



**Women's Regional  
Consortium**

## **Consortium for the Regional Support for Women in Disadvantaged and Rural Areas**

### **Response to: Hate crime legislation in Northern Ireland**

**Issued by: Hate Crime Independent Review**

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**WOMEN'STEC**  
Enabling women into non-traditional employment

Foyle Women's  
Information  
Network



# **Women's Regional Consortium: Working to Support Women in Rural Communities and Disadvantaged Urban Areas**

## **1. Introduction**

**1.1** This response has been undertaken collaboratively by the members of the Consortium for the Regional Support for Women in Disadvantaged and Rural Areas (hereafter, either the Women's Regional Consortium or simply the Consortium), which is funded by the Department for Communities and the Department of Agriculture, Environment and Rural Affairs.

**1.2** The Women's Regional Consortium consists of seven established women's sector organisations that are committed to working in partnership with each other, government, statutory organisations and women's organisations, centres and groups in disadvantaged and rural areas, to ensure that organisations working for women are given the best possible support in the work they do in tackling disadvantage and social exclusion.<sup>1</sup> The seven groups are as follows:

- ♀ Training for Women Network (TWN) – Project lead
- ♀ Women's Resource and Development Agency (WRDA)
- ♀ Women's Support Network (WSN)
- ♀ Northern Ireland's Rural Women's Network (NIRWN)
- ♀ Women's TEC
- ♀ Women's Centre Derry
- ♀ Foyle Women's Information Network (FWIN)

**1.3** The Consortium is the established link and strategic partner between government and statutory agencies and women in disadvantaged and rural areas, including all groups, centres and organisations delivering essential frontline services, advice and support. The Consortium ensures that there is a continuous two-way flow of information between government and the sector. It also ensures that organisations/centres and groups are made aware of consultations, government planning and policy implementation. In turn, the

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<sup>1</sup> Sections 1.2-1.3 represent the official description of the Consortium's work, as agreed and authored by its seven partner organisation

Consortium ascertains the views, needs and aspirations of women in disadvantaged and rural areas and takes these views forward to influence policy development and future government planning, which ultimately results in the empowerment of local women in disadvantaged and rurally isolated communities.

**1.4** The Women's Regional Consortium appreciates the opportunity to respond to the Independent Review on Hate Crime Legislation in Northern Ireland.

## **2. General comments**

### **2.1 Accessibility of Consultation Document**

We have some concerns about the length and complexity of the consultation document. The main consultation document runs to 310 pages long with a total of 68 consultation questions. The abridged version is still lengthy at 165 pages. The sheer length of the document can do much to deter respondents from taking part in the process.

We acknowledge that a shorter online survey is available to complete and that is to be welcomed. However we would suggest that online-only means are insufficient to reach some people particularly those who are the most isolated and vulnerable. There are issues with broadband access (particularly in rural areas) and cost implications with some the most disadvantaged unable to afford the extra costs associated with internet use.

Despite the focus on plain language and accessibility many public consultation documents contain jargon and policy terms which mean very little to ordinary people. WRDA guidance for public authorities on consulting with women<sup>2</sup> says that: *"the terminology can create a language barrier or make the respondent feel like they don't know enough to take part."* Unfortunately this is the

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<sup>2</sup> Women at the Heart of Public Consultation, A guide for Public Authorities and Women's Organisations, WRDA, November 2017  
[https://wrda.net/wp-content/uploads/2018/10/WRDA\\_WomenAtTheHeartOfPublicConsultation.pdf](https://wrda.net/wp-content/uploads/2018/10/WRDA_WomenAtTheHeartOfPublicConsultation.pdf)

experience of some of the women we spoke to about this consultation. There was a sense that it was too “*high level*” for them and they did not feel it was something that they would be able to respond to.

The language used in the document is often complex containing legalistic terminology. We understand it may be difficult to avoid the use of more complex language in a consultation of this nature. However the guidelines state that when government consults it must: “*make sure the document is as simple and concise as possible.*”<sup>3</sup>

This is a complex area and there is much to read and understand about the proposals. The consultation is therefore challenging and can be difficult to understand particularly if the reader does not have a legal background. For some groups especially those who are more marginalised it is difficult to properly consult their views and some may have felt excluded from this process due to a lack of understanding of the complex legal issues included in the consultation.

We do however acknowledge the outreach work carried out by the Independent Review around the content of the consultation. These events provided a valuable opportunity for people to have their say. We acknowledge Judge Marrinan’s statement at the Belfast Hate Crime Workshop<sup>4</sup> “*I don’t want anyone to feel shut out of the conversation.*” We also acknowledge the willingness of the Judge and the Review Team to meet with the women’s sector to explore further the issues contained within this consultation which has proved most valuable in making this response.

## **2.2 Format of the Consultation Questionnaire**

The Consortium has concerns about the format of the consultation questionnaire. It asks many questions which have a ‘yes/no’ format followed by a space to expand the answer. As WRDA guidance on public consultations<sup>5</sup>

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<sup>3</sup> nidirect <https://www.nidirect.gov.uk/articles/public-consultations>

<sup>4</sup> Hate Crime Workshop, Queen’s University Belfast, 12<sup>th</sup> February 2020

<sup>5</sup> Women at the Heart of Public Consultation, A guide for Public Authorities and Women’s Organisations, WRDA, November 2017

states: *“the binary ‘agree/disagree’ nature of many questions hides the complexity of how people feel about different issues.”* We would urge extreme caution on using statistics on responses to these binary questions as the basis for making conclusions on the proposals. The answer to these ‘yes/no’ questions needs careful analysis alongside the accompanying text.

### **2.3 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>6</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.

A report from the House of Commons Women and Equalities Committee<sup>7</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

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[https://wrda.net/wp-content/uploads/2018/10/WRDA\\_WomenAtTheHeartOfPublicConsultation.pdf](https://wrda.net/wp-content/uploads/2018/10/WRDA_WomenAtTheHeartOfPublicConsultation.pdf)

<sup>6</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)

<sup>7</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>

many people fail to recognise it. This makes it even more difficult to see the 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>8</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 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>9</sup>*

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<sup>8</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>

<sup>9</sup> Gendering the ‘post-conflict’ narrative in Northern Ireland’s peace process, Niall Gilmartin, Trinity College Dublin, December 2018

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>10</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:

- 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>11</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>12</sup>
- From October 2018 to September 2019 the PSNI recorded 2,423 sexual offences and 1,023 reports of rape.<sup>13</sup>

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<sup>10</sup> J. Darby and R. McGinty, *The Management of Peace Processes: Coming Out of Violence Project*, Darby and McGinty, (London: Macmillan 2000) p.260

<sup>11</sup> Domestic Abuse Incidents and Crimes Recorded by the Police in Northern Ireland, PSNI Statistics Branch, February 2020 [https://www.psni.police.uk/globalassets/inside-the-psni/our-statistics/domestic-abuse-statistics/2019-20/q3/domestic-abuse\\_bulletin-dec-19.pdf](https://www.psni.police.uk/globalassets/inside-the-psni/our-statistics/domestic-abuse-statistics/2019-20/q3/domestic-abuse_bulletin-dec-19.pdf)

<sup>12</sup> *Ibid*

<sup>13</sup> Police Recorded Crime in Northern Ireland, PSNI Statistics Branch, October 2019

- 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>14</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>15</sup>

## 2.4 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 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>16</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*

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

<sup>14</sup> kNOwMORE! NUS-USI Student Consent Survey, March 2019

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

<sup>15</sup> <https://www.itv.com/news/utv/2018-12-18/1-220-reports-of-online-violence-towards-women-in-ni/>

<sup>16</sup> Misogyny Hate Crime Evaluation Report, University of Nottingham, Nottingham Trent University, June 2018

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



*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’.”*

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>17</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.”*

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<sup>17</sup> <https://www.fawcettsociety.org.uk/News/new-fawcett-data-reveals-gender-is-most-common-cause-of-hate-crime-for-women>

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 sexually harassed in public places – creates a culture where it is ok for men to demean women. In short, it normalises abuse.”*<sup>18</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 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.

## **2.5 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>19</sup> He said that while the world has made

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<sup>18</sup> Ibid

<sup>19</sup> Why the web needs to work for women and girls, Sir Tim Berners-Lee, March 2020

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 it’s 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 MP 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.”*

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.

## **2.6 International Recommendations**

### **2.6.1 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>20</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:

*“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,*

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<sup>20</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)

*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>21</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>22</sup> CEDAW recommends that the UK *“Adopt legislative and comprehensive policy measures to protect women from all forms of gender-based violence throughout the State party’s jurisdiction including Northern Ireland.”*<sup>23</sup>

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<sup>21</sup> Ibid, para 29

<sup>22</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

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<sup>23</sup> Ibid, Para 30(b)

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>24</sup>

The Women and Equalities Committee report on Sexual harassment of women and girls in public places<sup>25</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>26</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 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>27</sup>

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<sup>24</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>25</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>26</sup> Ibid, Para 86

<sup>27</sup> Ibid, Para 52

### 2.6.2 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>28</sup>

### 2.6.3 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.

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*

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<sup>28</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>

*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>29</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>30</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>31</sup>

## **2.7 Gillen Review**

In May 2019 Judge Gillen published his report into the law and procedures in serious sexual offences in Northern Ireland.<sup>32</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

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<sup>29</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>30</sup> Ibid, Para 47(h)

<sup>31</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>

<sup>32</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>



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.

