

Women's Policy Group NI

WPG NI Statement on the Law Commission Hate Crime Report - December 2021

The Women's Policy Group (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, LGBT+ organisations, migrant groups, support service providers, NGOs, 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. The WPG represents all women of Northern Ireland, and we use our group expertise to lobby to influence the development and implementation of policies affecting women.

The WPG is endorsed as a voice that advocates for all women of Northern Ireland on a policy level. This group has collective expertise on protected characteristics and focus on identifying the intersectional needs of all women.

The WPG would like to express our extreme disappointment in the recent report from the Law Commission on the review of Hate Crime. This review stated:

*"Sex or gender" should **not** be added to the protected characteristics for aggravated offences and enhanced sentencing as it would be ineffective at protecting women and girls and in some cases, counterproductive.*

For example, if applied in the context of rape and domestic abuse it could make it more difficult to secure prosecutions and create unhelpful hierarchies of victims. However, if these contexts are excluded, it would make sex or gender very much the poor relation of hate crime characteristics, applicable only in certain, limited contexts.

However, the Commission has made a number of recommendations to provide greater protection:

- *Extending the offence of stirring up hatred to cover stirring up hatred on the grounds of sex or gender. This would help to tackle the growing threat of extremist misogynist “incel” ideology, and its potential to lead to serious criminal offending.*
- *A government review of the need for a specific offence to tackle public sexual harassment, which would likely be more effective than adding sex or gender to hate crime laws.*

Many women and women’s organisations across Northern Ireland will be extremely disappointed and frustrated by the response of the Law Commission, in which they have made a u-turn and decided not to recognise misogyny as a hate crime. Further, the Law Commission has failed to recognise the deep systemic nature of misogynistic hate crimes.

It is extremely disappointing that in refusing to recognise misogyny as a hate crime, the Law Commission has also failed to offer any alternative to address widespread levels of male violence towards women, misogynistic hate crimes and the deep failures to deal with these crimes within the criminal justice system.

The essence of the argument made by the Law Commission is twofold; it argues both that recognising misogyny as a category of hate crime would not do enough to address violence against women and girls, and it argues further that it could also be counterproductive to any such efforts.

The Commission took the “provisional” view that two of their three criteria were met in determining whether misogyny - or indeed gender more broadly - should be included as a category, namely that there is evidence that these kinds of crimes are prevalent (“demonstrable need” and that such crimes cause “additional harm”), both to the victim, to other members of the group, and to society as a whole.

It disagreed as to the third criteria, suitability; in other words whether or not “protection of the characteristic would fit logically within the broader offences and sentencing framework, prove workable in practice, represent an efficient use of criminal justice resources, and is consistent with the rights of others”.¹

With regards to the potentially harmful consequences that the Law Commission outlines, many of these amount to an argument that, because certain types of crimes (sexual attacks by strangers, violence by men against women within heterosexual relationships, etc) are more likely to be classified as a hate crime, a kind of hierarchy of violence will be created. This is one of the arguments that must be parsed carefully because, while sentencing may be more severe for incidents categorised as hate crimes, this does not necessarily imply a hierarchy of harm

¹ Law Commission Hate Crime Report p.130

<https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsou24uy7q/uploads/2021/12/Hate-crime-report-accessible.pdf>

caused to the victim/survivor or of seriousness, and it is not intended to. More work should be done to dispel the idea that a certain type of conviction (or, indeed, any conviction at all) means that some incidents are more serious when in fact they are simply different - harm is very particular to the individual and the individual circumstance.

A further concern outlined related to the burden of proof, where the argument is that these incidents are often difficult to prove anyway, especially so because they so often take place behind closed doors, for example the difficulties associated with securing a conviction for sexual violence. This is self-evidently a problem, but it is a problem independently of the addition of a hate crime aggravator. As with our involvement with the Gillen Review and the outworkings of that, our position is that this is an area that needs particular, dedicated work to address irrespective of this question.

