

Our response to the
**Hate Crime Legislation
in Northern Ireland
Independent Review**

Full consultation response by TransgenderNI
April 2020

TransgenderNI 
Supporting and campaigning for
trans people in Northern Ireland

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Introduction

We welcomed the Department of Justice commissioning an independent review into hate crime legislation in Northern Ireland, and have welcomed the opportunity to work collaboratively with Judge Marrinan and the rest of the community and voluntary sector to shape the new hate crime legislation.

Consent to disclose

We give full and informed consent to the disclosure internally and to the general public of this consultation response in full.

Context for our response

This is a response to the public consultation on changing hate crime legislation in Northern Ireland, and is submitted by TransgenderNI, a not-for-profit human rights organisation based in Belfast. TransgenderNI exists to promote and support the human rights of trans and gender diverse people in Northern Ireland, including through policy work and service development.

We are the organisation responsible for the running and funding of the Belfast Trans Resource Centre, the only trans community centre in the UK & Ireland, and delivery of consultancy and training services to public authorities on trans inclusion across Northern Ireland. We are members of Transgender Europe and have been expert consultants & contributors on projects at EU/European Commission level and at United Nations level.

Hate crime in Northern Ireland is governed under the Criminal Justice (Northern Ireland) Order 2004, and refers to a crime that has been committed which is motivated by hate against a protected characteristic: race, religion, sexual orientation and disability. Trans individuals wishing to report a hate crime are able to do so, with the PSNI having updated their recording process for hate crime to include and collect data on transphobic hate crime. However, if this crime goes further through the judicial system to prosecution, usually the hate motivation will be dropped or misreported as a hate crime based on sexual orientation.

It's very clear that the current hate crime provisions are inadequate for trans communities, given the lack of protection for individuals based on their trans identity and the inability of transphobic hate crimes to be reported, recorded and prosecuted as such. However, it's also clear that the overarching mechanism for prosecuting hate crime – that of applying aggravated offences where hate is a motivating factor in the crime – is completely inadequate for all communities affected by hate crime.

This model of dealing with hate crime results in the hate motivation being lost in the prosecution of the crime, and only allows for it to be raised at the end of court proceedings to argue for an aggravated offence. In many cases, it is forgotten about entirely, and even more worryingly, there have been discrepancies in court reporting surrounding whether or not the hate motivation has been raised in several cases. This system is convoluted, deprioritises the identity and experience of victims, and leads to worse outcomes overall than we see in many other jurisdictions.

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One impact of these poor outcomes is that, within trans communities, we see a widespread – and arguably justified - distrust of this system. In many cases, not only has the judicial system failed, but trans individuals are often revictimized through their interactions with the police and wider criminal justice system, which results in a disproportionate lack of willingness to report hate crimes.

The latest quarterly PSNI figures on transphobic hate crime show an increase in reporting from 32 to 60 incidents; a figure not reflective of the lived experiences of many trans people in NI, some of whom experience hate incidences on at least a weekly basis.

Response Summary

Our key asks are:

- Introduce a fit-for-purpose working definition of hate crime;
- Replace the enhanced sentencing model with the statutory aggravation model;
- Apply whatever model is adopted equally across all protected characteristics;
- Recognise *transgender identity* as a protected characteristic;
- Recognise *intersex* as a protected characteristic;
- Recognise *gender*, specifically *misogyny*, as a protected characteristic;
- Recognise *sex workers* as a protected characteristic;
- Provide the legal framework for the reporting, recording and prosecuting of hate crimes across multiple protected characteristics;
- Introduce specific sentencing guidelines and extensive training programmes on any new model of hate crime legislation for judicial staff, collaborating with civil society to explore issues experienced by victims;
- Introduce the 'by reason of' threshold for hate crime;
- Record aggravated offences on criminal records;
- Create a statutory body for the deliverance of restorative justice, ensure adequate community sector input & introduce public education on restorative justice processes
- Add equivalent provisions to Sections 4, 4A and 5 of the Public Order Act 1986 to the Public Order (Northern Ireland) Order 1987;
- Remove the 'dwelling' defence for all hate crime, including online;
- Recognise and regulate online hate, and update existing legislation to be fit for contemporary contexts;
- Strengthen duty on public authorities to tackle hate expression in public spaces;
- Adequately fund and expand the Hate Crime Advocacy Scheme;
- Restrict the press reporting of hate crime victims where appropriate;
- Consolidate all areas of hate crime regulation into one piece of legislation;

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Our response to the specific consultation questions

Chapter 1

Part 1: Definition

Q1: What do you consider to be a hate crime?

We consider Barbara Perry's comprehensive definition provided in the consultation document at point 1.6 to cover hate crimes effectively:

"Hate crime involves acts of violence and intimidation, usually directed towards already stigmatized and marginalised groups. As such, it is a mechanism of power and control, intended to reaffirm the precarious hierarchies that characterise a given social order. It attempts to re-create simultaneously the threatened (real or imaginary) hegemony of the perpetrator's group and the 'appropriate' subordinate identity of the victim's group. It is a means of marking both the Self and the Other in such a way as to re-establish their 'proper' relative positions, as given and reproduced by broader ideologies and patterns of social and political inequality."

This definition provides a clear outline of what is a hate crime: namely, violence and/or intimidation perpetrated against an individual or group based on some kind of perceived deviation from the norm. As such, this could cover a wide range of incidents if incited or motivated by hatred, including but not limited to:

- Physical assault
- Sexual harassment or violence
- Incitement to hatred
- Verbal harassment and abuse
- Online harassment and abuse
- Property damage
- Stalking, harassment, or other forms of intimidation

The most pressing part of the definition provided above is the reference to power dynamics and control, which are central to what a hate crime is. Transphobic hate crime, for instance, reinforces the social and political hierarchy between trans people and cis¹ people, reaffirming the place of cis people as 'normal' and of trans people as the 'other'. It is vital that, when defining or discussing hate crime, power dynamics and social hierarchies remain central to our understanding of it.

Q2: 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 in Northern Ireland?



As referenced in the previous response, we believe that any definition of hate crime must take into account aspects of Barbara Perry's definition power dynamics and social hierarchies that hate crime serves to reinforce. We would recommend an alternative working definition:

¹ The term 'cisgender', often shortened to 'cis', refers to anyone who identifies with the gender with which they were assigned at birth. It describes the experience the majority of people in our society have with their gender.

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

It is imperative that the definition provided in the legislation and the guidelines is comprehensive, encompassing the ideological and social aspects of hate crime while also being workable within the judicial system, a balance which this definition strikes.

Part 2: Justification for hate crime law

Q3: Should we have specific hate crime legislation in Northern Ireland?



Hate crimes are unique in that the perpetrator is reinforcing existing social hierarchies and the 'lower place' of marginalised groups in our society. With registered hate incidents and crimes on the rise, now is the time for fit-for-purpose hate crime legislation.