## **2.8 New Decade, New Approach**

New Decade, New Approach<sup>33</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 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.

## **2.9 Raise Your Voice**

WSN is proud to be a partner in the 'Raise Your Voice' project<sup>34</sup> alongside our colleagues in 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

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<sup>33</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)

<sup>34</sup> <https://www.raiseyourvoice.community/>

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.

We would like to see this type of community-based work developed and adequately resourced so that it can support and complement any new hate crime definition around misogyny. As previously outlined any new legislation is only as good as the knowledge, training and education around it and we believe that projects such as Raise Your Voice are crucial in helping to achieve this among the general public and in society in general.

### 3. Specific comments

Please see below our comments in relation to the specific questions asked in the consultation document.

## CHAPTER 1

### HATE CRIME: DEFINITION AND JUSTIFICATION

#### PART 1: DEFINITION

##### QUESTION 1: What do you consider to be hate crime?

We refer to the definitions given in the consultation document at paragraph 1.6. We agree with the simple, broad definition of hate crime provided by Chakraborti and Garland as *“acts of violence, hostility and intimidation directed towards people because of their identity or perceived “difference”*”. However we would also like to see an additional aspect included within Barbara Perry’s more comprehensive description around the fact that it is *“usually directed toward already stigmatized and marginalized groups. As such, it is a mechanism of power and oppression, intended to reaffirm the precarious hierarchies that characterise a given social order.”*

##### QUESTION 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?

Yes

No

Please see answer to Question 1 above.

#### PART 2: JUSTIFICATION FOR HATE CRIME LAW

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

Yes

No

We are in favour of having specific hate crime legislation in Northern Ireland. We believe in the symbolic value of the law and that it is as the consultation suggests at paragraph 1.11 *“a powerful expression of society’s condemnation of certain offences as especially reprehensible, and deserving of greater punishment.”* Having specific hate crime legislation sends a powerful message that this type of crime exists and that those in power are committed to addressing it.

As Schweppe notes in research *“the absence of legislation ‘means the hate element of a crime is being ignored by the criminal justice process, and by introducing legislation, will ensure that the hate element is addressed.”*<sup>35</sup>

If there is no specific hate crime legislation then it could be argued that victims, perpetrators and the criminal justice system are even less likely to recognise it and therefore take action against it. This is evidenced in the small number of arrests and charges under the current legislation for dealing with hate crime incidents.

Hate crime is a growing issue in Northern Ireland as noted in the consultation at paragraph 3.1. *“In Northern Ireland, during 2016, there were over eight hate incidents reported to the police every single day. When population is considered, this figure is higher than the equivalent rate in England and Wales.”* Given Northern Ireland’s particular circumstances violence has become normalised and many have become accustomed to the routine use of violence in many aspects of society. It is therefore particularly important for Northern Ireland to have specific hate crime legislation so that it is explicitly named and these actions are clearly identified as crimes. This would also help the public to understand that there are identifiable consequences for these type of actions.

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<sup>35</sup> Legislating Against Hate Crime: Considering International Frameworks for an Irish Context, Jennifer Schweppe, Trinity College Dublin, August 2019

We believe that the introduction of specific hate crime legislation would be an important step in recognising the extent of this issue and in working to prevent and reduce this type of crime in Northern Ireland.

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

Yes

No

We believe it is important that these type of crimes are punished more severely than non-hate crimes and agree with the three arguments set out in paragraphs 1.11 and 1.12 of the consultation. Many jurisdictions around the world also share this view as noted at paragraph 1.13.

The fact that hate crimes are punished more severely than non-hate crimes sends a powerful message that society will not tolerate this type of behaviour and when it does happen it will be dealt with more severely. If these laws are properly used and enforced, they should help to act as a more powerful deterrent against hate crime.

The consultation outlines the OSCE arguments in paragraphs 1.9 and 1.10 that hate crimes cause greater harm to victims than ordinary crimes and that communities who share the characteristics of the victim may also be frightened and intimidated. The feelings of vulnerability and harm to the individual and their community as a result of a characteristic they are unable to change are felt very deeply. This can potentially have far reaching consequences including security and public order problems. This must therefore be reflected in any punishment for hate crime offences.

By taking the approach of punishing hate crimes more severely government can lead by example and work to tackle prejudice by showing that marginalised and victimised groups are valued and worthy of respect.

## CHAPTER 6

### OPERATION OF THE CRIMINAL JUSTICE (NO. 2) (NORTHERN IRELAND) ORDER 2004

**QUESTION 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?**

- Yes (If Yes, go to Question 6)
- No (If No, go to Question 7 (Chapter 7))

It is clear, given the low number of successful prosecutions for hate crime, that the existing method of prosecuting these crimes in Northern Ireland is not working. This is against the backdrop of evidence that hate crime is a growing problem here as outlined in the consultation.

Criminal Justice Inspection Northern Ireland (CJINI) Reports over a number of years (referred to in paragraphs 6.3 to 6.5 of the consultation) have highlighted lack of knowledge of provisions of the legislation among court staff. They have also highlighted that since the introduction of the legislation there had only been 13 occasions when the prosecutor had brought a hate crime element to the court's attention and from those 11 occasions when an enhanced sentence was imposed by the judge.

Figures from the Public Prosecution Service (PPS) referenced in paragraphs 6.7 and 6.8 of the consultation also give cause for concern and point to the fact that existing methods are not working.

Indeed it is damning of the existing method of prosecuting these cases that Dr Neil Jarman concluded that a *“hate crime recorded by the PSNI had less than a one per cent chance of resulting in a conviction involving aggravation by hostility.”*<sup>36</sup>

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<sup>36</sup> Acknowledgment, Recognition and Response: The Criminal Justice System and Hate Crime in Northern Ireland, Dr Neil Jarman, April 2017

In order to tackle this issue it is important that a more effective method is used to prosecute hate crimes.

**QUESTION 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?**

- Yes
- No

We do not believe the enhanced sentencing model should continue to be the core method of prosecuting hate crimes in Northern Ireland as outlined above.

## **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**

**QUESTION 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)
- No (If No, go to Question 9)

We think that the statutory aggravation model as used in England, Wales and Scotland should be introduced into Northern Ireland law. Our answer to Question 5 and the evidence and statistics provided in the consultation document point to the fact that the existing enhanced sentencing model currently in place in Northern Ireland is not working and an alternative model is needed.

**QUESTION 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 used in England, Wales and Scotland should be introduced into Northern Ireland law instead of the

enhanced sentencing model. Our response to Question 5 points to the fact that the existing enhanced sentencing model is not working in Northern Ireland.

Dr Robbie McVeigh made some damning conclusions about Northern Ireland's current legislation and policy in this area stating that "*Northern Ireland provides a textbook example of how not to address hate crime.*" He argues that Northern Ireland should follow the England and Wales model rather than the current enhanced sentencing model saying that it does not work in practice and arguably cannot work in principle.<sup>37</sup> Dr McVeigh does acknowledge that the GB model is far from perfect but that it is much less problematical than the Northern Ireland model.

A key benefit of the statutory aggravation model is that the proof of hostility will be examined during the trial rather than after the trial when the hate element is addressed only at sentencing. This is currently the case with the enhanced sentencing model. This will ensure that the hate element of a crime will be addressed from the point of recording right through to sentencing.

There are a range of other benefits to the statutory aggravation model which were outlined by the Law Commission and detailed in paragraph 7.23 of the consultation document. We see the benefits of this model in terms of the following:

- Consistently addresses hate crime;
- Symbolic effects of offences carrying an aggravated label and higher maximum sentences;
- Provides a clear set of proofs to guide the criminal justice system in investigating/prosecuting hate crime;
- Better recording of hate crime offences allowing for the production of statistics and for trends to be identified and monitored;
- The aggravation appears on the perpetrator's criminal record.

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<sup>37</sup> Hate and the State: Northern Ireland, Sectarian Violence and Perpetrator-less Crime, Dr Robbie McVeigh, April 2017



**QUESTION 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

No

Yes, sentencing guidelines set out the factors that should be considered and should provide guidance on how to deal with a range of hate crime behaviours. These guidelines provide clear rules for dealing with these issues and are important for consistency and setting out a standard approach. It is also possible that widespread knowledge of the specific sentences for hate crimes could act as a deterrent for this type of crime.