Resourcing, the third area of concern, is not in our view a sufficient concern for not broadening the categories of hate crime. It is almost absurd to argue that a crime is too prevalent to be tackled; resources must be found, rather than arguing that certain kinds of harm ought to be dismissed. It is especially absurd in relation to the argument that a hierarchy of crimes might be created by introducing misogyny as a hate crime - what does it communicate to the public if we argue that it is such a large problem that it's too expensive to take seriously?

A further concern outlined in the report is whether hate crime is the appropriate or most suitable way to look at VAWG, given how individualised domestic abuse, in particular, can be, and the fact that victims of this abuse are not always women. It is certainly the case that domestic abuse is very individualised, and that not all cases of domestic abuse - or any other crime where the victim is a woman - will be motivated by misogyny, but it was never central to the argument that all crimes against women are so motivated. It is important that we discuss this in more detail at a later date.

The final issue outlined was concerns about "double-counting" in other words that adding to the sentences for crimes such as rape, which already have the potential to carry long sentences, would be unjust. It also suggests that "it might be argued that the length of these sentences implicitly accounts for the fact that in many cases, they are targeted towards women."² It then seems to contradict this, noting that the seriousness of the sentence is designed to capture the nature of the harm done to the victim/survivor, and the harm done by the betrayal of trust when such harm takes place within relationships. This is true regardless of the gender of the victim or the perpetrator, and the sentencing guidelines do not vary to accommodate those factors, with good reason - the sentence is measured against the harm, not the motivation for the crime.

² Ibid. p.133

We have attached a summary briefing to this statement, which highlights the WPG recommendations made in relation to the recent Northern Ireland Independent Review of Hate Crime Legislation in Northern Ireland. Within this, we summarise:

- Why we need to recognise hate crimes towards women and girls,
- recognising the severity of misogyny in our society,
- incorporating intersectionality into the legislation,
- the harm of a gender-neutral approach to hate crime,
- the 'by reason of' threshold,
- International mechanisms and obligations,
- Introducing misogyny as a statutory aggravator and,
- Concluding remarks.

The full WPG Hate Crime Legislation Review Public Consultation Response can be viewed [here](#). In addition, we have gathered significant evidence, data and recommendations relating to all forms of Male Violence Towards Women and Girls within our [WPG COVID-19 Feminist Recovery Plan](#), which we believe the Law Commission should consider.

The WPG will provide a more detailed response to the Law Commission report in early 2022. For now, the WPG wants to express our extreme disappointment in the position taken by the Law Commission.

For questions or queries regarding this statement, please contact Rachel Powell, Women's Sector Lobbyist - rachel.powell@wrda.net.

ENDS

Women's Policy Group NI

WPG Response to Department of Justice Response to Hate Crime Review – December 2021

This summary has been developed by the Women's Policy Group (WPG) in response to the [response](#) by the Department of Justice in July 2021 to Judge Marrinan's Hate Crime Review in December 2020. It will summarise WPG recommendations on recognising gender, and specifically misogyny, as a motivator of hate crime against women and incorporating intersectionality into hate crime legislation. The Independent Hate Crime Legislation Review provides an important opportunity for action to be taken on this issue. The WPG made several recommendations in its consultation response to the Independent Hate Crime Review in 2020, which can be read in full [here](#).

i. Gender as a Protected Characteristic (in reference to section 15 of Department of Justice Response):

In our Consultation response, the WPG called for gender to be included as a protected characteristic under new hate crime legislation. Although the WPG welcome Judge Marrinan's recognition that gender should be included as a protected characteristic, the WPG remain concerned about the hesitancy by both Judge Marrinan and the Department of Justice to specifically recognise gender-based hate crime as a crime that disproportionately and overwhelmingly impacts women, and one which is primarily caused by misogyny towards women (please see Annex 1). The WPG understand that the Department of Justice will be undertaking further work on considering the inclusion of gender as a protected characteristic and are keen to engage with the Department on this work.