Hate crimes are distinct and separate from other crimes as their impact is to make an individual feel unwelcome, unsafe and unwanted within society due to their identity or perceived identity. This clearly deserves a distinct and separate law to govern these crimes, their impacts and the route to justice.

Q4: Should hate crimes be punished more severely than non-hate crimes?



In order to recognise the impact that hate crime has on both individual victims and the communities they are a part of, it is imperative that the state is seen to be taking prejudice, intolerance and discrimination in the form of violence or intimidation seriously.

We recognise, however, that punitive measures are not the solution to tackling hate crime. In many cases, individuals leave prison more radicalised than they were previously, especially if these punitive measures are not combined with education and rehabilitation.

In the current model of hate crimes, the hate motivation is almost always left off of criminal records, meaning that those who deal with perpetrators are not aware of the motivating factor and thus will not enrol them in rehabilitative or restorative justice programmes.

Hence, while we support increased sentences for hate crimes due to the impact that these crimes have on the victim and those who share their identity, we do not believe that punitive measures can be the solution to meaningfully tackling the causes of hate crime, prejudice and discrimination.

Chapter 6

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

Q5: 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?

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The enhanced sentencing model ensures that the hatred and prejudice motivating a crime are an afterthought in judicial proceedings, if it is mentioned at all. To provide recourse to justice for victims, and to ensure their experiences are accurately represented, this model must change.

Given the noted unreliability of the statistics provided by the Public Prosecution Service² it is quite clear that leaving the hate motivation to the end of court proceedings often results in it not being taken seriously, not being recorded accurately, and ultimately fails to provide justice to victims.

Since the 2004 Order was introduced, there has been extremely limited evidence of a prosecutor bringing hate motivation to the court's attention, and even scarcer examples of a judge applying an enhanced sentence³. All available indications suggest that less than 1% of hate crimes reported to the PSNI result in a conviction involving aggravation by hostility.⁴

This model is not one which can be amended, tweaked or fixed: it is fundamentally flawed, and is not fit adequately deal with the rising levels of hate crime we see in Northern Ireland.

If 'no,' go to question 7

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

Q7: Do you think the statutory aggravation model as used in England and Wales and Scotland should be introduced into Northern Ireland law?



Q8: 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 the statutory aggravation model should be introduced instead of the enhanced sentencing model for the reasons provided in response to question 5. The enhanced sentencing model is not one which can be tweaked or amended, it is unfit for purpose as it does not centre the victims experience of the hate crime and provide them with an adequate route to justice.

² Hate Crime Legislation in Northern Ireland Consultation Paper, page 58, beginning point 6.10

³ Criminal Justice Inspection Northern Ireland (2010) A follow-up inspection of Hate Crime in Northern Ireland: A thematic inspection of the management of hate crime by the criminal justice system in Northern Ireland Belfast: Criminal Justice Inspection Northern Ireland, p.7

⁴ Jarman, N. (2017) "Acknowledgement, Recognition and Response: The Criminal Justice System and Hate Crime in Northern Ireland" in Haynes, A., Schweppe, J. and Taylor, S. (eds) Critical Perspectives on Hate Crime: Contributions from the Island of Ireland London: Palgrave MacMillan, p.61

The statutory aggravation model begins to address this issue by enabling the examination of the motivating factor (hate/hostility) during the trial, rather than after the trial has concluded and during the sentencing proceedings where it is likely to be forgotten about or dismissed. While this model is not perfect, it is much better than the methods that currently exist for tackling hate crime in Northern Ireland.

Examining the aggravating hostility during the trial has many benefits, including acting as a deterrent to others who may harbour this hostility, acting as a form of public education on how instances of discrimination against marginalised groups can manifest itself, as well as making it clear that the judicial system can adequately address hate crime and discrimination.

Q9: Irrespective of whichever model is used (aggravated offences or enhanced sentencing), should there be specific sentencing guidelines for hate crimes in Northern Ireland?



It is imperative that jury members and legal professionals working within the courts and wider judicial system understand the serious, often traumatising, impact of hate crimes, the sensitivity surrounding them, and the importance of handling them accordingly.

Further, legislative models for dealing with hate crime can be unduly complex, and as the current model has shown, that has resulted in a lack of awareness and utilisation of the mechanisms for enhancing sentences. Regardless of the model in use, the most important thing is that it is able to be used effectively and to provide recourse to justice for victims of hate crime. Sentencing guidelines, which may include information about the different manifestations of hatred and bias against different protected characteristics, would be a positive contribution to ensuring that this is the case.

Q10: 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?



As noted previously, hate crimes are unique in that they serve to reinforce power imbalances within our society, and to establish an identity, characteristic or group of people as 'less than' the majority.

The response to such crimes should be to deal with them more seriously, to educate the public on the impact of these crimes and ensure that hate crime levels fall. Communicating the impact of aggravation/hatred on a sentence communicates that the judicial system takes hate crimes seriously.

However, as mentioned previously and as will be explored in later questions, jail sentences and other punitive measures do not, on their own, adequately address hate crime and the impact it has on marginalised communities. A system of restorative justice must be put in place, through engagement with the communities victimised by this criminality, to ensure that perpetrators are meaningfully rehabilitated and hate crime levels drop.

Chapter 8

Protected groups – should additional characteristics be added?

Q11: Should gender and gender identity be included as protected characteristics in Northern Ireland hate crime legislation?

Although confusion exists between these two terms, within the legal and social context in Northern Ireland they effectively mean the same thing. Trans people who have access legal gender recognition in the UK or another recognised state are known in law to have an “acquired gender”; the term “gender identity” is not used. The term ‘transgender status’/‘transgender identity’ provides for a more readily understood and easily operationalised term, and one which persists with trans people as a legal tool should they access legal gender recognition.

The likely impact of including both ‘gender’ and ‘gender identity’ in hate crime legislation would be, at best, to confuse those attempting to apply the law, and at worst, establish trans people as having something ‘lesser than’ a gender. This risks creating a form of legal hierarchy between trans people’s “gender identity” and everyone else’s gender.

We support including gender as a protected characteristic, with the caveat that hate crime specifically serves to reinforce existing power dynamics and social hierarchies. In this context, it is imperative that we recognise that hate crimes based on gender are overwhelmingly targeted at women and girls, including trans women and girls, and the inclusion of ‘gender’ should be accompanied with an interpretation clause to ensure that misogyny specifically is the issue that must be addressed.

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

To that end, including gender as a protected characteristic should not be based on legal gender, but on self-identification, in line other areas of NI law including the Sex Discrimination Order.

Q12: Should transgender identity be included as a protected characteristic in Northern Ireland hate crime legislation?



