be created for certain characteristics which are currently not covered. We are strongly of the view that

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<sup>6</sup> Domestic Abuse Incidents and Crimes Recorded by the Police in Northern Ireland, PSNI Statistics Branch, February 2020 [https://www.psnipolice.uk/globalassets/inside-the-psni/our-statistics/domestic-abuse-statistics/2019-20/q3/domestic-abuse\\_bulletin-dec-19.pdf](https://www.psnipolice.uk/globalassets/inside-the-psni/our-statistics/domestic-abuse-statistics/2019-20/q3/domestic-abuse_bulletin-dec-19.pdf)

<sup>7</sup> Ibid

<sup>8</sup> Police Recorded Crime in Northern Ireland, PSNI Statistics Branch, October 2019

[https://www.psnipolice.uk/globalassets/inside-the-psni/our-statistics/police-recorded-crime-statistics/2019/september/crime\\_bulletin-sep-19.pdf](https://www.psnipolice.uk/globalassets/inside-the-psni/our-statistics/police-recorded-crime-statistics/2019/september/crime_bulletin-sep-19.pdf)

<sup>9</sup> kNOWMORE! NUS-USI Student Consent Survey, March 2019

<http://nus-usi.org/wp-content/uploads/2020/01/kNOWMORE-Report.pdf>

<sup>10</sup> <https://www.itv.com/news/utv/2018-12-18/1-220-reports-of-online-violence-towards-women-in-ni/>

gender must be included as a new category of hate crime specifically to tackle misogyny which is so prevalent in our society today.

Nottinghamshire Police made history in 2016 by becoming the first force in the UK to recognise misogyny as a hate crime. An evaluation report<sup>11</sup> into the policy highlighted a number of important findings which must be considered as part of this review:

- **Normalisation of misogynistic hate crime** - *“Misogyny hate crime is highly prevalent but still significantly under-reported, and continues to be so, two years after the inception of the policy in Nottinghamshire. This is partly due to the ‘normalisation’ of these incidents and people’s lack of knowledge that the policy exists.” “Within certain contexts, such as the night-time economy, groping and sexual assaults are commonplace and normalised.”*
- **Lack of knowledge of the existence/detail of the policy** – *“Once the focus group/interview participants who did not know about the existence of the policy had it explained to them, they thought it should definitely be rolled out nationally.” “Of those members of the public who knew of the existence of the policy, most were unaware of what the policy covered, exactly how to report the crime if it happened to them, and what would happen to them if they did report.”*
- **Confusion over terminology including what ‘misogyny’ and ‘hate crime’ mean** – *“Members of the public often struggled to know what Misogyny Hate Crime actually meant. Members of the public and the police viewed the term ‘misogyny’ as too elitist/academic. Members of the public also struggled to define ‘hate crime’.”*

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<sup>11</sup> Misogyny Hate Crime Evaluation Report, Univesity of Nottingham, Nottingham Trent University, June 2018

<https://www.nottinghamwomenscentre.com/wp-content/uploads/2018/07/Misogyny-Hate-Crime-Evaluation-Report-June-2018.pdf>

Results from the evaluation showed there is clear support for the policy from men and women in the general public, as well as victims who have reported. An important finding was that victims who reported did so because the policy change sent a very clear message to them that they would be taken seriously if they came forward and this often outweighed the desire for a conviction. The overall recommendations call for the policy to be rolled out nationally alongside publicity to increase reporting and education to help change behaviours.

Fawcett Society research has showed that gender is the most common cause of hate crime for women – there were 67,000 incidents of hate crime based on gender last year – 57,000 of which were targeted at women.<sup>12</sup> In releasing this data Fawcett Society Chief Executive Sam Smethers said: *“We have to recognise how serious misogyny is. It is at the root of violence against women and girls. Yet it is so common that we don’t see it. Instead it is dismissed and trivialised. By naming it as a hate crime we will take that vital first step.”*

Women’s Aid have said that: *“Domestic abuse does not just happen in a cultural vacuum. The everyday sexism that women experience daily – from the catcalls on the street through to being groped and sexual harassed in public places – creates a culture where it is ok for men to demean women. In short, it normalises abuse.”*<sup>13</sup>

The rise of the #MeToo movement has helped to show how widespread sexual harassment, assault and sexual crime is. It has also helped to create a climate which fosters increased reporting of these crimes and one where it is more likely that offenders are held accountable for their actions. However, this is just the start and there is much more work to be done to tackle the huge problem of sexual harassment and assault that exists in society today.

We therefore believe that recognising misogyny as a hate crime is an important step in making progress on the extent of this problem, in ensuring that it is taken more seriously and in providing victims with greater confidence in coming forward. It will also provide benefits in terms of statistical recording which is crucially important. Proper recording of incidents and

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<sup>12</sup> <https://www.fawcettsociety.org.uk/News/new-fawcett-data-reveals-gender-is-most-common-cause-of-hate-crime-for-women>

<sup>13</sup> Ibid

the availability of data on these crimes will help to determine the size and nature of the problem and the actions that need to be taken in this area.

Legislative reform on this issue however is only the beginning of the process. Any new law is only as good as how it is understood, implemented and used. In order for it to be effective it must be supported by adequate resources so that the police and the criminal justice system have the necessary information and training to properly recognise misogyny and to enforce the law. In addition, there is a need for a public awareness campaign so that everyone understands the law is there, how to use it and the implications for breaking it.

### Hate Crime and Transgender and Intersex Individuals

Trans individuals wishing to report a hate crime can do so, with the PSNI having updated their recording process for hate crime to include and collect data on transphobic hate crime. However, if this crime goes further through the judicial system to prosecution, usually the hate motivation will be dropped or misreported as a hate crime based on sexual orientation. The consultation offers some ways to begin addressing this gap, including by introducing 'gender', 'gender identity' and/or 'transgender identity' as protected characteristics. There has been some debate regarding what the best approach to take here is, and Transgender NI have agreed upon the following view which the WPG supports:

- Ensuring a strong working definition of hate crime is included in the legislation, incorporating the power dynamics of hate crime and the social hierarchies it reinforces. We recommend incorporating elements of the definition provided at 1.6 in the consultation document,
- Including 'gender' as a protected characteristic, in line with recommendations from the women's sector to ensure that this cannot be abused to target feminist groups,
- Not including 'gender identity' as a protected characteristic. The reasoning for this is simple: gender and gender identity are two terms which mean refer to the same concept and including them both in law would create the impression that there is some sort of hierarchy between the two terms. It risks creating the precedence in law that cisgender (non-trans)

people have a 'gender', but trans people only have a 'gender identity,' and opens the door to watered-down provisions and protections,

- Gender identity is correctly used in international human rights practice due to the wide range of gender diversity across the globe, especially in the Global South where terms like transgender do not neatly apply to or are rejected by gender diverse communities. In a UK legal context, transgender is an accepted term.
- Regarding the coexistence of gender and gender identity separately, although confusion exists the two effectively mean the same thing, and trans people who have accessed legal gender recognition in the UK or another recognised State are known in law to have an "acquired gender".
- Sex discrimination law also applies to trans people through the Sex Discrimination (Gender Reassignment) Regulations (Northern Ireland) 1999. The term "transgender status"/"transgender identity" provides for a more readily understood term, and one which persists with trans people as a legal tool should they access legal gender recognition etc.
- Including transgender identity as a protected characteristic, which avoids the confusion with the previous suggestion but allows for the specific reporting and data collection of transphobic hate crimes and incidents. This should be accompanied with an interpretation clause to recognise and include the experiences of non-binary and gender diverse individuals,
- Including intersex as a protected characteristic. Trans and intersex communities are overlapping and interconnected but still maintain distinct identities, experiences and needs. Many intersex people would not identify themselves as transgender, and it is important therefore to be able to capture experiences of interphobia in hate crime law,
- Allowing for reporting across multiple protected characteristics (intersectional reporting). This allows for the experience of the victim to be fully captured and represented throughout the reporting and judicial process.

## Online Abuse against Women

The issue of online abuse against women is extremely concerning. It has prompted the creator of the internet, Sir Tim Berners-Lee, to say that *“the web is not working for women and girls.”*<sup>14</sup> He said that while the world has made important progress on gender equality he is *“seriously concerned that online harms facing women and girls – especially those of colour, from LGBTQ+ communities and other marginalised groups – threaten that progress.”* Sir Tim said that *“for many who are online, the web is simply not safe enough”* and that online abuse *“forces women out of jobs and causes girls to skip school, it damages relationships and leads to tremendous distress. Relentless harassment silences women and deprives the world of their opinions and ideas, with female journalists and politicians pushed off social media and bullied out of office.”*

Judge Marrinan has acknowledged the issue of hateful abuse online as part of this Review citing the abuse that many female politicians both in Westminster and locally in the Northern Ireland Assembly have to endure often on a daily basis.

This is a significant issue as it has led to the resignation of a number of female MPs in recent years with obvious impacts for gender equality and ensuring that the voices of women are at the table. Heidi Allen stood down because of the *“nastiness and intimidation”* she faced as a politician. Luciana Berger said the abuse she faced made her *“physically ill”* so much so that she had to work with the police and security for her personal safety. She described the abuse as *“personal and sometimes very extreme in its nature. Sometimes its pornographic, sometimes violent, often very misogynistic.”*

Online abuse of some of Northern Ireland’s female politicians has prompted calls to establish a cross-party working group on misogyny. Cara Hunter, SDLP MLA and Deputy Mayor of Derry has been subjected to near-constant *“sexual and violent messages and threatening voicemails.”* DUP MLA Carla Lockhart said that online abuse was something she had become accustomed to. She explained *“any time there’s a picture of me on Twitter, no matter what it’s connected with, I will have someone picking on my appearance.”*

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<sup>14</sup> Why the web needs to work for women and girls, Sir Tim Berners-Lee, March 2020 <https://webfoundation.org/2020/03/web-birthday-31/>

There is a real need for action to prevent these online behaviours. It is important to have the best people involved in Government representing their communities. It is not possible to achieve this if women feel excluded from these positions due to this type of misogyny and online hate. Women make up half the population and their rights and interests cannot be adequately protected unless women are involved in positions of power and in Government. Misogynistic behaviour of this kind limits women's representation and visibility not just in politics but in other spheres and it is therefore vital that this is tackled. This Review provides an important opportunity for action to be taken on this issue.