**QUESTION 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

No

Yes, we think that openly stating the extent to which the aggravation altered the length of the sentence helps to make it clear the seriousness of hate crimes. It further serves to highlight the issue of hate crime, the seriousness by which it will be viewed by the criminal justice system and help to increase awareness and data collection on this issue.

## **CHAPTER 8**

### **PROTECTED GROUPS - SHOULD ADDITIONAL CHARACTERISTICS BE ADDED?**

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

Yes

No

We are strongly of the view that gender should be included as a protected characteristic in Northern Ireland hate crime legislation.

There are a number of reasons why we believe that this is important:

- Fawcett Society research referred to in paragraph 8.16 of the consultation document 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.
- Misogynistic hate crime is highly prevalent but normalised in society and is therefore significantly under-reported;
- It is symbolic and would focus attention on this issue that is so prevalent in society today as well as acting as a deterrent;
- There is a need to recognise the seriousness of misogyny. It is at the root of violence against women and girls yet is often dismissed and trivialised. Naming it as a hate crime reinforces its seriousness;
- It would send a clear message that victims would be taken seriously if they came forward which is of crucial importance;
- It will improve statistical recording and 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.

There are a number of additional points to consider. As previously referred to Nottinghamshire Police made history in 2016 by becoming the first police force in the UK to recognise misogyny as a hate crime. An evaluation of this policy<sup>38</sup> highlighted a number of important findings which point to the need for gender to be included as a protected category in hate crime legislation:

- Misogyny hate crime is highly prevalent but still significantly under-reported, and continues to be so, two years after the inception of the

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<sup>38</sup> Misogyny Hate Crime Evaluation Report, University of Nottingham, Nottingham Trent University, June 2018  
<https://www.nottinghamwomenscentre.com/wp-content/uploads/2018/07/Misogyny-Hate-Crime-Evaluation-Report-June-2018.pdf>

policy in Nottinghamshire. This is partly due to the 'normalisation' of these incidents and people's lack of knowledge that the policy exists;

- 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';
- 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;
- Of those women who reported, those who had positive experiences praised the police for taking them seriously – they reported that knowing the policy existed made them feel safer;
- 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 and kept;
- Women from BME groups often experience Misogyny Hate Crime and racial hate crime simultaneously and feel doubly vulnerable to attack.

As discussed in our answer to Question 2 the definition of hate crime should recognise that hate crime is usually directed towards an already stigmatised and marginalised group and is a mechanism of power and oppression. With this in mind it is vital that hate crimes based on gender should be recognised as overwhelmingly targeted towards women and girls (including transgender women and girls). We therefore believe that this should be defined specifically as misogyny.

As colleagues in Women's Aid have said domestic abuse does not happen in a vacuum. Everyday sexism that women experience on a daily basis creates a culture where abuse is normalised. Misogyny is at the root of many crimes including violent crimes such as rape, domestic abuse, assault and murder and in other offences such as stalking and harassment. By naming these crimes as hate crimes it is an important first step in recognising how serious misogyny is.

We are aware that the use of the term misogyny may not be understood by some people and as found in the Nottinghamshire evaluation can be viewed as elitist/academic. In carrying out research with local women as part of Women's Regional Consortium work we often find that women are put off by what they view as 'high-level' language and often disengage from information if they feel it is not for them. It is important in this regard to make the language around this area as simple as possible as it helps with education and awareness around any new laws. We suggest the inclusion of gender and gender identity as protected characteristics in any new hate crime legislation with the definition explaining hate crimes based on gender refer to misogyny specifically. This will help the public, victims, perpetrators and the police to understand any new laws around gender-based hate crime better.

As with any new law it 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 criminal justice system have the necessary guidance and training to recognise misogyny and to enforce the law.

Creating a protected characteristic for gender will also allow more accurate recording of these crimes which provides for analysis and the identification of trends and actions that could be taken in this area. It will also allow for these crimes to show up on background checks of perpetrators including in checks under the Domestic Violence Disclosure Scheme which will help to protect potential victims.

Including gender as a protected characteristic could also help with intersectionality as many crimes motivated by hate are motivated by more than one type of hate, for example, race and gender or homophobia and gender. Including misogyny as a protected category will help to capture this intersectionality and the extent of the harm caused to the victim.

We share the views of our colleagues in Transgender NI that gender and gender identity effectively mean the same thing as trans people who accessed legal gender recognition are known in law to have an "acquired gender". In a

UK legal context, transgender is an accepted term – see answer to next Question.

Adding gender (specifically misogyny) into hate crime legislation will ensure that trans women are also able to report misogynistic hate crime.

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

Yes

No

The consultation notes the increases in the numbers of these incidents and the fact that it has been accepted that this is particularly vulnerable group. The rise in transphobia particularly online and the abuse and harassment many trans people face means that there is a real need for the inclusion of transgender identity as a protected characteristic in Northern Ireland hate crime legislation.

The PSNI currently record transphobic incidents and crimes. It seems an obvious gap therefore that there is no hate crime provision for trans communities. The current situation allows a trans person to report a hate crime however if this crime goes further through the judicial system to prosecution, the hate motivation is almost always dropped or misreported as a hate crime based on sexual orientation.

Including both gender and transgender identity provides protection for individuals whether they are victimised because of one or both of these characteristics. For example, many trans women will experience hate crime because they are trans but also because they are women. Including both these protected characteristics allows for this intersectionality and allows for the experience of the victim to be fully captured and represented throughout the reporting and judicial process.

We agree with our colleagues in Transgender NI that transgender identity should be included a protected characteristic and that this should be accompanied with an interpretation clause to recognise and include the experiences of non-binary and gender diverse individuals.

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

Yes

No

Once again we agree with our colleagues in Transgender NI that intersex status should be included 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 the experiences of interphobia in hate crime law.

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

Yes

No

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

We do note however the growing issue of elder abuse in our society and recognise that this is likely to be an increasing problem due to an ageing population. It is important to communicate the message that targeting older people is unacceptable. We are concerned that crimes targeting older people are often not treated seriously enough or sentenced appropriately and therefore believe that more needs to be done to tackle this issue. In terms of intersectionality we see that this could be an important given that many people could be targeted both because they are older and because of their gender.

The fact that women live longer than men and therefore make up a larger proportion of the older population is a consideration here.

In terms of younger people the consultation raises the issue of bullying and online abuse which are significant issues for this age group. It seems that much hate crime against younger people had related to children who possessed another characteristic – such as race, religion, sexuality, disability or transgender identity.

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

- Yes
- No

As stated in our answer to Question 15 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 also 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.

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

- Yes
- No

We note the growing problem of homelessness in our society and the need to be able to protect those who are homeless and therefore vulnerable from hate crime.

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

Yes

No

There is a need to ensure the protection of sex workers. Laws on sexual and violent crime should be unequivocal regardless of whether the victim is a sex worker or not. Violence against sex workers should be treated as a hate crime and anyone found guilty of these crimes should be duly punished for this.

This will clearly depend on a strong relationship between the criminal justice system and sex workers so that they feel that they can approach the police for help and that their complaint will be taken seriously by both the police and the courts.

### **Intersectionality**

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

Yes (If Yes, go to Question 19)

No (If No, go to Question 20 (Chapter 9))

Yes, we believe that intersectionality is an important consideration in this review. The term intersectionality was coined by the feminist scholar Kimberlé Crenshaw in 1989.<sup>39</sup> The theory began as an exploration of oppression of

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<sup>39</sup> Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics, University of Chicago Legal Forum, Vol 1989, Article 8  
<https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1052&context=uclf>



women of colour in society and she described the intersectional experience as something “*greater than the sum of racism and sexism.*” This analysis has expanded to include many more aspects of social identity.

Crenshaw’s point was that we needed to see things in terms of their intersections in order to explain them more effectively. If someone gets hit by a car, it’s not their black side, or their straight side, or their female side, that gets hurt. Human beings cannot literally or metaphorically be divided by their different identities.<sup>40</sup>

The consultation notes at paragraph 8.91 in citing the All Party Parliamentary Group’s report on Hate Crime “*that a significant proportion of hate crime victims were targeted because of more than one of their identity characteristics which demonstrates multiple and intersecting prejudices held by perpetrators.*” This report also stated “*It is clear to this enquiry that hate crimes are often intersectional; victims are attacked because of their multiple identities.*”

It is clear that most people have multiple identities. The consultation cites writer Hanna Mason-Bish (paragraph 8.80) on this issue who gives the example of a victim who described herself as “*disabled, gay and a woman*”. She described identity as “*messy*” (paragraph 8.81) and we agree that this is often the case for many victims of hate crime. Without the acceptance of the importance of intersectionality victims may be frustrated that the criminal justice response requires them to only select one aspect of their identity as the potential cause of the hate crime. Intersectionality is an important factor in understanding the multiple ways in which prejudice and violence are experienced.