As referenced above, we support the introduction of transgender identity to hate crime legislation, to begin addressing the flagrant inability of the criminal justice system to adequately recognise, address and prosecute transphobic hate crime and hate speech.

Transphobic hate incidents were previously misrecorded as homophobic by the PSNI, and to this day, if a transphobic crime goes through to prosecution, the hate motivation is almost always lost or changed as our current legislation does not regard transgender identity as a protected characteristic.

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

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

This should again be accompanied with an interpretation clause to recognise and include the experiences of non-binary and gender diverse individuals. Many definitions of trans identity already incorporated into UK law, as referenced in 8.33 and 8.34 of the consultation document, are flawed, exclusionary or overly medicalising. We would recommend defining transgender as 'any individual whose gender is different from that which they were assigned at birth.' This includes all those who identify as non-binary or otherwise gender diverse, and avoids the use of outdated or pathologizing language.

Q13. Should Intersex status be included as a protected characteristic in Northern Ireland hate crime legislation?



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

Q14: Should age be included as a protected characteristic in Northern Ireland hate crime legislation?



The inclusion of age as a protected characteristic risks broadening the scope of hate crime to such an extent that we lose any understanding of these crimes being based around social hierarchies, power dynamics and control.

Further, many crimes which could be nominally seen as being perpetrated based on the age of the victim, in particular those perpetrated against older people, may actually be based on perceived vulnerability. There is already precedence for vulnerability being taken into account during sentencing, as noted in 8.51 of the consultation document.

Including age would essentially result in everyone being covered by hate crime legislation; legislation which is specifically designed to tackle criminality against marginalised and disadvantaged groups within our society. Thus, including age runs the risk of diluting the function of the legislation, possibly leading to a reduction in its use.

Q15: Should a general statutory aggravation covering victim vulnerability and/or exploitation of vulnerability be introduced into Northern Ireland hate crime legislation?

There is already precedent for the perceived vulnerability of victims being taken into account during sentencing, specifically regarding violence against older people⁵. It is imperative that those particularly vulnerable members of our society are protected from violence and opportunism, however we believe that including this statutory aggravation in hate crime legislation would serve to dilute its purpose and broaden its scope in a similar way that adding the 'age' characteristic would.

Hate crimes and similar incidents are broadly understood to be motivated on the basis of hatred or prejudice against a protected characteristic, thus serving to devalue and degrade that group's identity. Crimes involving the exploitation of vulnerability may indeed be hate motivated, however they may alternatively be motivated by opportunism. Hence, while this issue may cross over into the remit of hate crime legislation, we believe it should not be contained within it so as to maintain the direct purpose of the legislation.

Q16: Should homeless status be included as a protected characteristic in Northern Ireland hate crime legislation?



Q17: Do you consider any other new characteristics should be protected in Northern Ireland hate crime legislation other than those mentioned above?



Many of the most targeted and abused individuals within trans communities are sex workers, and the legal framework governing this occupation is unfit for purpose and actively deters sex workers from reporting abuse and violence against them.

To date, the NI Assembly focused on reducing demand rather than reducing violence, introducing a deeply flawed piece of legislation which criminalises the clients but not the sex worker themselves. Since this was introduced, there has been an increase in reported violence against sex workers in the region⁶.

In order to tackle this abuse, we must first recognise that it exists and serves the purpose of maintaining the power and control of clients, as well as sending the message that society views sex workers as unworthy of respect, protection or support.

⁵ [Attacks on the Elderly Sentencing Guidelines](#)

⁶ "Between 2015 and 2018 there has been an increase in the number of reports on the Uglymugs.ie website in relation to, for example, assaults (from 3 to 13) sexual assaults (from 1 to 13) and threatening behaviour (from 10 to 42)" – [Assessment of review of operation of Article 64A of the Sexual Offences Order \(Northern Ireland\) 2008; Offence of Purchasing Sexual Services](#)

Hence, it meets the criteria for being covered under hate crime legislation and would add much needed protections for sex workers.

Q18: Do you consider that intersectionality is an important factor to be taken into consideration in any new hate crime legislation?



The concept of intersectionality, a term coined by lawyer and academic Kimberlé Williams Crenshaw, was intended to capture the experiences and oppressions of specifically African-American women relating to their exclusion from mainstream feminist movements⁷.

In modern contexts, including in the consultation document, the term intersectionality acts as a framework for understanding how aspects of our social and political identities (race, religion, gender, sexuality, disability, etc) may combine to create new forms of discrimination.

Intersectional identities very clearly have an impact on an individual's ability to live free from discrimination, prejudice and violence. Within our own communities, we see the impact of this being that trans women of colour are disproportionately victimised, experience significant employment and housing discrimination, and are on the whole more likely to experience physical and sexual violence.

In the current legal context, if a trans woman of colour were to report a hate crime and go through the mechanisms for prosecution, the specific aggravating factor for that crime may not be clear and thus will likely not be considered in sentencing. If the aggravation of the crime was discussed, it would be raised as either racially motivated, motivated by misogyny or motivated by transphobia, when in many cases all three characteristics will form the real motivation for violence.

Hence it is imperative that the judicial system is capable of capturing and accurately representing the experiences of hate crime victims, and of marginalised groups more generally. Current hate crime mechanisms have been developed by and emerged from a political class that has oversimplified victim groups, is not representative of these groups and does not take into account their diverse and intersecting experiences.

An approach which takes intersectionality into account is not the quick fix for ensuring that marginalised groups engage in hate crime reporting and mechanisms; years of institutional violence, abuse and discrimination from the criminal justice system has ensured that the lack of trust for this system within many communities remains. However, it would be a first step for ensuring that these communities see themselves and their experiences captured in the legislation and incorporated into the system, and may feel more confident reporting if their nuanced experience is taken seriously.

⁷ Crenshaw, K. (1989) "Demarginalizing the intersection of race and sex: a Black feminist critique of Antidiscrimination doctrine, feminist theory and anti racist politics" University of Chicago Legal Forum pp.139-168

Q19: 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?

Any new hate crime legislation applied in Northern Ireland must be able to accommodate the concept of intersectionality within it. While there is debate regarding how best to incorporate this in, we would suggest the addition of the 'multiple group hostility' to cover instances where an individual is victimised due to multiple characteristics.

If included, this would allow for multiple hostilities and prejudices to be reflected in reporting, recording and sentencing. Combined with treating the protected characteristics equally within the legislation (as is not currently the case), this would better equip the criminal justice system to treat victims with respect, fully incorporate their experience into proceedings, and deliver meaningful justice.

This will mark a change in how hate crime is prosecuted and dealt with by the courts, which will naturally require training and education for judicial staff, judges, juries, and police. This is not a reason not to incorporate intersectionality into these regulations; it is clear based on the number of hate crimes successfully prosecuted through the courts that this education is needed regardless of what the legislation looks like.