## Relevant International Legislation and Recommendations

### CEDAW

Government has obligations under the UN Convention on the Elimination of All forms of Discrimination Against Women (CEDAW). CEDAW's General Recommendation 35<sup>15</sup> states that gender-based violence against women:

*“takes multiple forms, including acts or omissions intended or likely to cause or result in death or physical, sexual, psychological or economic harm or suffering to women, threats of such acts, harassment, coercion and arbitrary deprivation of liberty.”*

The General Recommendation also details the places in which gender-based violence against women occurs acknowledging new and developing forms of gender-based violence enabled through advances in technology:

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<sup>15</sup> General recommendation No.35 on gender-based violence against women, updating general recommendation No.19, CEDAW/C/GC/35, July 2017  
[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/GC/35&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/GC/35&Lang=en)

*“Gender-based violence against women occurs in all spaces and spheres of human interaction, whether public or private, including in the contexts of the family, the community, public spaces, the workplace, leisure, politics, sport, health services and educational settings, and the redefinition of public and private through technology-mediated environments, such as contemporary forms of violence occurring online and in other digital environments.”*

General Recommendation 35<sup>16</sup> provides for a number of general legislative measures that the Committee recommends that State parties implement:

*“Ensure that all forms of gender-based violence against women in all spheres, which amount to a violation of their physical, sexual or psychological integrity, are criminalized and introduce, without delay, or strengthen, legal sanctions commensurate with the gravity of the offence, as well as civil remedies.”*

*“Ensure that all legal systems, including plural legal systems, protect victims/survivors of gender-based violence against women and ensure that they have access to justice and to an effective remedy, in line with the guidance provided in general recommendation No. 33.”*

In its Concluding Observations for the UK Government the CEDAW Committee welcomed the adoption of measures to combat violence against women and girls in England, Wales and Scotland but were *“concerned about the lack of uniform protection of women and girls from all forms of gender-based violence across the jurisdiction of the State party, noting with particular concern the inadequacy of laws and policies to protect women in Northern Ireland.”*

<sup>17</sup> CEDAW recommends that the UK *“Adopt legislative and comprehensive policy measures to*

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<sup>16</sup> Ibid, para 29

<sup>17</sup> Concluding observations on the eighth periodic report of United Kingdom of Great Britain and Northern Ireland, Committee on the Elimination of Discrimination Against Women, Para 29 [https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fGBR%2fCO%2f8&Lang=en](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fGBR%2fCO%2f8&Lang=en)

*protect women from all forms of gender-based violence throughout the State party's jurisdiction including Northern Ireland.”<sup>18</sup>*

In its Concluding Observations the CEDAW Committee also recommended that the UK: *“Continue to implement the recommendations of the Women and Equalities Committee contained in the report of October 2018 on sexual harassment of women and girls in public places”<sup>19</sup>*

The Women and Equalities Committee report on Sexual harassment of women and girls in public places<sup>20</sup> showed that sexual harassment pervades the lives of women and girls. The report detailed the damage to victims of sexual harassment is far-reaching and experienced at a young age it becomes ‘normalised’ as girls move through life.

The report supported the UK Government’s approach of asking the Law Commission to review hate crime legislation: *“That review should consider whether categorising sexual harassment of women and girls in public places as a hate crime would bring substantive advantages to victims and achieve a reduction in the incidence of such harassment.”<sup>21</sup>*

The report also recommended that: *“Government should introduce a new law on image-based sexual abuse which criminalises all non-consensual creation and distribution of intimate sexual images, including altered images, and threats to do so. This should be a sexual offence*

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<sup>18</sup> Ibid, Para 30(b)

<sup>19</sup> Concluding observations on the eighth periodic report of United Kingdom of Great Britain and Northern Ireland, Committee on the Elimination of Discrimination Against Women, Para 41(b) [https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fGBR%2fCO%2f8&Lang=en](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fGBR%2fCO%2f8&Lang=en)

<sup>20</sup> Sexual harassment of women and girls in public places, House of Commons Women and Equalities Committee, October 2018

<https://publications.parliament.uk/pa/cm201719/cmselect/cmwomeq/701/701.pdf>

<sup>21</sup> Ibid, Para 86

*based on the victim's lack of consent and not on perpetrator motivation, and include an automatic right to life-long anonymity for the complainant, as with other sexual offences.”*<sup>22</sup>

### Istanbul Convention

The Council of Europe Convention on preventing and combating violence against women and domestic violence (the 'Istanbul Convention') condemns all forms of violence against women and domestic violence. One of the stated purposes of the Convention is to *“protect women against all forms of violence, and prevent, prosecute and eliminate violence against women and domestic violence.”* The Convention recognises that women and girls are exposed to a higher risk of gender-based violence than men.

The UK government is committed to ratifying the Convention. Article 40 of the Istanbul Convention states: *“Parties shall take the necessary legislative or other measures to ensure that any form of unwanted verbal, non-verbal or physical conduct of a sexual nature with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment, is subject to criminal or other legal sanction.”*<sup>23</sup>

### Commission on the Status of Women

The Commission on the Status of Women (CSW) is a UN Commission dedicated to the promotion of gender equality and the empowerment of women. In March 2019 it concluded its 63<sup>rd</sup> session with a strong commitment by UN Member States to safeguard and improve women's and girls' access to social protection systems, public services and sustainable infrastructure.

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<sup>22</sup> Ibid, Para 52

<sup>23</sup> Council of Europe Convention on preventing and combating violence against women and domestic violence  
<https://www.coe.int/fr/web/conventions/full-list/-/conventions/rms/090000168008482e>

The Commission stressed that: *“sexual harassment in private and public spaces, including in educational institutions and the workplace, as well as in digital contexts, leads to a hostile environment, which has a further negative impact on women and girls in the enjoyment of their rights and equal opportunities, including full and equal access to public services and sustainable infrastructure, and has negative and physical and mental health consequences for the victims and may negatively affect their families.”*<sup>24</sup>

The Commission urged governments to bear in mind: *“the importance of all women and girls living free from violence, such as sexual and gender-based violence, including sexual harassment, domestic violence, gender-related killings, including femicide, as well as elder abuse;”*<sup>25</sup>

As part of the Commission’s call to governments to take action to strengthen normative, legal and policy frameworks it urged governments to: *“Ensure that social protection, public services and sustainable infrastructure contribute to efforts to eliminate, prevent and respond to all forms of violence against women and girls in public and private spaces, through multisectoral and coordinated approaches to investigate, prosecute and punish the perpetrators of violence against women and girls and end impunity”*<sup>26</sup>

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<sup>24</sup> Social protection systems, access to public services and sustainable infrastructure for gender equality and the empowerment of women and girls, Agreed Conclusions, Commission on the Status of Women, March 2019, Para 14

<https://undocs.org/en/E/CN.6/2019/L.3>

<sup>25</sup> Ibid, Para 47(h)

<sup>26</sup> Social protection systems, access to public services and sustainable infrastructure for gender equality and the empowerment of women and girls, Agreed Conclusions, Commission on the Status of Women, March 2019, Para 47(h)

<https://undocs.org/en/E/CN.6/2019/L.3>

## Gillen Review

In May 2019 Judge Gillen published his report into the law and procedures in serious sexual offences in Northern Ireland.<sup>27</sup> This major review into how serious sexual crimes are handled by the judicial system has some obvious areas of overlap with the Hate Crime Review.

A number of the key recommendations from the Gillen Review will have resonance for any new hate crime legislation to tackle misogyny. Included in these were education for schools, the public and those working the justice system, measures to manage the dangers created by social media, the commissioning of research to gather knowledge and data on the prevalence, extent, nature and experiences of serious sexual offences and the consideration of alternative mechanisms such as restorative justice.

## New Decade, New Approach

New Decade, New Approach<sup>28</sup> has listed a Gender Strategy as a key supporting strategy that could underpin any new Programme for Government in Northern Ireland. We believe that this is vitally important in ensuring that Gender Equality is at the heart of Government decision making and in the development of future laws and policies for Northern Ireland. This would help to ensure that tackling issues such as sexual harassment, sexual violence, misogyny and sexual crime are priorities for the Northern Ireland Assembly.

Our colleagues in Women's Aid NI have been highlighting the lack of a Violence Against Women and Girls (VAWG) Strategy in Northern Ireland. Northern Ireland has no specific VAWG Strategy despite other parts of the UK including Scotland having its own Strategy. This was highlighted by the CEDAW Committee in its Concluding Observations (see section 2.6.1) for the UK Government. The development of a VAWG Strategy for Northern Ireland should

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<sup>27</sup> Report into the law and procedures in serious sexual offences in Northern Ireland, Gillen Review, May 2019

<https://www.justice-ni.gov.uk/sites/default/files/publications/justice/gillen-report-recommendations.pdf>

<sup>28</sup> New Decade, New Approach, January 2020, Page 27

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/856998/2020-01-08\\_a\\_new\\_decade\\_a\\_new\\_approach.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/856998/2020-01-08_a_new_decade_a_new_approach.pdf)

also have formed part of the New Decade, New Approach document in order to ensure that women and girls are protected from all forms of gender-based violence.

### Raise Your Voice

The WPG has several members that are partners in the 'Raise Your Voice' project<sup>29</sup>. This includes Women's Support Network (WSN), the Women's Resource & Development Agency (WRDA), Reclaim the Agenda and the Northern Ireland Rural Women's Network (NIRWN). Raise Your Voice is a project to tackle sexual harassment and sexual violence across Northern Ireland. This endemic problem will be approached in a variety of ways through working directly with the community, increasing public awareness, educating organisations on best practice and lobbying for legislative advances in this area.

Raise Your Voice was funded by the Rosa Fund for Women & Girls and Time's Up UK. It was launched in August 2019 and provides workshops on sexual harassment and violence. The goal of the project is to create true cultural change in order to tackle the root causes of these behaviours and empower people to act to change this in their own lives and communities. In Year 1 the project will work with women, girls and non-binary people and in Year 2 the project will work with men and boys. This project is doing vital work in local communities to raise awareness and to educate people on how to identify, challenge and prevent this type of behaviour. We believe that this type of work is invaluable in addressing the issue of sexual harassment and sexual violence.

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<sup>29</sup> <https://www.raiseyourvoice.community/>

## Chapter 1

### Hate Crime: Definition and Justification

#### Part 1: Definition

#### 1. What do you consider to be a hate crime?

A hate crime is an act of violence, hostility or intimidation directed towards people due to their identity or perceived identity. A wide range of incidents can constitute a hate crime if the incident or offence was motivated by, or provoked by, an existing bias. This can include, but is not limited to, verbal abuse, discriminatory practices, property damage, physical assault, online abuse and murder.

#### 2. Do you consider that the working definition of a hate crime discussed in this chapter adequately covers what should be regarded as hate crime by the law of Northern Ireland?