The WPG specifically calls on the Department to avoid taking a "gender-neutral" approach and to instead specifically recognise women and girls as a Protected Characteristic. The reasoning behind this recommendation is connected to the purpose of developing hate crime legislation. Hate crime reinforces long-established patterns of discrimination and crime towards marginalised groups. Accordingly, hate crime legislation should be targeted to protect those groups experiences such crime, including women and girls. Issues associated with adopting a "gender-neutral" approach are expanded upon in section iv. This is the first ask from the WPG and should be complimented by recognising misogyny as a statutory aggravator as highlighted in section ii and section vi.

ii. Misogyny

Misogyny is defined as the dislike of, contempt for, or ingrained prejudice against women. These feelings and beliefs are motivators of hate crime against women, and the law should regard them as such. Misogynistic hate crime has particular impacts for women from ethnic minority backgrounds, LGBTQ+ women, and disabled women.

The WPG, alongside many of our colleagues in the women's sector and LGBTQI+ sector, have long campaigned for misogyny to be recognised as a motivator of hate crime in Northern Ireland. For instance, the Raise Your Voice project has successfully achieved cross-party support for a motion across a number of local councils in Northern Ireland which calls for misogyny to be recognised as a hate crime. Further, a motion was also unanimously passed in the Northern Ireland Assembly on 23rd March 2021 which stated:

*“That this Assembly condemns violence against women and girls in all forms; notes with concern that Northern Ireland is the only place on these islands that does not have a specific strategy to tackle gender-based violence and abuse; regrets that the Executive is failing to meet its international obligations in this regard; and calls on the Executive to take immediate action to eliminate gender-based violence by introducing a Violence Against Women and Girls Strategy that is fully resourced **and underpinned by legislation to make misogyny a hate crime**, and to introduce standardised, comprehensive Relationship and Sexuality Education in our schools to eradicate sexist attitudes and build lifelong, positive relationships³.”*

In line with the support for misogyny to be recognised as a form of hate crime across local councils and the NI Assembly, we are calling on the Department to formally recognise Misogyny as a Statutory Aggravator in Hate Crime Legislation in Northern Ireland.

iii. Intersectionality

Within the initial WPG response to the Hate Crime Review, we advocated for the concept of intersectionality to be incorporated into hate crime legislation. The WPG welcomes that the Department has accepted recommendation number 11, that any new legislation will recognise the importance of intersectionality and will be included in the drafting of the new legislation, in recognition of victims who are subject to hate crime. In doing this, it is crucial that the definition of intersectionality accurately reflects multiple and intersecting levels of harm that victims face due to systemic structures of oppression, domination and discrimination.

Within our initial response, we defined intersectionality as:

“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

³ <http://www.niassembly.gov.uk/assembly-business/marshalled-list-of-amendments/23-march-2021/>

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.”

The factors which make someone a target of hate crime can be intersectional and may be related to multiple types of hostility towards a person’s identity. For example, an ethnic minority woman wearing a headscarf on the street might be attacked by an individual through prejudice or hostility relating to her race, religion *and* gender. We believe that intersectionality is crucial to understanding the experiences of hate crime victims, and marginalised groups more generally, and should be incorporated into new hate crime legislation. This would provide a clearer understanding of the experience of victimisation and the commission of the offence.

Judges should be able to apply multiple aggravating hostility-related factors at sentencing. For example, if a Muslim woman was attacked by a perpetrator motivated by both misogyny and islamophobia, adding “multiple group hostility” would not suggest that she was harmed more than someone attacked solely for their religion or gender; but that the intersecting harms of racism, misogyny, islamophobia and sectarianism means that their attack can be motivated by these multiple hostilities rather than just one. This approach better reflects the realities of motivations behind hate crimes and the impacts on victims. It would also support wider efforts to identify, through data collection, the most common intersecting areas of prejudice and better protect people from these types of crimes.