Taking an intersectional approach would also allow for more comprehensive monitoring of recorded hate crimes by the police and criminal justice agencies and therefore provide a more accurate picture of the scale of the problem. It will also allow the PSNI to identify which types of prejudices/identities that

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<sup>40</sup> The Intersections in “Intersectionality”, Michelle Gao, The Harvard Crimson, February 2018 <https://www.thecrimson.com/column/between-the-lines/article/2018/2/16/gao-intersection-of-intersectionality/>

intersect most commonly so that it is possible to identify those who might be vulnerable to this type of crime so that actions can be targeted in those areas.

It must also be noted that women are found in all protected groups and their experience of misogyny can be intensified by other aspects of their identity. It is therefore vital that any hate crime legislation responds to incidents that occur at the intersections of different identities.

**QUESTION 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 hate crime legislation must be able to address intersectionality. This is particularly important for victims who often do not see their experiences of hate crime as single identity issues.

This will ensure that it is possible to reflect multiple hostilities in all stages of the criminal justice response to hate crime, in the recording of data on hate crime and in understanding the best way to support victims.

We believe that the law should, in addition to the protection of specific groups (both existing and new as suggested in our answers to previous questions), add an additional option for “multiple group hostility”. This would help to address the issue of intersectionality. The consultation document points to the fact that this may prove complicated (paragraph 8.87) however it is possible to overcome these issues with detailed guidelines and training in this area.

The consultation document also acknowledges at paragraph 8.90 that anti-discrimination legislation is not dealt with by a single Equality Act but rather separate statutes. This makes it difficult to bring an intersectional case as the victim will have to engage two separate pieces of legislation that do not intersect. The Equality Commission for Northern Ireland has raised the significant gaps between equality law in Great Britain and Northern Ireland

following the introduction of single equality legislation (the Equality Act 2010) in Great Britain.

There are significant gaps between equality law in Great Britain (GB) and Northern Ireland (NI); gaps which have widened following the introduction of single equality legislation – the Equality Act 2010 - in Great Britain. These differences mean that in a number of key areas, individuals in Northern Ireland have less protection against discrimination and harassment than people in other parts of the United Kingdom.<sup>41</sup> The introduction of hate crime legislation could help to address the inability to challenge this type of discrimination and harassment under one piece of legislation.

We are supportive of the assertions in paragraph 8.91 of the consultation that *“if the law in hate crime is consolidated and drafted so as to ensure that all victims can expect the same level of justice, the issue of intersectionality can be fully catered for.”* Only an intersectional approach can fully address the injustices that many victims face when they are subjected to hate crime.

## CHAPTER 9

### TOWARDS A NEW HATE CRIME LAW FOR NORTHERN IRELAND

**QUESTION 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

No

The consultation details the problems with the current enhanced sentencing model and we believe that the current system is not effective in prosecuting hate crimes or providing recourse for victims in Northern Ireland. Our responses to the previous questions indicate that we believe that the statutory aggravation model should instead be introduced.

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<sup>41</sup> [www.equalityni.org/Delivering-Equality/Addressing-inequality/Law-reform/Tabs/Gaps-in-equality-law](http://www.equalityni.org/Delivering-Equality/Addressing-inequality/Law-reform/Tabs/Gaps-in-equality-law)

However if the enhanced sentencing model remains the core provision for dealing with hate crime, we think it should be amended to provide for the recording of convictions on the criminal record viewer. If hate crime is not properly recorded it lets victims down. Recording is not just about the numbers and statistics it is about victims and the protection of the public including the protection of potential victims. Failure to record these crimes properly increases the risks for victims and denies justice to victims and their communities.

As the consultation paper notes at paragraph 9.24 recording has two important functions namely that it helps to identify repeat offenders and it helps rehabilitation organisations to tailor programmes to address offending behaviour post-sentence.

**QUESTION 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)
- No (If No, go to Question 26)

As previously outlined we do not believe that the enhanced sentencing model is working effectively in Northern Ireland which has been evidenced by the low number of enhanced sentences received by offenders in Northern Ireland. This is despite the backdrop of an increase in the numbers of hate crime incidents particularly in relation to racist hate crimes in Northern Ireland.

We believe the introduction of the statutory aggravation model of hate crime will ensure that hate crime will be effectively addressed from the point of recording of the crime through to sentencing. This provides for a more comprehensive and system-wide response to address hate crime in a way that enhanced sentencing alone does not.

We note the work of the Criminal Justice Inspection Northern Ireland (CJINI) outlined at paragraph 9.9 of the consultation which reflects the view that *“the enhanced sentencing model on its own is not working in the best interests of victims or defendants. There is a strong argument that the aggravated offences model produces a more effective response by the criminal justice process as compared to those offences in which the hate element is addressed only at sentencing.”*

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

Yes

No

The consultation notes at paragraph 9.19 that the Law Commission highlighted that *“the “aggravated” label is designed to carry and communicate a stigma which “stings” more deeply than the mere fact of conviction for the basic offence, even with an enhanced sentence.”* The Commission also notes that it can be seen as giving recognition to *“the particular seriousness of hate crime, the greater culpability of its perpetrators and the greater harms it can cause.”* We believe it is therefore important that the court should state on conviction that the offence was aggravated.

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

Yes

No

The consultation notes at paragraph 9.19 that the Law Commission highlighted that *“the “aggravated” label is designed to carry and communicate a stigma which “stings” more deeply than the mere fact of conviction for the basic offence, even with an enhanced sentence.”* The Commission also notes that it can be seen as given recognition to *“the particular seriousness of hate crime,*

*the greater culpability of its perpetrators and the greater harms it can cause.”*  
We believe it is therefore important that the court should record the conviction in a way that shows that the offence was aggravated.

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

Yes

No

The consultation notes at paragraph 9.19 that the Law Commission highlighted that *“the “aggravated” label is designed to carry and communicate a stigma which “stings” more deeply than the mere fact of conviction for the basic offence, even with an enhanced sentence.”* The Commission also notes that it can be seen as giving recognition to *“the particular seriousness of hate crime, the greater culpability of its perpetrators and the greater harms it can cause.”* We believe it is therefore important that the court should take the aggravation into account in determining the appropriate sentence.

**QUESTION 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

No

We believe that this is important as it sends a clear and unambiguous message that hate crime is a serious offence and will therefore be treated with greater severity within the criminal justice system. It may help victims to feel more protected if they know that these issues are taken seriously and it may also act as a deterrent to perpetrators. It sends a clear message of denunciation for hate crime and the symbolism of this may help to change attitudes and behaviours to this type of crime.

**QUESTION 25 (Part 2):**

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

Yes

No

In the interests of openness and transparency we believe that the court should state the reasons for there being no difference in the sentence.

**QUESTION 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

No

As with our answers to the previous questions in this section we believe that this is important. This helps to reinforce the seriousness of hate crime, provide justice for victims, acknowledge the greater culpability of perpetrators and help to ensure that actions can be taken by the relevant statutory agencies and others to help prevent this type of offending behaviour.

## **CHAPTER 10**

### **ADEQUACY OF THE CURRENT THRESHOLDS FOR PROVING THE AGGRAVATION OF PREJUDICE**

**QUESTION 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?**

Yes

No

We believe the current thresholds should be extended to include a “by reason of” threshold. Paragraph 10.5 of the consultation details the problems with the motivation part of the legal test under Section 28(1)(b) of the Crime and Disorder Act 1998 in England and Wales: *“Section 28(1)(b) has proved particularly difficult to evidence in court for all types of hate crime making this part of the Act almost impotent in addressing aggravating offences. The main issue with Section 28(1)(b) is that proof beyond reasonable doubt requires evidence that proves why a defendant has carried out an act.”* This has meant that this has been very difficult to prove and is therefore rarely part of a prosecutor’s case.

The “by reason of” test relies on the decision by the offender to select the victim based on their protected characteristic. The example given in paragraph 10.15 of the consultation of a Muslim girl whose headscarf is torn from her head because she is seen as an easy target is a clear example of a hate crime committed by reason of the victim’s identity. The consultation document cites Walters in paragraph 10.15 who argues that in these types of cases there is no clear cut outward manifestation of hostility nor will there always be sufficient proof to show the defendant was motivated by hostility.

This leaves a clear gap for these types of examples of hate crimes committed by reason of the victim’s identity. Walters says *“These kinds of cases illustrate how often certain groups of people are brutalised, sometimes tortured, and often abused, simply because of who they are. Their perceived vulnerability cannot be disentangled from the judgments that offenders make about the worthiness of their victim’s value as human beings. Victims ‘selected’ because they are ‘different’ means that they are deemed to be somehow less, and their worth as equal members of society is therefore diminished.”*

We are therefore of the opinion that the “by reason of” threshold should be added to adequately capture these types of situations that do not fall within the existing thresholds.



We note the concerns outlined in paragraph 10.20 of the consultation that it could be argued that the “by reason of” test may be problematic if the protected characteristics are extended to include gender. The consultation argues that this test may potentially be too broad for gender and may include all cases of domestic or sexual violence.