It does, however, make clear that any information about hate crimes experienced by specific groups, or across multiple groups, should be drafted in collaboration with the victim groups affected by hate crime. Only these groups understand the impact of hate crime on the victim, the different kinds of hate crime that can affect different groups, as well as how identities can intersect to create different experiences. The experience of a white trans person will not be same as that of a trans person of colour; it's imperative that all these diverse experiences are accommodated within our hate crime law.

Chapter 9

Towards a new hate crime law for Northern Ireland

Q20: 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?



A major flaw of the current model is the inability of parole officers, judicial staff and others working with perpetrators of hate crime to identify what hostility motivated this crime, or even to identify whether or not it is a hate crime at all.

This impedes efforts to educate, rehabilitate and reintegrate those who have perpetrated hate crimes into our society, while ensuring the safety of the individual(s) who have been victimised by them. Punitive sentencing provisions alone are not enough to meaningfully tackle hate crime: this legislation must be framed around the importance of rehabilitation, education, and the safety of victimised groups.

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Q21: 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?



For victims of hate crime, often the hatred that motivates the crime – that based on their identity or a protected characteristic they hold – is the element that has the greatest impact on their life and their ability to live and participate in society as normal.

The reality of our current hate crime model is that it does not reflect this experience: the hatred or prejudice motivating the crime is treated as an afterthought, and often forgotten about entirely. Leaving the hate motivation to be raised during sentencing downplays the impact that this hatred has had on the victim, and does not treat it with the seriousness it is due.

It is important to again return to our definition of hate crime, in particular of it serving to reinforce social hierarchies and oppress those perceived as 'socially deviant'. The impact that this has leads to many victims being afraid to leave their house, to go to the shops, to socialise, for fear of further victimisation due to their identity. As such, the importance of this motivating factor must be reflected in the recording, reporting and prosecution of these crimes, ensuring that the victims experience is adequately reflected.

In England & Wales the statutory aggravation model is used to create somewhat of a 'hierarchy' of hate crime, where those committed on the basis of race or religion are covered more comprehensively in the law than those committed on the basis of disability or sexual orientation. In Northern Ireland, we believe this model should be applied across all characteristics equally to ensure our hate crime legislation serves all victim groups as effectively as possible.

With this caveat, we believe that the statutory aggravation model in Scotland, England and Wales would be a step in the right direction and would have a greater potential to address hate crime effectively as it provides the groundwork for a system-wide response to not just hate crime, but also the causes of hate crime.

Q22: In dealing with an aggravated offence, should the court state on conviction that the offence was aggravated?



Centralising the experience of the victim in hate crime proceedings is essential: explicitly recognising the hate motivation at sentencing ensures that this experience is not lost, while also affirming an opposition to hatred and prejudice within the judicial system.

Q23: In dealing with an aggravated offence, should the court record the conviction in a way that shows that the offence was aggravated?



As explored above, the accurate recording of hate motivation is essential for effective rehabilitation and education programmes to be developed for individual perpetrators in collaboration with the victim groups affected by hate crime.

Q24: In dealing with an aggravated offence, should the court take the aggravation into account in determining the appropriate sentence?



The stated purpose of hate crime legislation is to recognise the detrimental impact being victimised due to your identity or background has on an individual's wellbeing, as well as to show clearly that this abuse and discrimination will not be tolerated.

To that end, it's vital that this purpose is operationalised within the new legislation to ensure that crimes motivated by hate are recognised as having an increased impact, and that this impact is considered by the judiciary in their decision-making around hate crime cases.

Q25, 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?



While punitive measures cannot be the be-all-and-end-all of dealing with hate crime, delivering more stringent sentencing for perpetrators of hate crime sends the message that the judiciary takes the issue, and protecting hate crime victims, seriously.

Further, making clear the extent to which victimising someone based on their identity or protected characteristic has an impact on the sentence delivered may deter that individual and others from perpetrating hate crime in the future. This must be combined with education and rehabilitation, or else it runs the risk of further radicalising perpetrators through the flawed prison system in Northern Ireland.

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



Too often, in the current system, because there is no ability to consider the hate element of the crime until sentencing, it is forgotten about entirely. Including this measure would ensure that, even in cases where a judge determines that it is not prudent to extend a sentence, the hate motivation remains central to the case and the victim is given closure regarding the decisions that have been made.

Q26: 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?



As stated previously, the inability of parole officers, judicial staff and others working with perpetrators of hate crime to identify what hostility motivated this crime greatly impedes their ability to educate, rehabilitate and reform perpetrators.

Work carried out by those in statutory services and the community and voluntary sector to conduct these rehabilitation programmes can only happen if the information regarding the crimes committed is available.

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Chapter 10

Adequacy of the Current Thresholds for Proving the Aggravation Of Prejudice

Q27: If any new hate crime law in Northern Ireland follows the statutory aggravation model as in Section 28(1) of the Crime and Disorder Act 1998, do you consider that the current thresholds of (a) demonstration of hostility, and (b) motivation are appropriate or should there be a third threshold: the “by reason of” threshold?

We would support the introduction of the 'by reason' threshold to ensure that all incidents that could be considered a hate crime are able to be encompassed within this legislation. The existing thresholds provide for certain types of hate crime, where it is abundantly clear that the crime is motivated by hatred or prejudice, for instance where a slur is used during the attack or the perpetrator has made discriminatory posts on social media.

However, the current thresholds fail to recognise and account for unconscious bias and the victimisation of individuals based on the perceived 'weakness' of them and their identity/protected characteristic. For instance, a transgender sex worker may be victimised by an individual who is aware of the issues this group has reporting hate crime to the police; this would be covered under the 'by reason of' threshold, however there would need to be a slur used or other hostility demonstrated for it to be covered by the existing thresholds.

This relates to our recommended definition of hate crime provided previously, with regards to how hate crimes serve to reinforce a given social order. An individual's position within a given social order directly impacts how others view them, and creates a perception of them as 'vulnerable' or not. As such, the selection of the victim based on their identity or perceived 'deviance' from said social order is a form of hostility in itself which is inadequately addressed by hate crime provisions across the UK.

While there are concerns that the 'by reason of' threshold broadens the scope of hate crime legislation too much, we would posit that the state would be better equipped to address the scale of unconscious bias in our society, with the discrimination and violence that comes with that, if this threshold were included. It would help ensure that fewer incidents fall through the cracks of flawed regulations, and if applied effectively, may restore trust in hate crime reporting mechanisms.

Q28: 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?

The inclusion of the 'by reason of' threshold in addition to the others would strengthen hate crime provisions, without impeding the ability of prosecutors to relate hate motivation to specific demonstrations of hostility where appropriate.