The WPG welcome the acceptance by both Judge Marrinan and the Department of Justice of the inclusion of transgender identity as a protected characteristic in hate crime legislation (Section 13 of Department of Justice Response). The WPG believe that this provision should also specifically include non-binary and gender non-conforming people and we welcome the enhanced protections for these gender minorities. These groups should be given specific protections, rather than being protected generally under the category of ‘gender’. Incorporating intersectionality into hate crime legislation in this way would ensure the full and equal protection of transgender and non-binary people. A statutory aggravator of misogyny would protect *both* trans women and cis women because trans women can experience both misogyny and transphobia separately or together (through trans misogyny).

iv. Harm of Gender-Neutral Protected Characteristic

There is no substantiated evidence of instances of gender-based hate crime towards men. This is not to say that men do not experience hate crime, but that men are not victims of hate crime as a result of

their gender. In contrast, there is substantial evidence that women are victims of hate crime as a result of their gender, acts which are driven by misogyny. This includes misogynistic online abuse against women, which is particularly visible against women in public roles, such as female politicians.

It is crucial that the Department of Justice avoids taking a “gender neutral” approach to the inclusion of gender as a motivator of hate crime. There are several reasons why this approach is harmful to women, not least because the provision could be abused to remove focus from misogynistic violence and other abuse against women and girls. This approach would be based on the problematic idea that, rather than protecting women and girls from hate crime they already experience as a result of their gender, men and boys should be equally protected from hate crime that they could potentially experience in the future, as a result of their gender. Existing tangible threats to women and girls’ safety should not be treated with equal weight to potential and unlikely threats to men, based on non-existent evidence regarding gender-based hate crime towards men and boys.

v. Harm of ‘by reason of’ threshold

The WPG recommend *against* the introduction of a ‘by reason of’ threshold as a way to determine when a crime becomes a hate crime, in line with recommendations put forward by the Committee on the Administration of Justice (CAJ). As noted by CAJ, the ‘by reason of’ threshold would “likely apply to all protected characteristics and move hate crimes away from being tied to ideologies of hatred. For example, if the victim was targeted for a crime *because* they were a man, by another man, this could then constitute a hate crime, even though there is no evidence of ideology of hatred of men as a group.” This could leave hate crime legislation open to being exploited by groups that do not face systemic and structural discrimination at the expense of those who do face this oppression, on the basis of protected characteristics.

The WPG share concerns raised by CAJ that the introduction of this threshold does not reflect the primary purpose of hate crime legislation: to protect marginalised groups against a type of crime that seeks to reinforce long-established patterns of discrimination and ideologies of hatred. For example, hate crime motivated by racism seeks to reinforce racist structures that uphold white supremacy. Similarly, hate crime motivated by misogyny seeks to reinforce patriarchal structures upheld by sexism. Accordingly, hate crime legislation should be targeted at protecting marginalised groups who are impacted by these ideologies of hatred from such crime, including women and girls.

vi. Statutory Aggravation Model

The WPG support recommendations by CAJ to replace the enhanced sentencing model with the statutory aggravation model, which should be applied to all protected characteristics, including gender. Under this model, misogyny could be recognised as a statutory aggravator, in the same way that the Department is considering introducing a “sectarianism aggravator” to hate crime legislation dealing with sectarianism (Section 17 of Department of Justice Response). There is also a broader range of offences relating to harassment and other conduct within the review that could be tailored to become aggravated offences that are relevant to tackling misogynistic crime.

Hate crime against women constitutes a form of gender-based violence, and must be addressed as such. The misogyny aggravator would achieve this, while also underlining that hate crime motivated by misogyny is driven by societal norms and attitudes, with gender power relations and male privilege a primary factor in both misogyny and gender-based violence.

vii. International Standards and Obligations

As a State Party to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)⁴, the UK, including all the devolved administrations, has an obligation to protect women from all forms of discrimination, including gender-based violence. This is clearly stated throughout the Convention, and highlighted in Articles 1-3, which emphasise the obligation on states to introduce legislation that prohibit all forms of discrimination of women and protect women from “any act of discrimination” (Article 2). In addition, Article 5 introduces an obligation to act on gender stereotypes, which are relevant in the context of misogyny and hate crime in that misogyny both drives and utilises gender stereotyping, which often informs how perpetrators of hate crime choose their victims.