A paper by Gill and Mason-Bish<sup>42</sup> surveyed stakeholders working in the violence against women sector to explore the potential benefits and disadvantages of adding a gender-based category to British hate crime legislation. The paper noted concerns from respondents that having to prove perpetrators’ motivation might slow down or complicate traumatic trials making the experience of pursuing a case in court even more difficult for victims. The prevailing opinion among respondents was that domestic violence cases should not be pursued under hate crime policy or law as this would entail practical and emotional challenges for victims. Respondents acknowledged that there is a danger that having the aggravating factor of hate crime in relation to sexual and domestic violence will actually undermine the possibility of gaining convictions by making it harder to prove in court due to the difficulty in pinpointing “hate” as a motive in domestic violence.

The consultation suggests at paragraph 10.20 that a way of avoiding this unintended consequence may be to better consider a mixed group selection and animus model which might read “the offender selected the victim by reason of a bias towards the victim’s ‘group identity’” – or some variant of those words. This would allow for a broader group section test to be used and remove the need for “hostility” instead including only cases where there is some element of bias towards the victim because of their identity.

Domestic abuse trials are already complex and having to prove a motive for hate crime will only add to this complexity. While we agree with the assertions in paragraph 10.20 in principle we would suggest that this must be underpinned

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<sup>42</sup> Addressing violence against women as a form of hate crime: limitation and possibilities, Aisha Gill and Hannah Mason-Bish, *Feminist Review*, No 105, 2013  
[https://www.jstor.org/stable/24571896?read-now=1&seq=16#metadata\\_info\\_tab\\_contents](https://www.jstor.org/stable/24571896?read-now=1&seq=16#metadata_info_tab_contents)

by extensive training on what gender bias or a motivation against a perceived identify looks like in the context of violence against women, specifically domestic abuse. Education and training should be rolled out across all levels of the criminal justice system in this regard.

**QUESTION 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?**

Yes

No

We consider that there should be a third threshold in addition to the two thresholds. This should strengthen the ability to reach those offenders who harboured no hostility but selected their victim based on prejudice and on stereotypical information about the victim’s identity and vulnerabilities. We consider that this will be an improvement on what currently exists and provide greater scope for proving hate crime.

**QUESTION 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)

No

We are supportive of the need for a statutory definition of the term “hostility”. This helps to provide clarity on what constitutes hostility for the purposes of the legislation rather than relying on an ordinary dictionary definition which provides for subjectivity. This would help to remove ambiguity around this issue.

We believe that any definition of hostility should include a wide range of attitudes including bias, prejudice, bigotry and contempt.

**QUESTION 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”?**

Yes

No

Following from our answer to Question 29 we agree with the introduction of a wider range of attitudes such as those listed above. This gives more clarity to this issue and allows for more certainty in understanding this type of offending behaviour.

## **CHAPTER 11**

### **STIRRING UP OFFENCES**

**QUESTION 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

No

Stirring up hatred is conduct which encourages others to hate a particular group and is important as a stirring up hatred offence may criminalise conduct which would not otherwise be criminal. It is therefore important that the law is effective in dealing with the issue of stirring up offences.

The consultation notes at paragraph 11.6 that the available evidence suggests that Part III of the Public Order (Northern Ireland) Order 1987 (which is a key element of legislation on hate speech) has been little used and also that there is limited awareness of it. Over a period of 6 years there were only 73 cases considered for prosecution of which just 28 were prosecuted. A similar trend was noted in Scotland where over a ten year period there were only 9 prosecutions for stirring up racial hatred.

Given the well documented rise in incidents of hate speech (particularly racist hate speech), the propensity for this type of speech to encourage acts of hatred and violence and the damaging impacts on victims it is important that legislation exists which can properly address this issue.

The consultation outlines at paragraph 11.37 that at present there are a number of offences designed to cover offensive conduct but that each has its limitations. This means that the current provisions create the potential for gaps which potentially could be closed by the incorporation of Sections 4, 4A and 5 of the Public Order Act 1986. Paragraphs 11.39 to 11.48 give examples of how this legislation has been and could be used and they seem to demonstrate its effectiveness.

In a Northern Ireland context, it would seem that this could also provide some protection for pregnant people who are being harassed at abortion clinics (please see answer to Question 35 below).

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

Yes

No

We believe that the dwelling defence is outdated and should be removed. It is difficult to understand why stirring up hatred inside a building is considered acceptable when the same expression outside a building is an offence.

Words or behaviour used or written material displayed inside a dwelling still has the power to instil and provoke hatred and violence. It can reinforce hateful and extremist thoughts and behaviours which leads to actual harassment, violence and even murder. The murder of Jo Cox by Thomas Mair shows the danger of hateful written material within a private dwelling. Police found a library of extreme nationalist and racist material and far right literature in his home.

**QUESTION 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

No

We understand the rationale for this provision in order to protect people from trivial disputes and cases without merit going to court. This also helps to ensure consistency of prosecution policy. Providing there is an effective review process for these decisions we see no reason why this should not be the case.

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

Yes

No (If not, what should it be replaced with?)

We agree with the assertion in the consultation document at paragraph 11.57 that attempting to define something by reference to itself is circular and unhelpful. In ordinary reading of the term “hatred” we would agree that it is a stronger term than “hostility”.

While we understand that the purpose of the legislation is to deal with hateful behaviour that is sufficiently severe to reach the threshold for criminal prosecution we are of the opinion that if the bar is set too high and prosecutions are rare that this will severely limit the ability of the criminal justice system to tackle this growing issue. We agree with the arguments set out in paragraph 11.58 of the consultation 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.”* This gives a clearer definition of what hate comprises.

We are also mindful that there needs to be a balance between the right to freedom of expression and to provide a legal framework for dealing with hate speech. This is, as noted in the consultation, one of the most important and difficult parts of this Review.

**QUESTION 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

No

Any additional protected groups under new hate crime legislation should also be protected under the stirring up provisions in Part III of the Public Order (Northern Ireland) Order 1987. The argument for the inclusion of gender is supported by several international treaties and human rights legislation that relate to harassment including the Istanbul Convention which deals with the issues of stalking and sexual harassment.

It would seem that this could also provide some protection for pregnant people who are being harassed at abortion clinics in Northern Ireland.

Many abortion clinics have been targeted by anti-choice groups who gather outside to shame and intimidate women. Examples of the actions taken by these groups include verbal and sometimes physical aggression and the displaying of graphic images. The effect on pregnant people who are already experiencing vulnerability is to cause great distress and harm.

The Committee for the Elimination of Discrimination Against Women (CEDAW) highlighted this issue in their Inquiry Report.<sup>43</sup> The report identified these

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<sup>43</sup> CEDAW 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, March 2018  
<https://undocs.org/CEDAW/C/OP.8/GBR/1>

behaviours as a violation of rights under the Convention *“In violation of their right to seek sexual and reproductive health services and information, women are subjected to harassment by anti-abortion protestors emboldened by lack of prosecution.”*<sup>44</sup> The report recommends that the State *“protect women from harassment by anti-abortion protestors by investigating complaints and prosecuting and punishing perpetrators.”*<sup>45</sup>

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 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.

In consulting on a new legal framework for the provision of abortion services in Northern Ireland the UK Government has recently made its response.<sup>46</sup> This response recognised that establishing any form of exclusion zone engages a number of ECHR rights specifically under Article 8 (Right to respect for private and family life), Article 9 (Freedom of thought, conscience and religion), Article 10 (Freedom of expression) and Article 11 (Freedom of assembly and

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<sup>44</sup> Ibid, para 70

<sup>45</sup> Ibid, para 86(g)

<sup>46</sup> A new legal framework for abortion services in Northern Ireland, HM Government, March 2020

[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)

association). However it also noted that these are qualified rights which can be limited or restricted in accordance with the law.

In relation to access to abortion services, interference with Articles 9, 10 and 11 must be necessary and proportionate for the purpose of ensuring safe access to legal healthcare services and the protection and guarantee of women and girls' right to health, physical integrity, non-discrimination and privacy (Article 8) as they seek healthcare information and services, free of harassment and intimidation amounting to obstruction of their access to that healthcare.

In the Government's response to the consultation it stated *"This framework will not include any powers to establish exclusion zones in Northern Ireland. We will keep this matter under review once abortion services have been commissioned and operational in Northern Ireland for some time."*<sup>47</sup>

We believe that this is a missed opportunity to protect pregnant people from harassment and that there is the potential for any new legislation on hate crime to bridge this gap by providing this much needed protection as recommended by CEDAW.

**QUESTION 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?**

Yes

No

We do not believe that the defence of freedom of expression for religion and sexual orientation should be specifically added. We are uncomfortable with a legislative provision which seems to sanction homophobia, sectarianism and anti-religious discourses.

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<sup>47</sup> Ibid, page 36



**QUESTION 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?**

- Yes (retained in law)
- No (repealed)

Following from our previous answer to Question 36 we do not believe that the defence of freedom of expression for same-sex marriage should be retained in law. Again, we express our discomfort with a legislative provision which seems to justify homophobia.