- **No**

We believe that this definition would adequately cover what should be regarded as a hate crime if it is supported by elements of the definition from Barbara Perry provided in section 1.6 of the consultation paper. Therefore, we believe the definition of a hate crime should be state that:

Hate crimes are acts of violence, hostility and intimidation directed towards people because of their identity or perceived 'difference'. These acts are usually directed toward already stigmatised and marginalised groups. As such, it is a mechanism of power and oppression, intended to reaffirm the precarious hierarchies that characterise a given social order.

#### Part 2: Justification for Hate Crime Law

#### 3. Should we have specific hate crime legislation in Northern Ireland?

- **Yes**

We agree with the statement in section 1.8 that hate crimes are unique in that the perpetrator is sending a message about the victim and their right to belong to that society. This view supports the definition of a hate crime provided under question 2 whereby hate crimes are a mechanism of power and oppressions, intended to reaffirm the precarious hierarchies that characterise a given social order.

With the rise in reported hate crimes in Northern Ireland, and the increasingly racial motivations behind hate crimes, it is imperative that robust legislation is created to mitigate against this. Existing legislation that deals with crimes motivated by a person's race, religion, sexual orientation or disability do not adequately reflect the intersectionality between a person's identity. Further, with the growing levels of gender-based violence alongside misogynistic and transphobic abuse towards women online, to name a few examples, it is necessary to have a form of hate crime legislation that incorporates gender and social media.

**4. Should hate crimes be punished more severely than non-hate crimes?**

- **Yes**

As hate crimes have additional consequences which set them apart from other crimes, it is necessary to have a more severe punishment for perpetrating a hate crime. In taking this approach, a clear message is sent to the criminal and to society that prejudiced behaviours will not be tolerated. In line with the OSCE approach outlined in sections 1.8-1.10 of the consultation document, we agree with the three main justifications outlined in section 1.11.

These are firstly, the symbolic value of the law as a reflection of the values of a society; secondly, criminal law penalises the harm caused and thus the offender's moral culpability is said to be greater than that of similar offences without elements of prejudice or hostility and, thirdly, hate crime law punishes the greater culpability of the perpetrator. These justifications further embed the view that society does not tolerate hatred or harm based on prejudice and bias. Furthermore, the impact of a hate crime on victims, and the wider community they are from, is likely to be much more significant than non-hate motivated incidents.

Denunciation of such crimes, through more severe punishments, sends a message to marginalised and victimised groups that they are valued as equal members of society who are worthy of respect. By taking such an approach by the State, this clearly eradicates disadvantage and prejudice.

## Chapter 6

### Operation of the Criminal Justice (NO.2) (Northern Ireland) Order 2004

5. **Do you think the enhanced sentencing model set out in the Criminal Justice (No. 2) (Northern Ireland) Order 2004 should continue to be the core method of prosecuting hate crimes in Northern Ireland?**

- **No** (If No, go to Question 7 (Chapter 7))

Given the steady rise of hate crimes in Northern Ireland in recent years, it is necessary to adopt a more effective response in the criminal justice system than what there has been to date. Enhanced sentencing has largely been treated as a symbolic gesture in a lot of cases dealing with hate crime in Northern Ireland. This is evident in past inspections by the Criminal Justice Inspection Northern Ireland, whereby evidence found that court clerks were unaware of provisions of Articles 2 and 4 of the 2004 Order ever being raised in court. In addition, since the 2004 legislation had been introduced, there has been extremely limited evidence of the prosecutor bringing a hate crime element of an offence to the court's attention: with even fewer examples of a judge imposing an enhanced sentence. Further evidence suggests that less than one percent of hate crimes recorded to the PSNI resulted in a conviction involving aggravation by hostility.

Over recent years reported hate crime incidents have been rising disproportionately in Northern Ireland compared to the rest of the UK when population sizes are considered. The failures of the enhanced sentencing model are particularly unsettling in recent years, where the growth of hate crimes have had limited impacts on defendants receiving an enhanced sentence; figures for 2018/19 show that for the rare number of hate crimes cases that made it to court, only 49 defendants out of a total of 138 received an enhanced sentence. Further,

since 2015, only four defendants convicted received an increased sentence where the judge accepted that the aggravating feature of the offence had been proven beyond reasonable doubt.

6. **If you think the enhanced sentencing model should continue to be the core method of prosecuting hate crimes in Northern Ireland, do you think it requires amendment?**

- N/A

We do not believe the enhanced sentencing model should continue to be the core method of prosecuting hate crimes in Northern Ireland due to the reasons outlined in our answers to throughout chapter 6.

## Chapter 7

Operation of the Crime and Disorder Act 1998 and the Criminal Justice Act 2003 in England and Wales and the Model in Scotland

7. **Do you think the statutory aggravation model as used in England and Wales and Scotland should be introduced into Northern Ireland law?**

- Yes (If Yes, go to Question 8)

8. **If you think that the statutory aggravation model used in England and Wales and Scotland should be introduced into Northern Ireland law, should it be introduced as well as or instead of the enhanced sentencing model?**

We believe that the statutory aggravation model should be introduced instead of the enhanced sentencing model due to the many limitations of the application of the enhanced

sentencing model outlined in question 5. In line with the views of Dr Robbie McVeigh, the model in GB is far from perfect but it is much better than the inadequate methods to address hate crime that currently exist in Northern Ireland.

One key reason for this is the fact that the proof of hostility will be examined during the trial under a statutory aggravation model, rather than after the trial when the offender has been found or pleaded guilty to the basic offence; as is the case with enhanced sentencing. In the latter, the sentencing judge decides upon the appropriate sentence but as the evidence suggests in the response to question 5, this has proven to be both under-utilised and ineffective in practice. This approach contradicts the three main justifications used for punishing hate crimes more harshly as the symbolic value of the law is not visible to the defendants or the court; the great moral culpability of the perpetrator of a hate crime is not highlighted. This compounded with the inconsistent records of the PPS, low levels of convictions and the rare increased sentences is evidence of the inadequacy of an enhanced sentencing model in accurately portraying the intolerance of hate crime in wider society.

Further issues with the enhanced sentencing model include failures to identify and investigate hostility at the appropriate time, inconsistency in sentencing practices and the imposition of unduly lenient sentences.

The benefits of the statutory aggravation model include:

- The symbolic effects of offences carrying an aggravated label and higher maximum sentences,
- Potential deterrent effects of extending the aggravated offences,
- Increased public awareness, confidence and reporting,
- Improved investigative and prosecution approaches,
- Higher maximum sentences,
- Greater “fair labelling” potential than enhanced sentencing,
- Benefits of a trial of the hostility element.

**9. Irrespective of whichever model is used (aggravated offences or enhanced sentencing), should there be specific sentencing guidelines for hate crimes in Northern Ireland?**

- **Yes**

Models can be unduly complex and other prosecution difficulties exist, it is necessary that specific sentencing guidelines are created. An effective model needs to be an operational model and any model brought into Northern Ireland needs to overcome the inadequacy of the current provision to effectively tackle rising hate crimes.

**10. Irrespective of which model is used (aggravated offences or enhanced sentencing provisions), do you think that courts should be required to state in open court the extent to which the aggravation altered the length of sentence?**

- **Yes**

This will increase awareness of the severity of hate crimes and act as an educational tool and deterrent. Further, this should increase the accuracy of PPS record keeping and data collection on hate crimes.

## Chapter 8

### Protected Groups – Should Additional Characteristics be added?

**11. Should gender and gender identity be included as protected characteristics in Northern Ireland hate crime legislation?**

- **Yes**

Although with regards to gender we must be mindful that this consultation already recognises that hate crime is most often directed toward “already stigmatised and marginalised groups. As such, it is a mechanism of power and oppression, intended to reaffirm the precarious hierarchies that characterise a given social order”. In this context it is vital that we recognise

that hate crimes based on gender are overwhelmingly targeted at women and girls, including transgender women and girls, and this definition should specify that misogyny, specifically, is the issue that must be addressed.

Incorporating misogyny into the definition of gender will, at least in principle, ensure that trans women are also able to report misogynistic hate crime. Including gender, alongside 'transgender identity', provides protection for individuals whether they are victimised because of one or both of these things. For instance, many trans women will experience hate crimes because they are trans, but also because they are women; it is important to recognise both experiences and be able to report hate crime across multiple characteristics where these overlap.

Regarding the coexistence of gender and gender identity separately, although confusion exists the two effectively mean the same thing, and trans people who have accessed legal gender recognition in the UK or another recognised State are known in law to have an "acquired gender". The term "transgender status"/"transgender identity" provides for a more readily understood term, and one which persists with trans people as a legal tool should they access legal gender recognition etc.

Misogyny is a motivator or aggravating factor in many crimes, including violent crimes like rape, domestic abuse, assault and murder, as well stalking, sexual harassment and more. Including misogyny as a category of hate crime will allow these crimes to be prosecuted for what they truly are; crimes motivated by hate. This will also allow the record of these crimes to accurately reflect what occurred, and will show up on background checks of perpetrators including in the checks allowed under the Domestic Violence Disclosure Scheme - an approach that will keep potential victims safer, as well as acting as a deterrent.

In addition to this, many crimes motivated by hate are motivated by more than one "type" of hate; for instance, they may be motivated by both homophobia and misogyny, or both race and misogyny. Including misogyny as a category can capture the intersectional nature of the issue and the true nature of the harm caused to the victim of the crime.

In jurisdictions that have already taken this approach eg in Nottinghamshire County in England, it has been a success – it greatly increases the confidence of victims in the police and

in surveys the majority of respondents who brought complaints to police reported feeling like their concerns were taken seriously and that they would encourage others to report (even if their case made it no further). This itself is a significant result, given that a fear of being mocked, derided or dismissed is one of the main reasons why victims don't report elsewhere. This tells us what we have long suspected: it means a lot to be seen, heard and taken seriously.

**12. Should Transgender identity be included as a protected characteristic in Northern Ireland hate crime legislation?**

- **Yes**

There currently exists a glaring flaw in hate crime legislation: the inability to adequately recognise, prosecute and address rising transphobic hate crime and hate speech. Transphobic hate incidents were previously mis-recorded as homophobic by the PSNI, and to this day, if a transphobic crime goes through to prosecution, the hate motivation is almost always lost or changed.

Given the prevalence of transphobia in our national and local media, the daily incitement to hatred many experience online, and the continued physical and verbal abuse and harassment trans individuals face, there is no question of the need for inclusion of transgender identity as a protected characteristic in any new hate crime legislation

Including transgender identity as a protected characteristic avoids the confusion with the previous suggestion and allows for the specific reporting and data collection of transphobic hate crimes and incidents. This should be accompanied with an interpretation clause to recognise and include the experiences of non-binary and gender diverse individuals.