In its Concluding Observations on the examination of the UK in 2019⁵, the CEDAW Committee expressed concern regarding the inadequacy of legislation and policies in Northern Ireland to protect women from gender-based violence, and recommended that the State Party adopt legislative and comprehensive measures to address the situation. The Concluding Observations also include a recommendation relevant to all jurisdictions in the UK to take action on sexual harassment of women and girls in public places, workplaces and educational institutions. The Inquiry into abortion legislation in Northern Ireland under the Optional Protocol to CEDAW underlines the need to protect women and pregnant people accessing abortion clinics and family planning services from harassment, and includes a recommendation to introduce protection zones around clinics⁶. This is currently being implemented through the Abortion Services (Safe Access Zones) Bill⁷.

CEDAW General Recommendation 35⁸ on gender-based violence clarifies the concept of gender-based violence as a social phenomenon as opposed to an individual level issue, and provides further guidance on action required by State Parties to protect women and girls in line with this understanding. This includes strengthening legal measures, including sanctions, as well as civil remedies. The General Recommendation also highlights that violence and harassment is increasingly perpetrated in the online sphere, and that action is required to protect women and girls.

The General Recommendation requires States parties to CEDAW to “have an effective and accessible legal and legal services framework in place to address all forms of gender-based violence against women

⁴ [CEDAW](#) 1979

⁵ CEDAW Committee (2019) [Concluding Observations on the 8th periodic report of the United Kingdom of Great Britain and Northern Ireland](#)

⁶ CEDAW Committee (2018) [Inquiry into abortion legislation in Northern Ireland under Article 8 of the Optional Protocol to CEDAW](#), see paragraph 86 (g) for recommendation.

⁷ [Abortion Services \(Safe Access Zones\) Bill](#) 2021

⁸ [CEDAW General recommendation No.35](#) on gender-based violence against women, updating general recommendation No.19, CEDAW/C/GC/35, July 2017

committed by State agents, whether on their territory or extraterritorially.”⁹ The Recommendation also requires State parties to ensure that state actors have appropriate training to effectively implement legislation and policy, including prosecuting offences. In addition, it places an onus on States parties to harmonise legislation with CEDAW, and ensure that all practices that can be considered gender-based violence come within the scope of such legislation.

A misogyny aggravator would, therefore, be in line with international human rights standards and would help ensure Northern Ireland legislation is fully compliant with CEDAW.

viii. Concluding remarks

The WPG understand that simply including misogyny as a motivator of hate crime in legislation will not necessarily prevent the hate crime from happening. However, this would be demonstrably helpful in underlining the prevalence and seriousness of these crimes. It would mean that we could yield statistics on these crimes to understand their true extent and impact, and would facilitate the provision of support to victims. Further, recognising misogyny as a motivator of hate crime in law could also encourage the introduction of educational efforts aimed at prevention work. Updated hate crime legislation should also include the creation of a legal framework that recognises the importance of intersectionality, to adequately reflect the experiences and identities of victims and motivations of perpetrators.

Signed,
The NI Women’s Policy Group

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⁹ CEDAW General Recommendation 35, paragraph 22.

Annex 1

Comments by the Department of Justice in Section 15 of its response:

“It will be important to consider the concerns of some that the addition of any new protected group may dilute the function of the hate crime legislation and that it would cease to be about protecting disadvantaged minorities... It is also possible these issues may be best addressed via mechanisms already ongoing, for example... The Executive Office work on the development of a Violence Against Women and Girls Strategy. Further work will be required on the inclusion of age and sex/gender as protected groups and will be subject to further consultation.”