**QUESTION 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?**

Yes, we believe 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 are not in agreement with any narrowing of the test for the commission of the offence.

While we acknowledge the comments of the District Judge in the case of DPP v James McConnell (2016) that *“courts needed to be very careful not to criminalise speech which, however contemptible, is no more than offence”* we remain concerned about the impact of words such as these in terms of stirring up hatred. Perhaps if Article 9(1) had been used in this case it would have been accepted as stirring up hatred or arousing fear with many of the terms used in Pastor McConnell’s sermon implying religious hatred in seemingly explicit terms.

Dr Robbie McVeigh has argued that the 1987 Order *“might prove more useful in charging – and convicting – persons for incitement to hatred, rather than*

*allowing instances to go unanswered because they do not meet the threshold required under other legislation.”<sup>48</sup>*

There does seem to be issues with the use of this Order and perhaps if they were addressed it would be more useful in ensuring prosecutions for these types of crimes. The consultation notes at paragraph 11.75 that there is little official guidance on interpreting the provisions of Part III of the 1987 Order and this should be a focus for attention and future work.

**QUESTION 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?**

Yes

No

We acknowledge the point made in the consultation at paragraph 11.63 *“Setting the correct balance in protecting human rights while at the same time addressing hate speech is one of the most important and difficult parts of this Review.”* We firmly believe in the right to Freedom of Expression and do not wish to take away from this important human right. However there is a need for a distinction between expressing disagreements and partaking in debate and the stirring up of hatred and the incitement of violence.

There is a growing problem of hate speech and stirring up hatred in society today and it is an issue that requires an effective response from the criminal justice system as a whole.

The existing protections for freedom of expression are outlined in the consultation in paragraph 11.64. It seems that while the existing law is complicated and interpreting the limits and scope of it are a matter for national

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<sup>48</sup> Incitement to Hatred in Northern Ireland, Dr Robbie McVeigh, Equality Coalition, April 2018 <https://s3-eu-west-1.amazonaws.com/caj.org.uk/2018/04/23122604/INCITEMENT-TO-HATRED-IN-NI-Final-April-2018.pdf>

courts the framework is there to provide protection for freedom of expression. Perhaps what needs to be clearer is where the line is in terms of freedom of expression and the competing concerns about victims and hate speech. Given the detrimental impacts on victims of this type of crime and the additional consequences for the victim's wider community there is a greater need to ensure that protected groups have an effective remedy against stirring up of hatred offences.

## **CHAPTER 12**

### **ONLINE HATE SPEECH**

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

Yes

No

We are firmly of the view that social media companies need to do much more to ensure the speedy removal of offensive material posted online.

Given their technical know-how and the financial resources they have at their disposal they should bear some responsibility for the harms that flow from the use of their services.

The negative consequences of online hate speech are many including damage to the victim themselves, their wider family/community, the potential for re-victimisation, reputational damage and on the victim's ability to maintain a public presence on the internet. This should place not only a legal but a moral obligation on social media companies to do more to protect those that use their services.

It seems that putting pressure on social media companies to sign up to voluntary codes of conduct to deal with these issues is not as effective as it should be. We believe that there is a real need for legislation to impose legal obligations on social media companies to comply. We are of the view that this

needs to take the form of an extensive regulatory regime that provides clear guidance rather than imposing a generalised and vague duty of care that is open to interpretation.

As we have already outlined in our General Comments at section 2.5 we have great concerns about the online environment particularly in relation to gender. It is often a toxic space for women and recent studies have found alarming levels of abuse for many protected groups including women. This has been the subject of much media coverage recently particularly in relation to female politicians who suffer so much from this type of abuse.

This type of abuse, often targeted at women and trans women, has untold implications for gender equality and the visibility of women. Unless it is effectively tackled it leads to discrimination, sexual harassment and has a detrimental impact on the representation of women. Allowing this type of abuse to go unchecked or for it to be ineffectually dealt with means that women could remove themselves from the online world, decide not to take up certain roles or public positions including in politics, journalism, etc and works to ensure that the voices of women are not heard. This has implications for future generations in terms of relying on images, stories, examples and leaders that inform us what the potential is – “you can’t be what you can’t see.”

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

Yes

No

It is evident that the Protection from Harassment (Northern Ireland) Order 1997 is insufficient to deal with the issue of online hate. It can be used against online hate targeted at a particular individual but there are constraints. As noted in paragraph 12.37 of the consultation it “*will only offer protection to victims of cyberhate in cases where the perpetrator can be identified, where they have targeted their hate at one person or persons directly on more than one*

*occasion, and where the targeted victim/s themselves have suffered harassment, alarm or distress.”* In addition, there is nothing to recognise the additional harm caused to the victim as a result of the attack being carried out in public and there is no mechanism for the victim to request that the offending material is removed. Crucially this legislation does not mention ‘hate’ and so the hate element is only taken into account at the sentencing stage.

There are lessons to be learned from the English and Welsh experience of the Public Order Act. The basic structure of the offences would seem to be able to fill many of the gaps left by the Northern Ireland Harassment legislation and allow for one-off events.

In consideration of whether the Public Order Act 1986 may help to tackle online hate crime it is clear that there are problems with using legislation that was not designed to deal with the online world to tackle this issue. The consultation document outlines a number of problems with using these offences online (paragraph 12.68 of the consultation summarises these). The fact that the high threshold for these offences has led to very few offences being prosecuted gives cause for concern that this legislation in its current form can adequately address this issue and the sheer volume of offences which can occur online.

As the consultation document outlines at paragraph 12.71 for this offence to work in the online world there is a need for a range of amendments in order to make it effective. The same would obviously be the case for Northern Ireland and we support these recommendations.

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

Yes

No

We see the dwelling defence as particularly problematic in the context of the online world. Most of what is posted online would seem to be able to fall into

this category if this is taken literally as much of what is posted online is posted from a person's own home.

It would therefore seem that the solution would be to remove this defence. As outlined in the consultation at paragraph 12.71 this would create a problem around private conversations which will then need to be dealt with (see answer to Question 44).

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

Yes

No

It is clear that existing legislation which is being used to tackle online hate has not been designed to deal with hate which takes place over the internet. It is difficult to keep up with the pace of change in this area but it is evident that there is a need for legislation that can deal with this issue effectively and cope with the scale of this problem. We would therefore be in agreement for the need for amendments to existing legislation to include reference to posting or uploading material online.

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

Yes

No

We firmly believe in the rights to respect for private and family life and in freedom of expression and we do not wish to take away from these important human rights. While we agree there should be an explicit defence of “private conversations” we believe that this needs to be very carefully considered to provide clarity around this issue. In trying to define the difference between a ‘private’ and a ‘public’ conversation it will be necessary to clearly outline the

criteria that can be taken into account in order to decide whether a conversation can be considered private, for example, how would being a member of a private Facebook group with thousands of members be handled?

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

Yes

No

We are very pleased that the Review has acknowledged the fact that women in particular are at greater risk of being targeted online. This is a serious and ongoing issue which has been the subject of much media attention in Northern Ireland of late (see our comments in the General Section at paragraph 2.5). It is clearly an area which needs tackled urgently as it has the potential to roll back gains made in gender equality and in the participation and representation of women more generally.

We are firmly of the view that gender and transgender identity **must** be included as protected characteristics for online hate offences given the increasing evidence that women and transgender women are particularly targeted by this type of hate speech.

**QUESTION 46: Should the Malicious Communications (Northern Ireland) Order 1988 be adapted to deal with online behaviour?**

Yes

No

Evidence demonstrates that there are very significant problems of online abuse and harassment which is directed at women for a reason related to their gender and which could be dealt with more effectively by the law than it is at present.

Much of the legislation dealing with online hate crimes was formulated before the advent of the internet and the explosion in the use of online technology and social media. It has struggled to keep pace with developments in this rapidly changing environment. This means that prosecutors are using legislative instruments to prosecute online hate which were not designed specifically for this purpose and are therefore having to “fit” these crimes into existing legislation.

The Malicious Communications (Northern Ireland) Order 1988 refers to sending another person a “letter or other article” but does not make any reference to electronic communications. We believe that it should be adapted to deal with electronic communications and online behaviour as a very necessary minimum step to reflect the current online environment in which we live.

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

Yes

No

It would seem to be the case that reform is needed in this area as the use of these terms is somewhat outdated. We agree with the points made in the consultation at paragraph 12.86 that *“there needs to be a clearer articulation of the harm caused by cyberhate so that offences are both clear and certain, and come within the Article 10(2) exceptions.”* It may be more useful to include wording which is more relevant to a modern day context in order to ensure that the legislation is able to effectively deal with instances of cyberhate both now and in the future.