**13. Should Intersex status be included as a protected characteristic in Northern Ireland hate crime legislation?**

- **Yes**

Trans and intersex communities are overlapping and interconnected but still maintain distinct identities, experiences and needs. Many intersex people would not identify themselves as transgender, and it is important therefore to be able to capture the nuanced and diverse experiences of interphobia in hate crime law.

**14. Should age be included as a protected characteristic in Northern Ireland hate crime legislation?**

We defer to our colleagues in the age sector and children's sector in answering this question.

**15. Should a general statutory aggravation covering victim vulnerability and/or exploitation of vulnerability be introduced into Northern Ireland hate crime legislation?**

We believe that there is a need to ensure the protection of older people given the ageing population and that this is likely to be a growing problem. We understand from the consultation that the introduction of a general statutory aggravation covering vulnerability could help with the issue of elder abuse if there was no specific characteristic for age.

However, we are unsure of the best way of dealing with the issues of vulnerability not just for age but for other characteristics including disability or incapacity. We note that the consultation states at paragraph 8.69 that this could add complexity and that paragraph 8.70 states that courts already take into consideration vulnerability issues when sentencing. It is therefore difficult for us to take a view on whether this would be beneficial or not.

**16. Should homeless status be included as a protected characteristic in Northern Ireland hate crime legislation?**

- Yes

**17. Do you consider any other new characteristics should be protected in Northern Ireland hate crime legislation other than those mentioned above?**

- Yes

We think there should be further consultation with sex worker led groups such as Sex Workers Alliance Ireland on the potential to include sex workers through any new hate crime legislation. In three jurisdictions in England local forces have made a decision to include sex workers in their hate crime policing, as a none formally recognised group Merseyside Police report this allows them when building cases to point to the targeting of vulnerability to make a case for enhanced sentences under existing sentencing aggravating factors. This approach also appears to have increased sex worker's confidence in reporting crimes to the police. We believe laws on sexual and violent crime should apply to all, regardless of whether someone is a sex worker or not. Within the trans community in particular, many of the most targeted and abused individuals are sex workers and existing legal frameworks governing sex work does not protect sex workers from these increasing levels of violence. In fact, evidence suggests the contrary as it acts as a deterrent from reporting abuse and violent acts against them. The legislation within Northern Ireland focuses on the reduction of demand for sex work, rather than focusing on protecting sex workers. Regardless of ones view on what model to address sex work is the best approach, we feel that sex workers still have the right to be free from being targeted through sexual and violent crime because of their status as sex workers. This is of particular importance as violence against sex workers in Northern Ireland has increased significantly since the introduction of legislation aimed at reducing demand by criminalising clients<sup>30</sup>. In addressing this increased, targeted violence, it is essential to recognise sex workers and their right to protection and support against hate crimes.

## Intersectionality

**18. Do you consider that intersectionality is an important factor to be taken into consideration in any new hate crime legislation?**

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<sup>30</sup> See Department of Justice (2019), 'A Review of the Criminalisation of Paying for Sexual Services in Northern Ireland', <https://www.justice-ni.gov.uk/news/report-published-impact-sex-purchase-offence>; Between 2015 and 2018 there has been an increase in the number of reports on the Uglymugs.ie website in relation to, for example, assaults (from 3 to 13) sexual assaults (from 1 to 13) and threatening behaviour (from 10 to 42); see Swarm, (2019), 'Nordic Model in Northern Ireland a Total Failure: No Decrease in Sex Work, But Increases in Violence and Stigma', <https://www.swarmcollective.org/blog/2019/9/20/nordic-model-in-northern-ireland-a-total-failure-no-decrease-in-sex-work-but-increases-in-violence-and-stigma>

- **Yes** (If Yes, go to Question 19))

American lawyer and scholar, Kimberlé Williams Crenshaw, introduced the theory of Intersectionality in 1989 and coined the term in 1993. This extremely influential theory explains how overlapping identities relate to systems and structures of oppression, domination or discrimination. The main argument behind this was that the experience of a black woman cannot be understood in terms of being black and of being a woman considered independently, but must include the interactions between the two, which frequently reinforce each other.

We believe that the above theory of intersectionality is crucial to understanding the experiences of hate crime victims, and marginalised groups more generally. We also agree with the view in 8.79 that hate crime policy has emerged through an identity of politics which tends to over-simplify victim groups and does not necessarily take into account the diverse and intersecting experiences of victims and the nuances of the harms that they might suffer. It is crucial to understand that a hate crime can be the outcome of multiple prejudices and in recognising this, a clearer understanding of the experience of victimisation and the commission of the offence can be gained. This approach would also allow for more comprehensive monitoring and responses to hate crimes by both the police and the PPS.

**19. If you consider intersectionality to be an important factor to be taken into consideration in any new hate crime legislation, what is the best way to achieve this?**

We believe that any new legislation should be able to accommodate the importance of intersectionality, particularly if the law protects all of the acknowledged characteristics equally; which we believe it should. Therefore, the judge should be able to apply multiple aggravating hostility-related factors at sentencing. For example, if someone was attacked for being both a woman and a Muslim, adding “multiple group hostility” would not suggest that they were harmed more than someone attacked solely for their religion or gender; but that their intersecting identities led to them being an even greater risk of being a victim of such hostility.

By incorporating the intersectionality approach, it will be possible to reflect multiple hostilities at both the offence/sentencing stage of a hate crime, in recording data and in understanding how to support victims; these are not mutually exclusive benefits. Further, in adopting “multiple group hostility”, this would enable the recognition of some crimes being intersectional. In order to overcome complications for judges and juries, well-explained guidelines and training should be made available based on the wealth of academic legal theory on intersectionality.

Difficulties in understanding on the parts of judges, juries and the police should not be a factor against incorporating intersectionality, as the current provisions are not fit for purpose and through adding this recognition, it better reflects the realities of motivations behind hate crimes and the impacts on victims. This would support wider efforts to identify, through data collected, the most common intersecting areas of prejudice and better protect people from these groups. As Northern Ireland does not have one single anti-discrimination act similar to the Equality Act, an updated hate crime model would address the inability to challenge discrimination, oppression and hostility under one form of legislation.

We support the view in 8.91 that a consolidated hate crime legislation can ensure all victims can expect the same level of justice through fully catering for intersectionality. Hate crime is often intersectional in nature and having legislation that does not reflect this would ignore the reality for many who are more likely to fall victim of hate crime due to their intersecting identities. For example, the majority of Islamophobic attacks in the UK are carried out by men against women; only an intersectional approach can fully address this injustice.

## Chapter 9

### Towards a new hate crime law for Northern Ireland

20. **If the enhanced sentencing model remains as the core provision for dealing with hate crime in Northern Ireland, should it be amended to provide for the recording of convictions on the criminal record viewer?**

- **Yes**

**21. Do you believe there is a need to introduce a statutory aggravation model of hate crime law similar to that which exists in Scotland and in England and Wales under the Crime and Disorder Act 1998?**

- **Yes** (If Yes, go to Questions 22 - 25)

Addressing hate crime through sentencing provisions alone, such as the enhanced sentencing model, will not ensure that the hate element of a crime will be consistently addressed from the point of recording through to sentencing. We believe that the introduction of the aggravated offences model would have a greater potential to address hate crime effectively, because it provides for a system-wide response to the criminalisation of the hate elements of crimes in a manner which enhanced sentencing fails to do.

It is important to note that in most jurisdictions, express hate crime laws are not necessary to police, prosecute or sentence prejudice-related crime as most of the conduct they target is already criminalised. Therefore, hate crime laws ‘top-up’ the traditional criminal law by imposing a heavier penalty than that which is applicable to parallel crimes. The imposition of an extra penalty for prejudice, bias, hostility and hatred is a core feature of hate crime law. This top-up feature has been neglected in the enhanced sentencing model in Northern Ireland and has been much more successful in other jurisdictions; therefore, we support an aggravated sentencing model that is embedded throughout all aspects of the criminal proceedings that includes statutory aggravations.

**22. In dealing with an aggravated offence, should the court state on conviction that the offence was aggravated?**

- **Yes**

**23. In dealing with an aggravated offence, should the court record the conviction in a way that shows that the offence was aggravated?**

- **Yes**

**24. In dealing with an aggravated offence, should the court take the aggravation into account in determining the appropriate sentence?**

- **Yes**

**25. (Part 1) In dealing with an aggravated offence, should the court state where the sentence in respect of the offence is different from that which the court would have imposed if the offence were not so aggravated, the extent of and the reasons for that difference?**

- **Yes**

**(Part 2) In dealing with an aggravated offence, should the court otherwise state the reasons for there being no such difference?**

- **Yes**

**26. Do you consider that aggravated offences should be recorded as such in criminal justice records so that statutory agencies and others are aware of the hostility element of an individual's criminal history?**

- **Yes**

We have answered yes to the above questions in chapter 9 as we believe these approaches are needed to embed the intolerance of hate crime in all aspects of the criminal justice system, as a means of increasing awareness of the consequences of perpetrating a hate crime, as a means of justice for the victim and to educate the wider public.

Due to the inconsistency in England and Wales in plying the CJA 2003 provisions, we believe Northern Ireland needs a model that incorporates aggravated offences rather than enhanced sentencing to reflect the more serious nature of aggravated offences than their counterparts. This can be seen as a recognition of the particular seriousness of hate crime, the greater culpability of the perpetrators and the greater harms it can cause. We believe this should be for all protected characteristics and not just race or religion due to the intersectionality of crimes and the failure of enhanced sentencing.

## Chapter 10

### Adequacy of the Current Thresholds for Proving the Aggravation Of Prejudice

27. **If any new hate crime law in Northern Ireland follows the statutory aggravation model as in Section 28(1) of the Crime and Disorder Act 1998, do you consider that the current thresholds of (a) demonstration of hostility, and (b) motivation are appropriate or should there be a third threshold: the “by reason of” threshold?**

We do not believe the thresholds above should also include the “by reason of” threshold. The demonstration test of Section 28(1) is complex; and we believe the introduction of this threshold would broaden the legislation and potentially make it weaker. We do not support this change as it moves away from the purpose of hate crimes legislation.

28. **If you consider that there should be a third threshold, do you consider that this should be in addition to the two thresholds of “demonstration of hostility” and “motivation”, or should there be a third threshold to replace the motivation threshold?**

We do not believe the third threshold should be in addition to the two thresholds.

29. **Do you consider that there should be a statutory definition of the term “hostility”?**

- **Yes** (If Yes, please provide a suggested definition in the box below)

As there is no current legal definition of hostility, we believe there should be a wide range of attitudes including “bias, prejudice, bigotry or contempt”.