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This addition enhances the ability of the legislation to address how the offender views their victim(s) within a given social order, ensuring that this pre-judgement is incorporated as a motivating factor for the hate crime. By adding this threshold to the existing ones, it provides a more comprehensive tool with which to address hate crime, without taking away from or devaluing the symbolic power and purpose of hate crime legislation.

Q29: Do you consider that there should be a statutory definition of the term "hostility"?



Achieving clarity on what is included within the term 'hostility' would enable those prosecuting hate crime offences to choose the most applicable threshold to apply for each individual case. This is imperative for ensuring the justice system actually delivers justice in these cases.

We would recommend a definition of hostility which incorporates the notions of 'bias, bigotry, prejudice and/or contempt' as factors contributing to this hostility.

Q30: 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"?



The term 'hostility' can be interpreted quite literally, especially when used in legislation without a definition, to the detriment of hate crime victims and their recourse to justice. In many cases, if an explicitly spoken/written form of hostility is not identified, even where bigotry or prejudice clearly exists, little can be done to prosecute this.

Expanding the term to include 'bias, hostility, prejudice, bigotry or contempt' ensures that all forms of hate crime in all their manifestations can be adequately addressed by the legislation. While there are concerns that this would widen the scope of hate crime too much with regards to gender, this can be rectified through interpretation clauses explicitly referring to misogyny and transphobia in relation to that protected characteristic.

Taking this approach should preserve the symbolic power of hate crime legislation while ensuring that incidents which would've previously fallen through the cracks are adequately dealt with.

Chapter 11

Stirring up Offences

Q31: 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?



As recognised in the consultation document, there are several different, disconnected areas of legislation designed to cover what might be considered offensive or hateful conduct. The provisions in these pieces of legislation are wholly inadequate.

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'Disorderly behaviour', 'behaviour likely to cause a breach of the peace' and 'harassment' are all offences which ostensibly cover offensive conduct without explicitly being designed to cover hate speech and/or incitement to hatred, creating a patchwork coverage of this conduct to hatred which simply is not fit for use in a modern context.

For an incident to be considered 'disorderly behaviour', it must take place in a public place. For one to be breaching the peace, it must take the form of an assault, riot, etc. For it to be considered harassment, it must happen more than once.

For those who have experienced a one-time street harassment, or been abused by protesters outside abortion clinics, or been verbally assaulted by neighbours from within their property, this patchwork of regulations will provide them with no protection or recourse to justice, despite the significant distress and fear these incidents may cause.

All of these incidents, however, would be actionable under sections 4, 4A & 5 of the Public Order Act 1986. While imperfect, these regulations provide a more direct recourse to justice than existing provisions, and ensure that fewer incidents of hate speech will fall through the cracks of unfit-for-purpose legislation. However, for this to be operationalised, the police, judiciary and wider criminal justice system must have a comprehensive understanding of the different types of hate speech and incitement to hatred experienced by different protected groups.

Q32: Should the dwelling defence under Article 9(3) of the Public Order (Northern Ireland) Order 1987 be retained?



The 'dwelling defence' – wherein an individual is excused from the provisions of the Public Order (NI) Order 1987 if they are within a private dwelling – was designed for a society without the internet, and has been rendered moot by changing ideas about what 'public speech' really is.

It is unclear what the material difference is or was between hate speech or incitement to hatred conducted inside a building and that conducted outside, or why one would be considered an offence while the other isn't. Regardless, it is an outdated piece of legislation, especially given developments in communication technology and the ability to speak in a public domain (e.g. Twitter, or other online forums) from a private dwelling.

Q33: 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?



We agree that, for the maintenance of a consistent prosecution policy, this is a necessary and appropriate measure. However, it will only be effective if the Director of Public Prosecutions has a rounded understanding of the different ways in which hate speech and incitement to hatred can manifest and be directed at different groups.

As such, we would advise the inclusion of a mechanism for review and accountability, to ensure that victim groups and civil society organisations supporting victims are able

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to contribute their expertise, experience and understanding of how different kinds of hate speech/incitement to hatred impacts different groups to the DPP's decision-making. This will, hopefully, be a measure by which to ensure the proper application of this legislation and meaningfully tackle hate speech and incitement to hatred within our society.

Q34: Do you consider the term "hatred" as the appropriate test to use in the Public Order (Northern Ireland) Order 1987?



The term 'hatred' is used without a definition in the Public Order Act 1986, and used with a fundamentally flawed definition in the Public Order (NI) Order 1987. As a result, the threshold for hate speech/incitement to hatred is not just high, but high and unidentifiable.

The result of this obtrusiveness has been very little successful use of the Public Order Act 1986, despite rising hatred directed in particular towards people of colour, migrants, and trans people throughout the UK. This high threshold is ostensibly to 'protect free speech', when in reality it leads to minorities and marginalised groups struggling to speak out, participate in society and contribute to public discourse due to fear of unchecked harassment or violence.

Prioritising the freedom to espouse bigotry, hatred, and intolerance over the right of minorities to merely participate in society is not a protection of free speech, it is a protection of the social hierarchies which dominate our state of being.

To enable a diversity of expressions, opinions and backgrounds in our society, we must first and foremost protect and uplift those whose speech is not considered 'worthy' of public attention: racialised people, migrants and refugees, LGBTI+ people, sex workers, homeless people. All of these groups have valuable perspectives and contributions to make, most of which will not be heard over the hatred and abuse directed at them.

Q35: 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?



Hate speech and incitement to hatred directed at trans people, sex workers, racialised people, and many other groups has become an accepted facet of our society, our media, & our culture. Any new hate speech regulations must begin to address this steadily worsening problem.

That involves including 'transgender identity' and any other new groups brought under hate crime legislation within Part III of the Public Order (Northern Ireland) Order 1987. There is no reason for those groups to not be included, as if they can be victimised by perpetrators of hate crime then, naturally, they may also experience hate speech and incitement to hatred.

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Q36: 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?



The decision to include these 'defences' was made politically, not backed up by evidence of need, and did not provide meaningful additional protections to free expression. It did, however, excuse and implicitly endorse homophobia & discrimination against religious minorities.

There is not any doubt regarding an individual's right to express disagreement with LGBTI+ identities, or with different religious beliefs. Indeed, if there was a real political will to improve freedom of expression in Northern Ireland, reforming libel laws would be an excellent area within which to start.

Regardless, the Public Order (Northern Ireland) Order 1987 is not the area to address this issue: it governs hate speech and incitement to hatred. Thus, including these provisions solely serves to implicitly excuse and justify hate speech and incitement to hatred directed at LGBTI+ individuals and religious minorities.

Q37: 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?



This was, again, a decision that was taken to cater to a particular ideological outlook within the UK Parliament, rather than one taken with the genuine interests of freedom of speech and expression in mind. It provides justification for and implicit endorsement of homophobia.

Q38: 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?