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

Yes

No

It would seem that offences under these pieces of legislation are very broadly drafted and this is potentially very useful to prosecutors because of their ‘catch-all’ ability. However as the consultation notes at paragraph 12.88 this breadth *“makes these offences untenable.”*

We are pleased to note the significant increases in the number of prosecutions under these pieces of legislation over the last number of years. This shows that this is a growing area of concern and that prosecutions for these types of crimes are possible using this legislation. However the consultation raises issues with their effectiveness in the context of cyberhate and it is important that these are addressed so that this issue can be more robustly dealt with.

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

Yes

No

We believe that online harm must be part of a general law applying to hate crime. The world we live in is vastly different to the world that existed when much of the existing legislation was created. Therefore, hate crimes that take place in the online space have not been specifically provided for in any of the existing legislation. This gives the potential for victims of online hate crime to be denied access to justice.

Online harm is a massive and growing issue for women and transgender women (see our comments in the General Section at paragraph 2.5). It is vital

that the online sphere is part of any general law applying to hate crime because it is often the place where hate crime takes place.

This would also help to send a clear message to perpetrators that hate crime in the online world is unacceptable. It is evident from much of the harassment and abuse that happens online that perpetrators feel they can act with impunity, many are anonymous and clearly are of the view that there will be no repercussions for their actions. There needs to be a strong message that hate crime in the online sphere will not be tolerated and action will be taken against those who commit this type of crime.

It may also help victims to understand that this type of behaviour will be treated seriously by the criminal justice system as whole and help to ensure that more victims will come forward. It would help to allow victims to get on with their online lives instead of removing themselves from the online world. Many victims feel that removing themselves from the online world is the only alternative open to them to protect themselves from online hate crime.

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

Yes

No

The consultation suggests that the current law contained in these pieces of legislation is not sufficiently clear to protect freedom of expression particularly with reference to the Communications Act 2003 (see paragraph 12.85).

We would suggest that laws that are too broad or ambiguous create difficulties around the issue of online harm. We agree with the need expressed at paragraph 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

**QUESTION 51: Would you support a specific reference to the term 'sectarian' within any new hate crime legislation?**

- Yes
- No

Sectarianism is a serious issue in Northern Ireland and it is recognised as such in the consultation in terms of the *“severe damage it causes in society.”* It is widely recognised as a significant issue yet it has proved to be difficult to deal with in criminal law. Dr Robbie McVeigh said of the existing law: *“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>49</sup>

The consultation sets out the difficulties with the lack of a definition of sectarianism in much of the existing legislation and the inconsistencies and complexities that this causes. We would therefore be supportive of a specific reference to the term sectarian, including its definition, within any new hate crime legislation. This would help to ensure that the issue of sectarian hate crime is effectively tackled within the law and also to assist with prevention.

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

- Yes
- No

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<sup>49</sup> Hate and the State: Northern Ireland, Sectarian Violence and Perpetrator-less Crime, Dr Robbie McVeigh, April 2017

The examples given in the consultation at paragraph 13.18 highlight the problems with the existing indicators for sectarianism and suggest that they need to be expanded to adequately protect people from what can only be classed as sectarian abuse or attacks. It would seem to make sense that some reference to nationality, descent, etc should also be included in the list of indicators.

However we do not agree that political opinion is an appropriate indicator for incitement to hatred and hate crimes legislation. One of the main concerns in expanding the list of indicators to include political opinion is detailed in paragraph 13.9 *“that the use of ‘political opinion’ as a category of offence dealing with hate expression would risk capturing legitimate political speech, and conflict with human rights obligations on freedom of expression.”* It is for this reason that we do not agree with political opinion being used as an indicator.

## **CHAPTER 14**

### **REMOVING HATE EXPRESSION FROM PUBLIC SPACE**

**QUESTION 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

No

There are significant problems with sectarian, racist and homophobic hate expressions in public places in Northern Ireland. There are numerous examples of sectarian, racist and homophobic graffiti and slogans. There are also examples of burning flags and other emblems and the display of racist and paramilitary flags. Flags are often used in an area to constitute sectarian or racist intimidation of the people who live there.

While we understand the difficulties that exist in apprehending offenders there are clearly issues around the duties and powers to remove material which

cause harm to protected groups. We believe that the law needs strengthened in this regard to tackle this type of hate expression more effectively.

## CHAPTER 15

### RESTORATIVE JUSTICE

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

Yes

No

We believe that restorative justice should be part of the criminal justice process in dealing with hate crime in Northern Ireland. Criminal law is only one of a number of instruments in effectively dealing with the issue of hate crime. It is clear that in some cases the use of punitive responses including prison sentences have limited deterrent value and can actually act as breeding grounds for intolerance and hate. The law will not provide the answer to everything and it must be combined with a range of other activities including restorative justice, education, etc.

The consultation outlines a range of studies and evidence to suggest the success of restorative justice approaches in terms of both victims and the potential for reducing the likelihood of reoffending in certain circumstances. There are clearly issues with the reporting of hate crimes in Northern Ireland with many victims choosing not to report to the police. Some of the reasons for this may be because they feel that nothing is going to be done, they do not trust the police or they are frightened about the court process. Restorative justice could provide an effective alternative for some of these victims. However it must be victim-led and as the Scottish government's guidance states at paragraph 15.13 of the consultation "*Throughout any restorative justice process the needs and interest of the victim, and avoiding further harm, are imperative.*"

We are supportive of approaches which give victims a stronger voice and we believe that in some cases perpetrators are less likely to reoffend if they really understand the impact of their behaviour.

It is also possible that the use of restorative justice approaches could be more beneficial for victims in terms of being quicker than the criminal justice process helping them to get closure sooner.

The consultation importantly makes it clear that some offending is not suitable for this approach and that this should be a voluntary process which can be stopped at any time.

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

Yes

No

Placing restorative justice schemes on a statutory footing would ensure that the process has more credibility and would make it less likely to be viewed as a soft or alternative option. It would help to ensure that it is seen as a proper practice with both parties having to agree to the process. It would also set out the central role of the victim and highlight rehabilitation as an important factor in the process.

**QUESTION 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)

No (If No, go to Question 58)

This is an important consideration as it raises issues regarding the funding of this approach more generally which is referred to in paragraph 15.14 of the consultation. We believe that this should be a funded process which helps to

add credibility and ensures the quality and sustainability of this approach going forwards.

In Northern Ireland it is clearly important that any such agency must be accepted by and have the confidence of all parts of the community. The consultation suggests at paragraph 15.15 that the likely provider would be the Probation Board for Northern Ireland and given that it currently enjoys this position that would seem reasonable.

If additional protected characteristics are to be added to hate crime legislation it will be necessary for any formal justice system agency to work with the women's sector, transgender, LGBT+, disability, age, BME organisations, etc. This will help to ensure that their staff/facilitators are fully aware of the specific needs of these sectors, understand the harm inflicted by perpetrators and ensure effective work with victims from these protected groups.

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

As the Women's Regional Consortium the partner organisations in the Consortium are all very much community-based. We know the value in having this trusted position among local communities and see the difference that this type of community based work makes to the local communities we exist to serve.

Having a community based approach is particularly important in a Northern Ireland context given that there are low levels of trust and confidence in the police and criminal justice system to tackle the issue of hate crime.

It is therefore important that trusted and accredited community based organisations are part of this process and should work alongside any formal justice system agency to ensure the needs of specific victims (protected groups) are met.

**QUESTION 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

No

We believe that diversion from prosecution could be an appropriate method of dealing with low level hate crimes. However we agree with some of the respondents to Lord Bracadale’s consultation for the independent review of hate crime legislation in Scotland outlined in paragraph 15.25 of the consultation: *“Their use is not straightforward and must be assessed on a case-by-case basis.”*

It is important that any such process is carefully and professionally carried out with all the necessary safeguards and risk assessments to ensure that victims are not pressurised in any way to take part and protected from any further harm. Adequate support structures must also be in place to ensure that the victim’s mental health and emotional needs are catered for throughout the process.

We do however see the value in this type of approach for both the victim and the perpetrator. We believe if this type of approach is used appropriately that it could be a very positive means of rehabilitation. We agree with Lord Bracadale’s conclusion that *“if it is possible to take action in relation to a perpetrator which will reduce or dispel that hostility, and which will give the victim confidence that the impact on them has been recognised, that is in my view a positive thing and consistent with the aims and justification of hate crime legislation.”*



## CHAPTER 16

### VICTIMS

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

Yes

No

The significant problem of under-reporting of hate crime has been well documented. This means that many victims of crime are left unable or unwilling to access justice for these crimes. This creates a huge problem of invisibility of hate crime and has lasting negative impacts on victims as well as increasing the potential for future victims. It is imperative that action is taken on the issue of under-reporting given the suffering it causes to victims. The examples given in the consultation at paragraph 16.6 clearly highlight the fear and trauma inflicted on victims from this type of crime and the need for more to be done to try and increase reporting levels.