30. **Whether or not you believe that the term “hostility” should be defined or not, do you consider that this term should be expanded to include other terms such as “bias, hostility, prejudice, bigotry or contempt”?**

We recognise the concerns outlined in 10.20 about the potential problematic consequences on the protected characteristic of gender in adding a third threshold. To address this, we draw back to our response to questions 11 and 12, where we specifically advocate for the explicit recognition of misogyny and transphobia when referencing gender. To avoid the unintended

consequence of the hostility threshold becoming too broad when relating to gender, it is possible to adopt the concept that the “offender selected the victim by reason of a bias towards the victim’s “group identity”. This would allow for a broader group selection test and remove the need for the word “hostility” and instead, include only cases where there is some element of bias towards the victim because of their identity.

## Chapter 11

### Stirring up Offences

**31. Do you consider there is merit in adding equivalent provisions to Sections 4, 4A and 5 of the Public Order Act 1986 to the Public Order (Northern Ireland) Order 1987?**

- **Yes**

It is important to criminalise conduct which encourages others to hate a particular marginalised group. Stirring up hatred encourages others to hate certain groups and it is important that hate crime legislation recognised the harm this causes through criminalising this conduct. Evidence outlined in paragraph 11.6 highlights that Part III of the Public Order (Northern Ireland) Order 1987 is rarely used and there is limited awareness of it.

Considerable evidence shows that hate speech, particularly racist hate speech, is on the rise. This type of speech incites acts of hatred and violence towards certain groups and is extremely damaging towards victims. Legislation needs to adequately address the severity of this.

**32. Should the dwelling defence under Article 9(3) of the Public Order (Northern Ireland) Order 1987 be retained?**

- **No**

This is an outdated form of legislation that does not reflect the modern reality of what is considered public. It is difficult to understand why stirring up hatred in a building is considered acceptable but the same act or expression of hatred outside of said building is an offence. Hateful acts, words or written materials displayed inside a dwelling can be as powerful in

inciting hatred and violence towards protected groups. For example, following the tragic murder of Jo Cox by Thomas Mair, the police found significant extreme nationalist, racist and far right materials and literature in his home (or dwelling). This highlights the extremely dangerous thoughts and behaviours that lead to harassment, violence and, in some cases, murder.

**33. Do you consider the requirement that the Director of Public Prosecutions gives consent to any prosecutions taken under Part III of the Public Order (Northern Ireland) Order 1987 to be necessary and appropriate?**

- **Yes**

We believe this will lead to consistency in the application of prosecution policies. There should, however, be room to review this process to ensure that this requirement is meeting its purpose.

**34. Do you consider the term “hatred” as the appropriate test to use in the Public Order (Northern Ireland) Order 1987?**

- **No**

The term ‘hatred’ is used without a definition in the Public Order Act 1986 and used with an arguably flawed definition in the Public Order (Northern Ireland) Order 1987. We also note the reason behind the argument in 11.57 of the consultation document whereby defining something by reference to itself is circular and unhelpful. We would agree that “hatred” is a stronger term than “hostility”. In creating legislation to deal with hateful behaviour that meets a criminal threshold, we believe that the use of the term “hatred” in the Public Order (Northern Ireland) Order 1987 sets the bar too high to enable the criminal justice system to tackle the rise in hate crimes. As the threshold for hate speech/incitement to hatred is high and unidentifiable in the aforementioned legislation, we agree with arguments set out in 11.58 that *“hatred should be defined by reference to concepts such as hostility, bias, prejudice, bigotry or contempt or that it should be replaced altogether by terms such as those”*.

35. **If gender, gender identity, age or other groups are included in the protected groups, should they also be included under the groups protected by the stirring up provisions in Part III of the Public Order (Northern Ireland) Order 1987?**

- **Yes**

Any additional groups protected under new hate crime legislation should also be protected under the stirring up provisions of Part III of the Public Order (Northern Ireland) Order 1987. The argument for the inclusion of the protection of gender is supported by several international treaties and forms of human rights legislation that relate to harassment. For example, through the Istanbul Convention on Violence Against Women<sup>31</sup>. Specifically, articles 34 and 40 deal with stalking and sexual harassment respectively.

Article 34 – Stalking

*Parties shall take the necessary legislative or other measures to ensure that the intentional conduct of repeatedly engaging in threatening conduct directed at another person, causing her or him to fear for her or his safety, is criminalised.*

Article 40 - Sexual harassment

*Parties shall take the necessary legislative or other measures to ensure that any form of unwanted verbal, non-verbal or physical conduct of a sexual nature with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment, is subject to criminal or other legal sanction.*

In England and Wales, the Anti-Social Behaviour Crime and Policing Act 2014 provides for Public Space Protection Orders (PSPOs). These have been used to prohibit protest and other activity outside clinics providing abortion services. However, this legislation does not apply to Northern Ireland and there are no equivalent powers in Northern Ireland legislation. In Northern Ireland pregnant people are relying on the Protection from Harassment legislation which simply is not adequate for women and pregnant people in these circumstances. Protection from Harassment legislation requires that the same person harassed the victim on

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<sup>31</sup> Istanbul Convention: <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210>

two or more instances. In terms of harassment outside abortion clinics many of the anti-choice protestors are aware of this law and change their behaviour so they target different people meaning that victims are unable to rely on this legislation for protection.

The UN CEDAW Inquiry into abortion law in Northern Ireland recommended the adaptation of a harassment provision to:

*“protect women from harassment from anti-abortion protestors by investigating complaints, prosecuting and punishing perpetrators.”<sup>32</sup>*

The adoption of such provisions is a legally binding duty on the NI Secretary of State in domestic law.<sup>33</sup> However, the abortion framework created through the Northern Ireland Office provides no such provision<sup>34</sup> as they stated *“this framework will not include any powers to establish exclusion zones in Northern Ireland”<sup>35</sup>*. In the absence of legislative provisions to protect abortion-seekers from harassment when accessing services, amending the aforementioned legislation on preventing harassment to include gender would be an effective remedy.

In general, UN CEDAW in relation to gender-based violence against women and girls has noted *“with particular concern the inadequacy of laws and policies to protect women in Northern Ireland”* and has called for implementation of the provisions of the Istanbul Convention.<sup>36</sup> This is in addition to general duties on states to take all appropriate measures to prevent acts which result in gender-based violence against women.<sup>37</sup> Such acts would encompass gender-

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<sup>32</sup> Report of the Inquiry concerning the United Kingdom of Great Britain and Northern Ireland under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW/C/OP.8/GBR/1) published on 6 March 2018.

<sup>33</sup> S9 [Northern Ireland \(Executive Formation etc\) Act 2019](#).

<sup>34</sup> NIO Abortion Framework:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/875380/FINAL\\_Government\\_response\\_-\\_Northern\\_Ireland\\_abortion\\_framework.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/875380/FINAL_Government_response_-_Northern_Ireland_abortion_framework.pdf)

<sup>35</sup> Ibid n4, 36.

<sup>36</sup> CEDAW [Concluding observations on the eighth periodic report of the United Kingdom of Great Britain and Northern Ireland](#), Adopted by the Committee at its seventy-second session (18 February–8 March 2019).

<sup>37</sup> [CEDAW general recommendation No. 35 \(2017\) on gender based violence against women](#) (para 24(2b)) ... States parties will be responsible if they fail to take all appropriate measures to prevent as well as to investigate, prosecute, punish and provide reparation for acts or omissions by non-State actors which result in gender-based violence against women...”

based incitement to hatred, harassment, intimidation and threats of provocation of violence against women as a group.

In addition, hate speech and incitement to hatred has been specifically targeted to trans people; especially trans women. This has become an accepted facet of our society, media and culture. Any new hate speech regulations that deal with the incitement to hatred must address this steadily worsening problem for the trans community. These are just some examples of how including additional groups in stirring up provisions in Part III of the Public Order (Northern Ireland) Order 1987 could further protect marginalised communities from targeted harassment and hatred.

In summary, we support the inclusion of additional groups to the stirring up provisions in Part III of the Public Order (Northern Ireland) Order 1987. The amendment of legislation should also consider additional obligations under international treaties and bodies such as the Istanbul Convention and the outcome of the CEDAW inquiry to create a robust form of legislation to adequately protect these additional groups from harassment, fear and hatred. This includes the offences of stalking, and harassment of a sexual nature (as required by the Istanbul Convention) and provisions to prevent the harassment of women and pregnant people accessing abortion services.

**36. Should the defences of freedom of expression present in the Public Order Act 1986 for religion and sexual orientation be specifically added as defences to Part III of the Public Order (Northern Ireland) Order 1987?**

- **No**

We do not believe that the defence of freedom of expression for religion and sexual orientation should be added. This would be creating a legislative provision to justify homophobia, sectarianism and anti-religious discourses.

**37. Should the express defence of freedom of expression for same-sex marriage in Article 8(2) of the Public Order (Northern Ireland) Order 1987 be retained in law or repealed?**

- **No** (repealed)

In line with our response to the previous question, we do not believe that the defence of freedom of expression for same-sex marriage should be retained in law. This defence should be repealed as it is a mean of justifying homophobia.

**38. Under Article 9(1) of the Public Order (Northern Ireland) Order 1987, should the test remain referring to a person using “threatening, abusive or insulting words or behaviour or displaying any similar written material which is threatening, abusive or insulting” or should the words “abusive” or “insulting” be removed from the test for the commission of the offence?**

We believe that the test should remain referring to a person using “threatening, abusive or insulting words or behaviour or displaying any similar written material which is threatening, abusive or insulting”. We do not support the narrowing of the test given the unreasonably high thresholds that have existed in proving hatred. We do acknowledge that this is a tricky area, and that it is a difficult balance between words being offensive or grossly offensive enough to be likely to stir up hatred. In line with the comments in 11.74 and 11.75 of the consultation notes, it is clear that there is little official guidance on interpreting the provisions of Part III of the 1987 Order and this should be an area for future clarification and work.

**39. If there are to be offences dealing with the stirring up of hatred against protected groups, do you consider that there needs to be any specific provision protecting freedom of expression?**

- **No**

Whilst we acknowledge that the balance between human rights protections and freedom of expression protections has long been debated when creating legislation, we still believe that the right to Freedom of Expression does not allow for the freedom to stir up hatred against protected groups. The importance of freedom of expression cannot be understated, however, there is a distinction between disagreements or slightly offensive statements and the stirring

up hatred, grossly offensive statements and the incitement of violence towards certain groups. As the problem of hate speech is on the rise globally, this requires an effective response from the entire criminal justice system.