Given the distinctly low prosecution rates of this legislation currently⁸, the general lack of awareness of the provisions and the rising incidents of hate speech and incitement to hatred many in our communities see every day, we would strongly oppose any efforts to raise the bar for hate speech and incitement to hatred.

It is very clear that the legislation in its current form is not working, given these low conviction rates. The response to this should be expanding the net, ensuring victims are adequately covered by provisions, and educating the public on how to report hate speech and incitement to hatred, rather than raising the threshold for what is included within this.

⁸ 73 cases were considered for prosecution between Jan 2010 & Sept 2016, just 28 were prosecuted with no info available on the outcomes – 2017 Criminal Justice Inspection Northern Ireland

Q39: 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?



As raised previously, hate speech and incitement to hatred laws are not the place for freedom of expression provisions. Including these provisions in this legislation, again, provides an implicit excuse for and endorsement of hate speech, and merely sends the message that some discrimination or abuse is acceptable.

There are many ways in which free speech and expression can be protected and upheld in Northern Ireland: reforming libel laws and creating a cultural environment which respects and includes voices and perspectives from all backgrounds. Aiding and abetting the abuse perpetrated against already oppressed voices will stifle free expression, not promote it.

Chapter 12

Online Hate Speech

Q40: Should social media companies be compelled under legislation to remove offensive material posted online?



Any speech, materials or other content posted online must be subject to the same hate speech and incitement to hatred regulations as speech shared offline.

Considering the levels of abuse and vitriol directed at, in particular, women, disabled people, people of colour and trans people online, it's clear that this is a growing issue and one which does not currently have the legislative coverage it should.

Existing policies for removing 'offensive' material upheld by Facebook, Twitter, Instagram and other social media sites often fail victims of abuse, as online hate may not fit exactly into the algorithms they've developed or the thresholds they've decided upon.

There are many different types of harm that can be perpetrated through the internet; abuse and vitriol targeting an individual, creating a atmosphere of hate against a group of people, or radicalisation of individuals as part of global hate movements. Further, the normalisation of this hateful rhetoric has created a culture wherein the rise in hate crimes committed is acceptable.

It is imperative that there are provisions in the law to compel companies to remove content that would contribute to these wide-ranging harms, and to play their part in addressing the culture of hate and fear that has developed in our society.

Q41: Are there lessons from the English and Welsh experience of the Public Order Act 1986 that may apply for Northern Ireland?



The Public Order Act 1986, while loosely applicable to hate speech and incitement to hatred perpetrated online, was not designed with it in mind, and as such contains flaws which have resulted in inconsistent application of the provisions across England & Wales.

Further to that, some of the contents of the Public Order Act 1986 complicate matters and make prosecuting online hate speech even more difficult. We would recommend making the following changes and clarifications to the Act before transferring these provisions to Northern Ireland:

- Clarifying that any materials downloaded in the UK fall within the jurisdiction of UK law
- Clarifying the definition of the word 'publication' to include 'posting or uploading materials online'
- Removing the dwelling defence, as explored below
- Removing the need for the Director of Public Prosecution's permission for prosecuting online offences, given the volume and nature of these offences
- Changing the wording from 'stirring up hatred' to 'incitement to hostility or discrimination' to provide clarity

While the structure of the Public Order Act 1986, in particular sections 4, 4A and 5, provides a baseline for dealing with online hate, these issues explored above should be addressed in order to make the provisions fit for use in an online world

Q42: Should the dwelling defence under Article 9(3) of the Public Order (Northern Ireland) Order 1987 be amended/removed?



There is no legitimate reason for hate speech or actions perpetrated inside one's home should be regulated differently to those perpetrated outside of it, especially if the material harm/content of the actions is the same.

For an incident to be treated differently depending on if a tweet was sent from home or sent, for instance, while using public transport or walking through a city centre, demonstrates a distinct lack of victim-centred approach and awareness of the impact of hate speech and incitement to hatred in a contemporary context. Thus, it is clear that this defence must be removed in order to ensure that the legislation is fit-for-purpose.

Q43: Should the term "publication" in the Public Order (Northern Ireland) Order 1987 be amended to include "posting or uploading material online"?



In order to update the legislation to be fit for contemporary contexts, we must recognise in the provisions that not all harmful material is physically 'published': indeed, a significant amount of hate speech & radicalisation occurs online, through private chatrooms and social media.

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As such, the term 'publication' no longer adequately captures the many forms which hate speech and incitement to hatred can take, and should be amended to include 'posting or uploading material online'.

Q44: Should there be an explicit defence of "private conversations" in the Public Order (Northern Ireland) Order 1987 to uphold privacy protection?



The right to privacy is one that should be respected and upheld, and within that, the right for private conversations to remain private. However, it is imperative that the legislation provides a clear and operationalizable definition of what constitutes a 'private' conversation.

There are many conversations online that could be deemed theoretically 'private', but still have far-reaching harms. For instance, would inciting hatred or violence against trans people in a 'private' group on Facebook or a large group chat be included within this defence? Would the radicalisation of individuals in alt-right 'private' forums through hate speech and the denigration of racialised people, LGBTI+ people, disabled people be actionable?

These issues and more point to the need for an explicit clarification of the criteria required to meet the definition of a 'private' conversation, to ensure this defence is not used to avoid accountability for genuinely harmful actions.

Q45: Should gender, gender identity, age and other characteristics be included as protected characteristics under the Public Order (Northern Ireland) Order 1987?



We support the inclusion of the characteristics we stated support for in our answers to Chapter 8, as there is no legitimate reason that an individual who may be victimised by hate crime may not also experience hate speech or incitement to hatred online.

As explored above, hate speech and incitement to hatred directed at trans people, sex workers, racialised people, and many other groups has become an accepted facet of our society, our media, & our culture. This is especially clear online, where anonymity enables individuals to project transphobic, racist, sexist, disablist, etc abuse and vitriol with virtually no ramifications.

The rising levels of transphobic and specifically transmisogynistic rhetoric and abuse online has led to trans people being hounded off social media, contributes to poor mental health experiences within the community, and creates a fearful environment which serves to push trans people out of public spaces, both physical and digital. It is imperative that any change to the law grants trans communities, and others who are subject the massive levels of online abuse, additional protects and some peace of mind.

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Q46: Should the Malicious Communications (Northern Ireland) Order 1988 be adapted to deal with online behaviour?



In order to adequately address online harm, and to be fit-for-purpose in a contemporary context, the Malicious Communications (Northern Ireland) Order 1988 must extend the reference to sending a 'letter or other article' to include electronic communications.

In the face of growing evidence of online abuse disproportionately impacting marginalised groups, and with the Malicious Communications Act 1988 and the Communications Act 2003 in England & Wales both having been adapted for online contexts, there is no reason for Northern Ireland to be in a legislative dark spot for dealing with this kind of hate.