In order to make significant progress on under-reporting it is necessary to understand why victims are reluctant to report these issues. The consultation lists a variety of possible reasons at paragraph 16.3. We would like to see some detailed research into why these crimes are not currently being reported, specifically in a Northern Ireland context, in order that effective solutions may be more easily identified.

We believe that a multi-agency approach is needed to work alongside the criminal justice system to ensure reporting of these crimes. This work should be carried out in collaboration with civil society organisations representing and advocating for those covered under the protected characteristics. These organisations are trusted by local communities and already have structures in place to reach those who are the most marginalised. Working in partnership will help to ensure that victims have the necessary information and support to report these crimes.

Having stronger hate crime legislation will also help with the issue of under-reporting. As Emma Barronwell from the Victim Support Hate Crime Advocacy Service said at a workshop to discuss the Hate Crime consultation in Queen's University Belfast: *"without robust laws to effectively deal with perpetrators we will continue to see low levels of reporting."*

It is clear that the enactment of policies/legislation on this issue can be a powerful message that this type of behaviour is unacceptable in modern society. We refer to the example given by Nottinghamshire Police who were the first force in the UK to recognise misogyny as a hate crime. The evaluation for this policy showed clear support from victims who have reported.

Having new laws and policies around the issue of hate crime sends a symbolic message that this type of crime is happening in society, that it is unacceptable and that those in positions of power are committed to addressing it. However these laws will remain merely symbolic if the ability to effectively and fully implement them is not there.

Any new laws must be backed up by a comprehensive education programme for all sections of the criminal justice system around their use and practical application and among the public to reinforce the message that this type of behaviour is unacceptable. For example, education in schools around sexual harassment could help to reduce the number of offences by increasing awareness among victims and possible perpetrators of what constitutes unacceptable behaviour and how to take action against this.

We would suggest that for any new legislation to be effective that collaboration with the third sector is crucial. A multi-agency approach is needed to help to improve hate crime reporting levels. As previously stated community organisations across Northern Ireland have spent many years working with the communities they represent and are in a trusted position. Collaborating with these groups could help with under reporting as these groups may be able to identify specific reasons for this and be aware of what needs to change to

increase the confidence of victims. It should also be noted that funding for community organisations is often focused on providing services and support after problems arise and less so for promotion, education and prevention work.

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

Yes

No

We consider that the Hate Crime Advocacy Scheme plays a valuable role in encouraging reporting of hate crime. The consultation highlights at paragraph 16.4 that the service *“was widely known and trusted by the victims that inspectors spoke with during fieldwork.”* An evaluation of the scheme by CENI referred to at paragraph 16.10 of the consultation also indicated *“a high level of user satisfaction.”*

In order to tackle the issue of under reporting it is important that trusted support organisations exist to help victims to understand the reporting systems and to guide them through the process if they need it. It is also important that these advocates can help victims to deal with the impact of hate crime on their lives.

Despite the existence of this valuable service under reporting remains a substantial problem. We would encourage the continued evaluation of this service and an investigation into how this service could be further resourced and developed to ensure more victims are reached and helped to report these crimes.

**QUESTION 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)

No (If No, go to Question 63)

The Criminal Justice Inspection Northern Ireland report on hate crime referred to in paragraph 16.14 of the consultation was also highly supportive of the Hate Crime Advocacy Scheme. It raised an important issue that *“some victims stated that they would have abandoned their complaints had the advocacy service not provided support.”* It is vitally important that if a victim has made the first step in making a complaint that they should not be put off continuing due to the difficulties of the process and must be supported to continue with their complaint. It is clear that the Hate Crime Advocacy Scheme can provide this support to victims and that this is very valuable.

The criminal justice system is adversarial and complex and there is a clear need for help and support to navigate these systems that may by their very nature put people off. The importance of the Hate Crime Advocacy Scheme in this regard was described in the consultation at paragraph 16.15 as *“vital services given the barriers experienced by victims when trying to access criminal justice in unfamiliar context.”* This is particularly the case for victims who may be particularly marginalised, for example, due to language difficulties.

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

Without being involved in the Hate Crime Advocacy Scheme it is difficult to comment on this. We would suggest however that evaluations from users of the scheme may be the best way of identifying any possible improvements to its operation.

We would also suggest that if there is new and extended hate crime legislation introduced in Northern Ireland that the Hate Crime Advocacy Scheme should be expanded to include advocates within community-based organisations that already support these protected groups. If new protected groups, such as gender, are added then funding and resources for this Scheme will obviously need to increase to support this additional work.

We would further suggest that funding should be provided to better advertise the scheme to ensure that all victims know about it and how to access it including those in more rural areas. This must also be the case if new protected groups are added so that these new groups are aware of the existence of the scheme and how it might help them.

**QUESTION 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

No

Placing the funding for the Hate Crime Advocacy Service on a permanent basis would help to embed this Scheme. Secure funding allows for better forward planning and development and enables organisations to more effectively recruit and retain staff. Placing the funding on a permanent basis would also help to ensure that any new hate crime legislation for Northern Ireland is given the best possible chance to succeed and provide support and redress for victims.

It is vital that in this climate of austerity and reduced budgets that funding for schemes such as this is not reduced or lost. If there is truly to be an improvement in hate crime reporting and ensuring justice for victims, then services such as this must be properly and sustainably funded. Putting it on secure, permanent funding also sends a message about the importance of such services and puts victims at the centre of the process.

**QUESTION 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)

No (If No, go to Question 66 (Chapter 17))

In certain circumstances, the identity of the complainant in a hate crime should not be reported by the press. We would suggest that this is often a factor in under-reporting of these types of crime particularly in relation to homophobic or transphobic hate crimes. The problems of lack of anonymity for these groups have been noted in the consultation at paragraphs 16.27 and 16.29 citing examples of a fear of being 'outed' in the press and how this would discourage others in the community from reporting hate crime.

It is necessary to find out more from victims about the desire for anonymity among all protected groups so that there is a greater understanding of why this is needed and the impact it could have on under-reporting levels.

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

As we have already suggested in our answer to Question 64 we see a particular need for restrictions on press reporting of the identity of the complainant in cases of homophobic or transphobic hate crimes. It is clear that the potential for being publicly 'outed' could have very serious impacts on the victim as well as actively discouraging others for reporting similar crimes.

In the context of the Northern Ireland situation there is also a case for restricting press reporting of the identity of a complainant. In terms of sectarian hate crimes there is widespread evidence of intimidation and control within local communities from perpetrators of these types of crimes. This leaves many victims scared to report these hate crimes.

Even with special measures in place to protect victims there are often difficulties in small jurisdictions such as this. This issue was highlighted in the recent Gillen Review into the law and procedures in serious sexual offences in Northern Ireland.<sup>50</sup> Due to the fact that Northern Ireland is so small there is often

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<sup>50</sup> Report into the law and procedures in serious sexual offences in Northern Ireland, Gillen Review, April 2019, Paragraph 29  
<https://www.justice-ni.gov.uk/sites/default/files/publications/justice/gillen-report-may-2019.pdf>

familiarity with the complainant. As Gillen outlined information about other disparate matters can be *“easily pieced together to identify the complainant despite the presence of special measures to protect identification.”*

## CHAPTER 17

### LEGISLATION: CONSOLIDATION AND SCRUTINY

**QUESTION 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
- No

We consider that the consolidation of this legislation could help to simplify and bring consistency to how hate crimes are dealt with in the criminal justice system. Any actions that can make the law in this regard clearer and more transparent can only help in addressing the many difficulties that exist with the way the current law is structured and could potentially help with intersectionality. We agree with the notion posed in the consultation at paragraph 17.6 that consolidation *“might also be said to be helpful in raising awareness and understanding of hate crime.”*

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

- Yes (If Yes, go to Question 68)
- No

We agree that there is a strong case for the provision of post-legislative scrutiny. It is important that the law on hate crime works effectively given the increase in these types of crime and the serious impact that they have on the lives of victims. It is therefore vital that any new legislation is scrutinised to determine if it is working effectively for victims.

We also note and wish to highlight the important comment from our colleagues in the Committee on the Administration of Justice (CAJ) at paragraph 17.12 of the consultation *“There is little value in amending or complementing current legislation with additional protections, if these provisions are then left unused or underused in the statute book.”*

We suggest that this is a vital part of the process with regards to any new legislation. It reinforces to all parties, victims as well as all aspects of the criminal justice system that this legislation is important and that it must work effectively. It also reinforces the fact that if it is not working as it should that this will be identified and changes will be made.

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

We agree with the assertion in the consultation at paragraph 17.11 that the review could take place three years after the legislation has passed to allow sufficient time for the legislation to be fully established and used. We consider that there should be a strong level of independent monitoring and reporting on the effectiveness of hate crime legislation. This should be undertaken by a range of bodies as mentioned in paragraph 17.14 of the consultation and supplemented by regular scrutiny from the Northern Ireland Assembly. This should also include extensive consultation with the voluntary and community sector who provide valued and trusted services to many marginalised groups and victims.