It is clear that the protections of freedom of expression outlined in 11.64 can be complicated and difficult to interpret, however, the legislative framework for protecting freedom of expression already exists and there does not need to be a specific provision to address this within legislation tackling the stirring up of hatred. Improvements to the existing legislation highlighted in 11.64 is a matter for national courts rather than the creation of new hate crime legislation.

## Chapter 12

### Online Hate Speech

#### 40. **Should social media companies be compelled under legislation to remove offensive material posted online?**

- **Yes**

Given the huge rise in abuse towards minority groups online, it is abundantly clear that social media companies have a greater duty to ensure the speedy removal of offensive material online. This is particularly evident through the drastic rise in misogynistic and transphobic abuse directed towards cis and trans women online. Given the financial resources at the disposal of social media companies, they should be legally required to create adequate ways to remove offensive material in a fast manner. The existing policies for removing offensive material by sites such as Facebook, Twitter and Instagram often fail victims, as offensive and targeted abuse does not fit the algorithms or company-created thresholds to be removed. This is highlighted in 12.3 as:

*“Experts warn that AI [Artificial Intelligence] still falls dramatically short when it comes to policing “grey area” content, particularly hate speech or harassment, that requires understanding of nuance or knowledge of the latest slang”<sup>38</sup>.*

This is extremely problematic as the harm derived online can be extremely broad, through targeted abuse in public or private forums, creating an atmosphere of hate or fear through hateful or threatening comments or, worryingly, through the radicalisation of individuals as a part of global hate movements. Social media companies are platforming these views and enabling the spread of hate or fear, therefore, it should be their legal duty to address this.

This is crucial when it comes to gender, as cis women and trans women often face daily onslaughts of abuse, threats and harassment, particularly if they are in a public position of leadership. Social media can be an extremely toxic space for women and recent studies have found alarming levels of abuse towards women; something that worsens for intersectional groups such as women of colour, trans women, migrant women etc<sup>39</sup>. This abuse has immeasurable consequences for gender equality and the visibility of women and can intimidate protected groups and decrease their public presence on social media. This targeted discrimination and expression of hatred needs to be adequately dealt with by the social media platforms that enable it to grow through the permanency and reach of the internet.

**41. Are there lessons from the English and Welsh experience of the Public Order Act 1986 that may apply for Northern Ireland?**

- **Yes**

The Protection from Harassment (Northern Ireland) Order 1997 is wholly insufficient to address online hatred. Whilst it can be used against targeted online hate towards an individual, there are constraints highlighted in 12.37. One of the biggest constraints in the need for the perpetrator to be identified, which is increasingly difficult online as perpetrators

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<sup>38</sup> Murphy, H. (2019) “Can Facebook really rely on artificial intelligence to spot abuse?” *The Financial Times*, 8 November.

<sup>39</sup> Perraudin, F. and Murphy, S. (2019) “Alarm over number of female MPs stepping down after abuse” *The Guardian*, 31 October.

often opt on creating fake profiles to ensure anonymity. This fact highlights the importance of social media companies themselves being responsible for removing hateful content, as the PHO offers no recognition of the additional harm caused to the victim through an attack being carried out on a public platform nor is there any mechanism to request the removal of offensive or hateful materials. As the PHO does not mention hate, it is largely inapplicable to online hate crimes and lessons need to be learned from the English and Welsh experience of the Public Order Act 1986.

There are problems with using legislation what was created before the existence of social media to tackle hatred and harassment on social media platforms that include:

- Issues over jurisdiction as social media platforms are global in their nature and reach,
- The wide definition of publication which may not be appropriate for the internet,
- The existence of the outdated “dwelling” defence which does not reflect the operationalisation of the internet,
- The need for material to be both threatening/abusive/insulting **and** for there to be either an intention to stir up hatred/arouse fear or that there was a likelihood of hatred being stirred up or fear aroused,
- The need for consent for the Director of Public Prosecution’s permission for prosecuting online offences,
- The high threshold leading to very few offences being prosecuted make these particularly inappropriate for the sheer number of offences which occur online.

We support the recommendations outlined in 12.71 to deal with the above issues by amending some of the POA as follows:

- Stating that any materials downloadable in the UK fall within the jurisdiction of the UK,
- Amending the definition of the word ‘publication’ to include ‘posting’ or ‘uploading’ materials online,
- Removing the ‘dwelling’ defence as it is outdated,
- Consider removing the need for the Director of Public Prosecution’s permission for prosecuting online offences (particularly given the volume of online offences),

- Consider changing the wording from ‘stirring up hatred’ to ‘incitement to hostility or discrimination’.

These are some of the lessons that can be learned from the experience in England and Wales of the POA 1987, and how to amend legislation created before the introduction of social media to address the growing problem of hate speech through social media. Given the inadequacy of the PHO in Northern Ireland, these lessons above must be applied to any consolidated form of hate crime legislation dealing with online hate crime.

**42. Should the dwelling defence under Article 9(3) of the Public Order (Northern Ireland) Order 1987 amended/removed?**

- **Yes – (removed)**

As stated in question X, the dwelling defence is outdated and should be removed. This defence is particularly problematic in the context of the online world, as it ignores the large levels of hate speech that happen daily if posting these is done within one’s dwelling. It would, therefore, seem logical to remove this defence.

**43. Should the term “publication” in the Public Order (Northern Ireland) Order 1987 be amended to include “posting or uploading material online”?**

- **Yes**

As suggested in the answer to question 41 and in 12.71 of the consultation document, we support the view that it is necessary to amend the definition of the term “publication” to include ‘posting’ or ‘uploading’ online.

**44. Should there be an explicit defence of “private conversations” in the Public Order (Northern Ireland) Order 1987 to uphold privacy protection?**

- **Yes (if extremely clear criteria is provided)**

Whilst it can be argued that one of the basic principles of freedom of expression and the right to a private and family life is the right to private conversations, careful consideration is needed in the context of online conversations. In defining a ‘public’ or private’ conversation on social media, clarity is needed around whether being a member of a private Facebook group with thousands of members would still count for example. Given the large rise in radicalisation of groups on the far-right, neo-nazi groups and those supporting dangerous views of nationalism within “private” groups or forums, this defence needs to be adequately compared to the ability for such “private” groups to incite hatred or harm. Clear criteria is needed in any defence of “private conversations” in the context of online harm.

**45. Should gender, gender identity, age and other characteristics be included as protected characteristics under the Public Order (Northern Ireland) Order 1987?**

- **Yes**

Given the substantial evidence that exists on the significant amounts of abuse, threats, harassment and hateful behaviour women endure online, it is evident that the law needs to more adequately deal with this. As stated previously in this response, recognising the intersectionality of victims’ identities and the multi-faceted nature of targeted abuse towards groups with multiple identities, we believe all protected characteristics should be protected under the Public order (Northern Ireland) Order 1987.

**46. Should the Malicious Communication (Northern Ireland) Order 1988 be adapted to deal with online behaviour?**

- **Yes**

There is significant evidence of growing online abuse directed towards women because of their gender. The malicious nature of online abuse needs to be adequately dealt with by law. As stated in previous answers, there are many complications in applying legislation to online harms when the legislation was written before the existence of social media. In order to adequately address online harm, the Malicious Communication (Northern Ireland) Order 1988 needs to be adapted to deal with growing malicious behaviour online. A recommended adaptation would be to extend the reference of sending another person a “letter or other

article” to include electronic communications. The Malicious Communications Act 1988 which applies in England and Wales was amended in 2001 to explicitly bring within its ambit electronic communications. The Communications Act 2003 has also been adapted to deal with online behaviour; it would make sense to do the same with the Malicious Communication (Northern Ireland) Order 1988.

47. **Should the wording of the Malicious Communications Act 1988, the Malicious Communication (Northern Ireland) Order 1988, and the Communications Act 2003 use terms such as “grossly offensive”, “indecent” and “obscene”?**

- **Yes/No**

The Malicious Communications (Northern Ireland) Order 1988 makes it an offence to send another person a letter or other article which conveys:

- (i) A message which is indecent or grossly offensive,
- (ii) A threat; or,
- (iii) Information which is false and known or believed to be false by the sender; or,
- (iv) Any other article which is, in whole or in part, of an indecent or grossly offensive nature, if his purpose, or one of his purposes, in sending it is that it should cause distress or anxiety to the recipient or to any other person to whom he intends that it or its contents or nature should be communicated.

These concepts have parallels with several aspects of the Communications Act 2003, however, as stated in the answer to the previous question, the reference in the Malicious Communications (Northern Ireland) Order 1988 to “letter or other article” is unlikely to include electric forms of communication. In Northern Ireland, offences relating to electronic communications need to fall under other provisions such as the Communications Act 2003. Crucially, as stated in 12.76, the core of the offence lies in sending a communication that is indecent or grossly offensive; the impact on the victim or intended victim is not important.

In England and Wales, crimes prosecuted under the Malicious Communications Act 1988 have increased from 122 in 2005 to 897 in 2014. Whilst it is not possible to tell how many of these were online crimes; it is encouraging to see the increased awareness and prosecutions of malicious communications. In relation to the application of this legislation to cyber hate, there are some careful considerations needed around the wording that is applied. For a communication to fit under the MCA 1999, it must be found to be 'indecent' or 'grossly offensive'. The latter term is particularly problematic given that under the ECHR we do have the right to offend<sup>40</sup>. However, as stated in 12.78, our right to freedom of expression does not justify us intending to cause distress or anxiety. It is argued in 12.79 that the wording of the Malicious Communications Act 1998 through 'indecent' or 'grossly offensive' is consistent with our freedom of expression, but that these terms seem outdated for modern problems and the issue of cyberhate. For example, if an individual posts a grossly offensive statement on an online forum of likeminded individuals, the law is unable to deal with this as the defendant has not intended to cause anxiety to those they were communicating to. Whilst the individual is posting grossly offensive content, the offence is not made out, and this highlights the constraints of the updated Malicious Communications Act 1988 in dealing with cyberhate in England and Wales.

With the Communications Act 2003, there has been a similar trend in increased application. In 2005 there were 355 prosecutions under section 127(1) of the Communications Act 2003, and in 2015 there were 1,175. However, there are similar issues with the application to cyberhate. The core of the offence in this case lies in the need to safeguard the public communications system from being abused; something that made much more sense when the communications system was publicly funded. Similar to the MCA 1988 example above, this is a conduct crime and the offence lies in the making of the communication irrespective if it is ever received by anyone. This is broader than the MCA 1988, as there does not need to be a victim at all, nor do you need to show that the defendant intended to cause someone stress or anxiety. Under the CA 2003, you just need to show that the defendant sends a message that is grossly offensive, indecent, obscene or menacing. This would mean, as

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<sup>40</sup> Sunday Times v UK (No 2) [1992] 14 EHRR 229.

highlighted in 12.82, that a private conversation between two racists on holocaust denial would now be criminalised as it could be characterised as ‘grossly offensive’.