Q47: 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"?



There are multiple different types of harms that can be perpetrated online, as explored in our response to Q40. The inclusion of the terms 'grossly offensive', 'indecent' and 'obscene' have been useful in terms of addressing all of these types of harm, however they are also so broad as to require the Public Prosecutions Service to self-regulate their application of them.

Relying on government self-regulation when dealing with issues of free expression and protection from harm is unwise, and as a result, these terms should be replaced with those fit for use in contemporary contexts.

Q48: Are the offences under the Malicious Communications Act 1988, the Malicious Communications (Northern Ireland) Order 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?



There are aspects, concepts and terms used across these areas of legislation which would require clarification or alteration in order to ensure that the legislation is able to be applied effectively to deal with online hate and abuse.

It is also important, however, to strike a balance when considering narrowing the regulations. It's clear that online hate creates a culture of fear and causes untold harm to many communities, and it is imperative that the provisions within the law to deal with that are strong, applicable across the different types of harms that can be caused online, and cover hate specifically directed at protected groups.

Q49: Should online harm be part of a general law applying to hate crime?



A significant amount of harm directed towards trans people of all genders takes place online, contributing to an aggressive culture of transphobia and a general concern for the safety and wellbeing of the communities.

Any hate crime legislation must be fit-for-purpose for contemporary contexts, and must also reflect the realities of the groups it is trying to protect. Online harm is a widespread reality for so many trans people, racialised people, disabled people, and women (including cis women), so there is a need for reformed hate crime legislation to reflect that and attempt to address it.

Q50: Is the current law contained in the Malicious Communications Act 1988, the Malicious Communications (Northern Ireland) Order 1988, the Malicious Communications (Northern Ireland) Order 1988 and the Communications Act 2003 sufficiently clear to protect freedom of expression?



As explored above, some of the concepts included in these regulations are arguably too broad or even conflicting, and should be clarified to protect free expression and prevent these provisions being turned on their head to attack and criminalise marginalised groups' speech.

We agree with point 12.86 of the consultation document where it states the need 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.*” This will hopefully address some of the difficulties in prosecuting instances of online abuse or harm while protecting free expression.

Chapter 13

Sectarianism and Hate Crime Legislation in Northern Ireland

Q51: Would you support a specific reference to the term 'sectarian' within any new hate crime legislation?



The consultation covers many of the difficulties in dealing with expressions of sectarian hatred, given the lack of a definition of the term in legislation and the inconsistent and patchwork application of that legislation.

There will be other organisations providing significantly more detail in response to Chapter 13 and 14, as tackling sectarianism is their core work, however we would like to echo their calls for increased legislative powers to deal with sectarianism.

Q52: Should the list of indicators for sectarianism (i.e. religious belief and political opinion) be expanded?



As explored in the consultation document, the indicators of religious belief and political opinion may not be applicable to certain expressions of sectarian hatred, especially if that hatred is motivated by, for instance, hearing someone speaking Irish, or seeing someone wearing an NI

football jersey.

As such, we would support the addition of 'language' and national identity as indicators for sectarianism. However, we are also concerned at the potential application of the 'political opinion' indicator, in particular where this indicator may impact on free expression.

Expanding the list of indicators to include 'political opinion' when dealing with hate expression would risk capturing and criminalising legitimate political speech and action. An example of this is the commencement of criminal proceedings against an LGBT+ protestor at the 2017 Belfast Pride Parade for holding a placard reading "F*ck the DUP".

While this instance did not result in a prosecution, there is the potential for instances like it to be criminalised in the future if 'political opinion' is included and used as a category of offence when dealing with hate expression.

Chapter 14

Removing Hate Expression from Public Space

Q53: Should the law relating to the duties of public authorities to intervene to tackle hate expression in public space be strengthened or further clarified?



Public expressions of hate - in particular along racist, sectarian and anti-LGBTI+ lines - is a widespread concern in Northern Ireland, and one which takes many different forms, requiring complexity and nuance in its regulation.

We regularly see hate expression through slogans and graffiti, to the burning of flags or effigies, as well as the strategic placement of specific flags (for instance, Nazi and Confederate flags) to intimidate migrant communities and racialised groups. Given the relative lack of action to tackle this from public authorities, it is clear that there is a need for a strengthening of these provisions.

We would support the creation of a statutory duty on the relevant public authorities to take reasonable action to remove hate expression on their property and, where appropriate, broader public spaces. This will go some of the way in tackling this kind of expression and addressing the culture of racism, sectarianism and anti-LGBT+ rhetoric being acceptable.

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Chapter 15

Restorative Justice

Q54: Should restorative justice be part of the criminal justice process in dealing with hate crime in Northern Ireland?



Addressing hate crime is not just about dealing with individual incidents: it's about dealing with a cultural acceptance of prejudice, discrimination and bigotry against marginalised groups. Taking a purely individual and carceral approach will not address this culture.

The conventional punitive approach to addressing hate crime will often not fully address the needs of hate crime victims, in terms of closure and general safety, especially those who experience persistent so-called 'low level' hate crime incidents. Often, there is a disconnect between the victim-centred reporting mechanisms and evidence-driven criminal justice proceedings, which can leave the victim feeling frustrated and re-traumatised through the ineffectiveness of the system in dealing with the harm they have experienced.

Restorative justice provides an alternative to these punitive solutions, which further rely on a prison system with "limited deterrent value, [which offers] limited opportunity for rehabilitative programmes and [which] can be 'hotbeds' for prejudice, intolerance and hate crime activity and recruitment."⁹ The restorative justice approach is a viable alternative for how we deal with all crime, but especially hate crime, where it can at least partially restore the harm done to the victim while educating the perpetrator on the impact of their actions.

Through this approach, and through linking in civil society organisations who work with victim groups, we can begin to address the prejudice, hatred and intolerance that is rampant within our society.

Q55: Should restorative justice schemes be placed on a statutory footing?



In order for restorative justice to be taken seriously as an alternative for dealing with hate crime, it should be grounded in statutory services with significant representation of victim group civil society organisations & those working in restorative justice already, such as NIACRO.

This would help ensure the process has credibility, isn't considered a 'soft' option by those working in the judiciary, while consistently applying the processes of restorative justice and taking a truly victim-centred approach.

⁹ Chakraborti, N. and Garland, J. (2015) "Hate Crime: Impact, Causes and Responses"

Q56: Should there be a formal justice system agency responsible for the delivery of adult restorative justice for hate crime?



It is clear through the case studies provided in the consultation document that establishing a centralised, statutory agency responsible for the delivery of restorative justice programmes with strong community links is the most effective way to ensure confidence in the process and consistency of approach.

This statutory agency must make significant efforts to meaningfully involve victim groups and representative organisations in the process of both establishing and running restorative justice programmes.