Therefore, this has created a debate on the compatibility of the CA 2003 with Freedom of Expression. Unlike MCA 1988, it is difficult to see how the CA 2003 wording would be compatible with ECHR Article 10(2) in a democratic society. Therefore, we feel that the wording included in legislation dealing with cyberhate and social media needs to be clearer to give citizens the ability to regulate their lives. We agree with the points in 12.86 that there needs to be a clearer articulation of the harm caused by cyberhate to ensure that offences are both clear and certain and come within the Article 10(2) exceptions. Wording that is applicable in a modern-day context needs to be used in order to ensure that legislation can effectively deal with instances of cyberhate both now and in the future.

**48. Are the offences under the Malicious Communications Act 1988, Malicious Communication (Northern Ireland) Order 1988 and the Communications Act 2003 too broadly drafted and require some modification to clarify and narrow their application?**

- **Yes**

Due to the extremely broad nature of the offences in the legislation mentioned above, coupled with the arguably outdated terms within them, it is possible that this breadth makes offences untenable, as noted in 12.87 and 12.88. Whilst it is extremely encouraging to see drastic increases in the number of prosecutions through these forms of legislation in recent years, it is important to ensure the wording of the legislation is adequate to fully address the nature of online crimes. The answer to the previous questions highlights some of the underreach, and overreach, of the forms of legislation and how they do not succinctly address the nature of cyber hate and online crimes.

The PPS in NI have introduced guidelines of prosecuting electronic communications; however, these have not been made public. For these laws to be functional, modification is needed to the wording of the legislation.

**49. Should online harm be part of a general law applying to hate crime?**

- **Yes**

A significant amount of harm directed towards women takes place online. Any hate crime law that is created should reflect the realities of the minorities it is trying to protect. We fully support the inclusion of online harm in the application of hate crime law. The existing legislation on communications in Northern Ireland is largely outdated and in need of modification. Therefore, online hate crimes are not adequately covered, and victims could be denied access to justice. With growing online misogynistic and transphobic hate crimes, it is vital that victims are adequately protected and that hate speech and abuse is not tolerated. If gender and transgender identities are to be included as protected characteristics, it is vital that the online harm is a part of general law applying to hate crime.

Similar to the comments made in answering question 4, including online harm as a part of a general law applying to hate crime sends a clear message to the criminal and to society that prejudiced behaviours will not be tolerated. In addition, this will help victims understand that this type of behaviour will be treated seriously by the criminal justice system as a whole and will help ensure that more victims come forward to seek justice. In the long run, this will hopefully assist in the reduction of biased, hateful or prejudiced attitudes and enable individuals from protected groups to live their lives visibly without feeling threatened.

**50. Is the current law contained in the Malicious Communications Act 1988, Malicious Communication (Northern Ireland) Order 1988 and the Communications Act 2003 sufficiently clear to protect freedom of expression?**

- **No**

The consultation document clearly highlights the inconsistencies in the MCA 1988 and CA 2003 in reference to freedom of expression under the ECHR. Clarity is needed in relation to the CA 2003 section 127(1). We would suggest that the laws are, in some cases, too broad and even contradictory, and could create significant difficulties in prosecuting instances of online harm. We agree with the need expressed in 12.86 of the consultation for “*a much*

*clearer articulation of the harm caused by cyberhate so that offences are both clear and certain, and come within the Article 10(2) exceptions”.*

## Chapter 13

### Sectarianism and Hate Crime Legislation in Northern Ireland

#### 51. **Would you support a specific reference to the term ‘sectarian’ within any new hate crime legislation?**

- **Yes**

The consultation sufficiently highlights the difficulties with the lack of a definition of sectarianism in much of the existing legislation and the inconsistencies and complexities that this causes. Other organisations will be presenting much more detailed evidence in their response to chapters 13 and 14, but we want to echo many of the calls for increased legislative powers to deal with sectarianism. This includes making a specific reference to ‘sectarian’ within any new hate crime legislation.

Dr Robbie McVeigh said of the existing laws dealing with sectarianism: *“In short, it would be difficult for anyone to argue that there is not a ‘problem’ with hate and hatred in contemporary Northern Ireland. In other words, it is not the absence of hatred in Northern Ireland that explains the absence of prosecutions for incitement to hatred. There is obviously something else going on – if the law is intended to prevent the profusion of hatred, it is not working very well.”*<sup>41</sup>

Both the United Nations and Council of Europe expert treaty bodies on racism have, when examining the UK, held that sectarianism in Northern Ireland is to be treated as a specific form of racism. When discussing sectarianism, the NI Human Rights Commission who have stated that *“this does not mean that sectarianism should not continue to be individually named and singled out just as other particular forms of racism are, for example, anti-Semitism or Islamophobia”*<sup>42</sup>. Given the difficulties to deal with sectarianism in existing criminal law,

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<sup>41</sup> Hate and the State: Northern Ireland, Sectarian Violence and Perpetrator-less Crime, Dr Robbie McVeigh, April 2017

<sup>42</sup> NI Human Rights Commission ‘Parallel Report to the Advisory Committee on the Third Monitoring Report of the United Kingdom on the Framework Convention on National Minorities, February 2011 paragraph 59.

we support including reference to ‘sectarian’, alongside a definition of the term, in any new hate crime legislation.

**52. Should the list of indicators for sectarianism (i.e. religious belief and political opinion) be expanded?**

**- Yes and No**

**Yes** - As alluded to in the previous answer, the lack of a widely accepted definition of sectarianism has led to negative impacts on policy and limited success in dealing with sectarianism through criminal law. In defining sectarianism for the purpose of hate crime legislation, sectarianism should be treated as a specific form of racism. This would involve nearly all the same grounds being included: race; language; religion; nationality or national or ethnic origin. The existing incitement to hatred legislation covers all these indicators except for language and we believe this is a necessary addition to the list of indicators due to the examples provided in 13.18.

**No** - ‘Political opinion’ is an indicator that is used in relation to anti-discrimination legislation. The differences in anti-discrimination legislation and hate crime legislation are outlined in 13.9 of the consultation document. One of the main concerns with expanding the list of indicators to include ‘political opinion’ when dealing with hate expression is that this would risk capturing legitimate political speech, and conflict with human rights obligations on freedom of speech such as ECHR Article 10. Due to this risk of criminalising protected political freedom of expression, we do not believe that political opinion is an appropriate indicator for incitement to hatred and hate crimes legislation capturing expressive behaviour. For example, when an LGBT+ rights protester at the 2017 Belfast Pride Parade held a “F\*ck the DUP” placard, the PSNI initiated criminal proceedings and questioning under caution of the woman holding the placard<sup>43</sup>. This led to an investigation under the ‘stirring up hatred’ provisions in the 1987 Order despite the incident not relating to any of the protected grounds listed in the legislation<sup>44</sup>. In this example, the placard against the DUP was not grounds for prosecution

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<sup>43</sup> See <http://www.irishlegal.com/11011/woman-will-not-prosecuted-f-dup-placard/>.

as it was not directed towards a group of persons defined by religious belief, disability, race, sexual orientation, colour, nationality or ethnicity.

## Chapter 14

### Removing Hate Expression from Public Space

#### 53. **Should the law relating to the duties of public authorities to intervene to tackle hate expression in public space be strengthened or further clarified?**

- **Yes**

In Northern Ireland, there are significant problems with racist, sectarian and homophobic hate expressions in public spaces. For instance, examples can be found across Belfast, and NI more generally, of graffiti or slogans that advocate genocide against certain communities (for example, 'Kill all Taigs, Kill all Huns) or homophobic and racist messages of a threatening nature (for example, 'gays out', 'no blacks', 'locals only' and 'Romas out'). Other forms of hate expressions in public spaces includes the extremely complicated nature of burning flags and other emblems in Northern Ireland. There have been examples of burning migrant community flags, rainbow flags, tricolour flags, Celtic Football shirts, effigies etc. Flags have also been placed in prominent positions in public spaces that include racist hate expression (for example, Nazi flags, Confederate Flags, apartheid South Africa flags) alongside flags associated with paramilitaries. These are often placed in an area or context to constitute sectarian or racist intimidation of persons living in a certain area.

Whilst the expression of hate in public spaces moves beyond gender, we believe that no form of hate expression is acceptable in a public space. Given the limited policy or interventions to date to deal with this issue by public authorities, we support the creation of a statutory duty on relevant public authorities to take reasonable steps to remove hate expression on their own property and, where it engages their functions, broader public spaces. This view is in relation to combating hate expression in public spaces and is not to be confused with wider debates and policy questions relating to flags and bonfires that do not relate to expressions of hatred.

## Chapter 15

### Restorative Justice

#### 54. **Should restorative justice be part of the criminal justice process in dealing with hate crime in Northern Ireland?**

- **Yes**

We believe restorative justice does have a place within the criminal justice process in dealing with hate crime in Northern Ireland. In paragraph 15.2 of the consultation document, restorative justice is described as a mechanism that *“gives victims the chance to meet, or communicate with, the relevant people who have harmed, to explain the impact the crime has had on their lives. This has the potential to help some victims by giving them a voice within a safe and supportive setting and giving them a sense of closure”*.

This is particularly important as it has been argued that the needs of hate crime victims are not always addressed through the conventional punitive approach and many victims may benefit further from restorative justice. Further, it is suggested in 15.4 that research illustrates restorative justice mechanisms reducing levels of anger, anxiety and fear and that they can prevent further incidents from recurring or escalating. It is also clear that punitive responses such as prison sentences can have limited deterrent value and can act as breeding groups for intolerance and hate. To reduce hate crimes in NI, a range of approaches are likely to be needed, including punitive measures, restorative justice, increased education etc.

However, any restorative justice process that is created needs to be led by victims entirely. Victims must not be put into a position where they can be pressurised by the offender, for example through the virtue of their relationship, to opt for restorative justice measures as an alternative to seeking punitive justice. Any form of restorative justice needs to work alongside the judicial system and be made up of adequately trained professionals. Further, restorative justice should only be an option in cases of “low-level” crimes. In order to test the effectiveness on reducing recurring incidents and increasing awareness, the changing attitudes or views of the perpetrator needs to be evaluated and tested.