As stated in 15.15, it is likely that the Probation Board for Northern Ireland would be the provider of this, and we would stress that it should conduct extensive outreach with trans orgs and communities, LGBTI+ groups, the women's sector, migrant groups, disabled groups, and racialised communities.

Q57: What role do you envisage for the accredited community based restorative justice organisations in the delivery of adult restorative justice for hate crime?

We recognise and commend the work of community-based restorative justice organisations, such as NIACRO, in delivering these programmes and working to change the criminal justice system in Northern Ireland, and indeed have worked with NIACRO and others to educate perpetrators of hate crime engaged with these services.

It should be recognised that significant expertise has developed within the community sector regarding restorative justice approaches, as demand has outweighed statutory supply of these programmes. Any move to a statutory system for restorative justice should be meaningfully codeveloped and coproduced with these orgs as well as those representing victim groups, with specific consideration given to their role in statutory provision.

Engaging with and including community organisations directly is imperative, especially when dealing with hate crime against protected groups: groups which often have low levels of trust and confidence in the police and criminal justice system. It is worth identifying where this lack of trust exists, and work closely with the relevant community organisations to ensure the needs of victims are met and they are fully able to engage with restorative justice processes.

Q58: Do you consider diversion from prosecution is an appropriate method of dealing with low level hate crimes as per the practice in Scotland?



We support a move away from an exclusively punitive and carceral system of dealing with hate crimes and towards one which centres the experience of the victim, supports rehabilitation, and tackles the prejudice at the root of this kind of crime.

Diversion from prosecution provides the opportunity for restorative justice programmes to be delivered, ensures that the perpetrator fully understands the impact of their

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crime, and provides education and information to help reduce the possibility of reoffending. This approach takes into account the victim's view on what should be done to rectify the offence, moving away from an exclusive reliance on imprisonment and fines.

It may not be suitable for all types of crime, and it is also a complex and nuanced process which relies on the involvement – and, specifically, training – from community organisations working with protected groups to ensure professionals working in restorative justice have a comprehensive understanding of the power dynamics that may exist between victims and perpetrators.

Chapter 16

Victims

Q59: Do you have any views as to how levels of under reporting might be improved?



The inclusion of transgender identity as a protected characteristic has the potential to improve underreporting within our communities, while public education and community advocacy services are essential for improving reporting and engagement.

Through our advocacy work and working closely with The Rainbow Project advocacy officer, we have identified significant barriers in the reporting, recording and prosecution processes for trans people attempting to report hate crime, all of which we have attempted to explore in this response.

Lack of trust in the police and criminal justice system, stemming from historical and contemporary institutional abuse and violence, has a significant impact on underreporting. Many within trans communities have been unhappy with PSNI outreach attempts in the past, and it's very clear that transphobia within the police service is a barrier to all kinds of justice for trans people.

Creating robust laws that can be effectively operationalised to address all forms of hate crimes is crucial, and this consultation was a good step in reaching out to community groups to ensure that. However, the collaboration can't stop here, and wide-spread training for police and judicial staff as well as public education programmes must be developed with the third sector to increase reporting and begin addressing the root causes of hate crime.

We have maintained throughout this process that reforming hate crime legislation is not the be-all-and-end-all of addressing hate crime: it also requires a significant change of attitudes within the police, political class, and wider society, to the rights and protection of marginalised groups.

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Q60: Do you consider that the Hate Crime Advocacy Scheme is valuable in encouraging the reporting of hate crime?



As raised previously, many protected groups have a strenuous relationship with the police and criminal justice system, and from our own experience, there are many hate crime incidents that simply would not have been reported had the advocacy scheme not existed.

Q61: Do you consider that the Hate Crime Advocacy Scheme is valuable in supporting victims of hate crime through the criminal justice process?



Institutional barriers to rights and respect within the criminal justice system for many marginalised groups means that there is often a need for a community advocate to support victims with the initial reporting and throughout the process.

As mentioned previously, if community advocates are not provided, many victims would feel uncomfortable going through the criminal justice process alone, and indeed reporting hate crimes to the PSNI in the first place. They are an invaluable asset in tackling hate crime and improving people's experience with the system.

Q62: How might the current Hate Crime Advocacy Scheme be improved?

Establishing a solid model of funding would provide hate crime advocates with job security, as well as securing the place of the advocacy scheme in the justice process.

Further to this, recognising the nuances of different protected groups, expanding the scheme to include a trans community advocate is vital considering that, as of the time of writing, no transphobic hate incidents have been reported in the past month. We know that this is not reflective of our communities' lived experiences, and believe that a trans community advocate could begin to address that gap in reporting.

As well as this, efforts must be made to ensure that those individuals living in rural areas who experience hate crime are adequately supported throughout the reporting and following processes.

Q63: 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?



In order for the Advocacy Scheme to be fully effective and for long-term work to take place, consistent and sustainable multi-year funding must be provided. Creating funding pots for further advocates to be created across the community sector would improve reporting and ensure that victims are adequately supported throughout the process.

Q64: Do you consider that, in certain circumstances, press reporting of the identity of the complainant in a hate crime should not be permitted?



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Q65: In what circumstances should a restriction on press reporting of the identity of the complainant in a hate crime be permissible?

There are many cases in which it would be inappropriate to identify the victim of a hate crime, in particular where there is a risk of the individual being revictimized through this identification. For instance, outing a transgender person by identifying them as the victim of a transphobic hate crime would have a significant impact on their mental wellbeing, as well as putting them at risk of further abuse or violence.

It is imperative that a victim's consent for being identified in press reporting is acquired to ensure that this reporting will not cause further harm.

Chapter 17

Legislation: Consolidation and Scrutiny

Q66: 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?



Existing legislation governing hate crime and speech is convoluted, conflicting, and in many areas vague or unclear. Consolidating all of these provisions into one piece of legislation will begin to address some of these issues, while ensuring consistency of approach.

The laws that are currently in place are fundamentally flawed in many ways: they are outdated, do not provide coverage for some marginalised groups, do not recognise hate crime across multiple characteristics, and do not provide adequate protection from online hate crime. As a result, they are under-utilised and misunderstood even within the justice system, never mind in wider society.

Consolidation would, hopefully, simplify the provisions and aide in raising public awareness and understanding of hate crime.

Q67: Should any new legislation on hate crime be subject to post-legislative scrutiny?



Q68: In what way should post-legislative scrutiny be provided for?

There should be at least two independent reviews following the implementation of any new hate crime laws, with built-in extensive consultation with the community & voluntary sector involved in supporting and advocating for protected groups.

We would support the establishment of a hate crime advisory group, including those aforementioned community organisations alongside victim representation, which would scrutinise the application of the new legislation as well as the ability of the PSNI and wider criminal justice system in addressing hate crime.

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