**55. Should restorative justice schemes be placed on a statutory footing?**

- **Yes**

We believe that restorative justice schemes should be placed on a statutory footing, alongside the judicial system, to ensure the process has credibility and is less likely to be considered as a soft or alternative option. In addition, this would help ensure consistency in the application of restorative justice processes and enable the system to be completely victim-led and victim-focused.

**56. Should there be a formal justice system agency responsible for the delivery of adult restorative justice for hate crime?**

- **Yes (If Yes, go to Question 57)**

In Northern Ireland, it is clearly important for such a scheme to work effectively in relation to hate crimes, any agency must be accepted by and have the confidence of all parts of the community. In paragraph 15.14 important points relating to funding are raised, which relates to our points in the previous question that formality can create greater credibility for the process. As stated in 15.15, the likely provider would be the Probation Board for Northern Ireland and given that it currently enjoys this position, it would seem reasonable that this continues. However, if additional protected characteristics are to be catered to, it will be necessary for any formal justice system agency to work with the women's sector, transgender organisations, LGBT+ organisations, migrant groups etc. to ensure those professionals within the agency are fully aware of the needs of each sector and how to cater systems to work best for victims from these groups.

**57. What role do you envisage for the accredited community-based restorative justice organisations in the delivery of adult restorative justice for hate crime?**

The Women's Policy Group is made up of multiple organisations from across a range of backgrounds from the voluntary and community sector. As a result, we are very much representative of the needs of community-based organisations and work with women's

organisations, women's centres, LGBT+ organisations, charities, NGOs, trade unions and more. We know the value in having this trusted position among local communities and are deeply aware of the difference community-based work makes to the communities we serve.

Given the prominence of and trust in the community sector in Northern Ireland, we understand the utmost importance of a community-based approach. This is extremely pertinent when dealing with protected groups in NI, who often have low levels of trust and confidence in the police and criminal justice system given the track record of prosecuting hate crimes. In creating any restorative justice approach, it is important to have statutory backing to reflect this as a part of, and not separate to, the judicial process. Further, in delivering restorative justice, it is worth identifying the victims-groups that will place more trust in community organisations to represent their needs and ensure effective collaboration with these organisations.

**58. Do you consider diversion from prosecution is an appropriate method of dealing with low level hate crimes as per the practice in Scotland?**

- **Yes**

We support the diversion from prosecution in dealing with certain low-level hate crimes due to the benefits of restorative justice processes highlighted in our answer to question 54. However, if this is to be an option, we would stress that it needs to be a process that is given credibility within the justice system, is completely victim-led and that victim involvement is completely voluntary. In doing this, professionals working on alternative means such as restorative justice must be completely trained and aware of the power dynamics that may exist between victims and perpetrators. This is one of the reasons why we stress the need for involvement from community organisations that work with protected groups on a regular basis. Finally, this is not a straight-forward matter, and this must be assessed on a case-by-case basis; with the input from the victims themselves.

## Chapter 16

### Victims

**59. Do you have any views as to how levels of under reporting might be improved?**

- **Yes**

Sections 16.1 -16.4 of the consultation document provide extensive evidence on the under reporting of hate crimes and a number of reasons as to why this is the case. This includes:

- (i) Previous experience of or lack of confidence in the criminal justice system,
- (ii) A perception that police and criminal justice agencies are not interested,
- (iii) A perception of how said agencies will respond,
- (iv) A fear of a breach of privacy and being exposed to further incidents,
- (v) A lack of knowledge of the reporting system,
- (vi) Language difficulties,
- (vii) Personal status, e.g. immigration status,
- (viii) Perception that is acceptable for affected groups to be treated this way,
- (ix) Concern of the implications of the action, e.g. for members of the LGBT+ community being “outed”,
- (x) Fear of victimisation, retribution or reprisals,
- (xi) Concerns that no action will be taken.

These are not all the explanations but highlight just some of the reasons for under-reporting. These are concerns that exist not only in Northern Ireland, but in other regions too, as highlighted in 16.4. In order to improve levels of under-reporting, effort must be put in to understanding why victims have the above concerns. Clearly, this is an area where detailed research is needed to understand why hate crimes are under-reported in a Northern Ireland context. For this research to be effective, we believe collaboration with the community-based organisations that support affected groups should be included in this.

As hate crimes are not only under-reported, but on the rise in Northern Ireland, it is crucial that a significant body of work is undertaken to address the impact of hate crimes have on victims, such as those in the examples provided in 16.6. A multi-agency approach is needed alongside the criminal justice system to assist in improving hate crime reporting levels. This would also include civil society organisations that would be able to identify specific reasons for under-reporting and advocate for the improvements needed to increase the confidence of the affected groups. The community organisations across Northern Ireland have spent

decades gaining the trust of the communities they represent and collaborating with these groups could lead to an improvement in reporting.

Creating robust laws that can be effectively applied to address all forms of hate crimes are crucial. This review is a huge body of work, and for any new legislation to be effective, collaboration with the third sector is crucial. In addition to this, wide-spread training and educational programmes will be needed to support this and to send a powerful message that this type of behaviour is unacceptable in our society. For example, age-appropriate education in schools on the harms of misogyny will hopefully reduce the number of offences, but also increased awareness among victims on the unacceptability of misogyny and the support available to them in reporting this and seeking justice.

Laws will remain symbolic, or worse, tokenistic, if the ability to fully implement them is not there. Collaboration, education, training and support is crucial to the success of any hate crime legislation review.

**60. Do you consider that the Hate Crime Advocacy Scheme is valuable in encouraging the reporting of hate crime?**

- **Yes**

We believe the Hate Crime Advocacy Scheme is extremely valuable in supporting victims and encouraging the reporting of hate crimes. As stated in 16.4, victims found the service to be trust-worthy and evaluations indicated high-levels of user satisfaction. As stated in the answer to the previous question, victims may trust community organisations more and through creating hate crime advocacy schemes within community-based organisations that already support each protected group, it is likely that reporting will increase and victims will be better supported throughout the reporting process.

**61. Do you consider that the Hate Crime Advocacy Scheme is valuable in supporting victims of hate crime through the criminal justice process?**

- **Yes (If Yes, go to Question 62)**

Section 16.4 of the consultation document highlights the outcomes of the Criminal Justice Inspection Northern Ireland report into the Hate Crime Advocacy Scheme. Crucially, this raised the issue that *“some victims stated that they would have abandoned their complaints had the advocacy service not provided support”*. In stepping forward to report a hate crime, it is absolutely crucial that a victim feels supported enough to go through with the rest of the reporting process and it is clear that the scheme supports victims in continuing with their complaints.

As hate crime reporting is worryingly low, the above report would suggest that reporting would be even lower without the scheme as victims would not feel confident enough or fully supported to continue the process. The criminal justice system can be very daunting, and when compounded with the reasons for under-reporting highlighted in the answer to question 59, it is clear that support is needed for all victims. The Hate Crime Advocacy Scheme is a crucial service that breaks down what can be an overwhelming burden of seeking justice through the criminal justice process.

**62. How might the current Hate Crime Advocacy Scheme be improved?**

Consistent and multi-year, sustainable funding is needed to enable the Hate Crime Advocacy Scheme to reach its full potential. This involved creating funding pots for further advocates to be created across the community sector to ensure all protected groups have an advocate they can approach. Further, funding must be introduced to better advertise the scheme to ensure all victims are aware of the support available. Finally, effort must be taken to ensure protected groups in rural communities are able to access the scheme.

**63. Do you consider that the funding model for the Hate Crime Advocacy Service should be placed on a permanent basis as opposed to the present annual rolling contract model?**

- **Yes**

This will lead to greater consistency within the Hate Crime Advocacy Service and enable providers to build upon existing skills regularly rather than facing staff retention issues due to short-term funding contracts. This will lead to an improved service that can better support

victims of hate crime. Guarantees must be made to ensure that funding for the Hate Crime Advocacy scheme is increased substantially to reflect any new protected characteristics. Finally, this funding should be protected from any reduced budgets or austerity, as justice for victims cannot be lost due to financial decision-making.

**64. Do you consider that, in certain circumstances, press reporting of the identity of the complainant in a hate crime should not be permitted?**

- **Yes** (If Yes, go to Question 65)

**65. In what circumstances should a restriction on press reporting of the identity of the complainant in a hate crime be permissible?**

Restrictions should be permissible in instances where the victim faces the risk of being re-victimised. For example, outing a LGBT+ person by identifying them as a victim of a hate crime due to their sexual orientation or transgender identity can put them at greater risk of further homophobic, transphobic, biphobic crimes. It is important that a victims consent is given to their identity being released in press reporting to ensure greater harm is not inflicted through sensationalist reporting.

Further, within the context of Northern Ireland, it may be necessary to restrict reporting on the identity of victims of sectarian crimes due to evidence of intimidation and control within communities from perpetrators of these crimes.

The complications of special measures to protect victims are pertinent in populations as small as Northern Ireland, which was identified in the recent Gillen Review into the law and procedures of serious sexual offences in Northern Ireland<sup>45</sup>. Regardless, measure to protect victims should still be introduced in appropriate cases and victims should be consulted throughout.

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<sup>45</sup> Report into the law and procedures in serious sexual offences in Northern Ireland, Gillen Review, April 2019, Paragraph 29

## Chapter 17

### Legislation: Consolidation and Scrutiny

**66. Do you believe that there is benefit in bringing all hate crime/hate speech legislation in Northern Ireland together in one consolidated piece of legislation?**

- **Yes**

We consider the consolidation of hate crime legislation to be a necessary step to simplify and bring consistency to how hate crimes are handled within the criminal justice system in Northern Ireland. Many of the existing laws referenced throughout this consultation are outdated, do not cover enough protected characteristics, are under-utilised or misunderstood and do not recognise crucial elements of hate crimes including intersectionality and online hate crime/cyberhate. We agree with the comments in 17.6 that consolidation could *“be said to be helpful in raising awareness and understanding of hate crime”*.

**67. Should any new legislation on hate crime be subject to post-legislative scrutiny?**

- **Yes** (If Yes, go to Question 68)

**68. In what way should post-legislative scrutiny be provided for?**

There should be at least two independent reviews following the implementation of any new legislation. This should include extensive consultation with the voluntary and community sector as supporters and service providers to many marginalised groups and victims. Further, any future consultations or evidence gathering as a means of post-legislative scrutiny should be made accessible to all groups. As highlighted by our colleagues in the Committee on the Administration of Justice (CAJ) in 17.12 of the consultation, *“there is little value in amending or complementing current legislation with additional protections, if these provisions are left unused or underused in the statute book”*.

We recommend following this guide on [Women at the Heart of Public Consultation](#).

ENDS

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For any questions or queries about this consultation response, please contact:

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