



EQUALITY COMMISSION FOR NORTHERN IRELAND

Response to consultation:

**Hate Crime Legislation in Northern
Ireland, Independent Review.**

April 2020

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1 Executive Summary

- 1.1 The Equality Commission for Northern Ireland (‘the Commission’) has set out below its **recommendations** relating to the consultation on *Hate Crime Legislation in Northern Ireland, An Independent Review* (‘hate crime review’)¹.

Our recommendations

Consultation Themes / Questions

- 1.2 Specifically, as regards the questions raised in the consultation paper:

Working definition of hate crime (Question 2)

- We recommend that the working definition of hate crime includes a reference to acts of ‘hostility’ (which in turn should include a reference to prejudice and hatred).

Enhanced sentencing and statutory aggravation models (Questions 7, 9)

- We recommend the adoption of a statutory aggravation model similar to that adopted in hate crime legislation in Great Britain.
- We recommend the introduction of sentencing guidelines for hate crimes in Northern Ireland.

Coverage of Hate Crime Legislation: Protected groups (Questions 11-14, 15, 18, and 19)

- We recommend that the hate crime legislation is extended to cover the additional grounds of age, gender, gender identity and intersex.
- We recommend protections under the hate crime legislation for individuals who are presumed to have a characteristic, or who have an association with an individual with that particular identity, should also be extended to the grounds of age, gender, gender identity, and intersex.

¹ Hate Crime Review Team (2020), *Hate crime legislation, Independent Review, Consultation Paper*.

- We recommend, in the event that the hate crime legislation does not cover offences targeted at equality groups ‘by reason of’ their membership of an equality group, that consideration be given to how to best ensure those offences are protected out with the hate crime legislation.
- We recommend that the hate crime legislation effectively addresses hate crime experienced by people due to their multiple identities.

Thresholds in hate crime legislation (Questions 27, 28)

- We recommend that the hate crime legislation includes an additional threshold so as to provide protection against crimes which are committed against, or targeted at, individuals ‘by reason of’ their membership of a particular protected group/s, and this protection should apply to equality groups covered by the hate crime legislation.

Statutory definition of ‘hostility (Questions 29, 30)

- We recommend the introduction of a statutory definition of ‘hostility’ that includes a reference to ‘prejudice and hatred’.

Public Order Incitement to Hatred Offences (Questions 31, 35, 36, 37, 39, 45)

- We recommend that legislative gaps in protection against hate crime under the Public Order legislation are addressed; ensuring that the legislative vehicle chosen is the most appropriate and effective means to combat hate crime across the equality grounds.
- We recommend that the Public Order incitement to hatred provisions are extended to cover the additional grounds of age, gender, gender identity and intersex.
- The Commission is not persuaded that express defences to the Public Order incitement to hatred offences relating to freedom of expression are necessary. However, if such defences are to be introduced, we recommend that Government ensures that such defences are narrowly defined and objectively justifiable, and are in compliance with equality and human rights law.
- We recommend that the ‘incitement to hatred’ legislation should prohibit ‘incitement to discriminate’ on the protected grounds.

Online hate speech (Question 40)

- We recommend further action to tackle online hate speech and abuse targeted at different equality groups.

Sectarianism and hate crime legislation (Questions 51, and 52)

- We recommend a specific reference to the term 'sectarian' within the hate crime legislation.
- We recommend the indicators of sectarianism are expanded so that they include: religious belief, national identity, nationality and citizenship; legislative gaps in protection relating to sectarian hate crime should be addressed; and that there is recognition that victims of sectarian hate crime can be targeted due to their multiple identities.

Removing Hate Expression From Public Space: Duties on public bodies (Question 53)

- We recommend the greater regulation of the display of flags and emblems, and greater leadership by public bodies as regards their existing equality duties.

Victims: Under reporting (Question 59)

- We recommend robust action to improve under-reporting of hate crime.

Victims: Anonymity (Questions 64, 65)

- We recommend that, in certain circumstances, press reporting on the identity of a complainant or witness in a hate crime should not be permitted. Such circumstances should include a consideration of whether, the disclosure of a person's identity will make the complainant or witness, due to an equality characteristic(s), more susceptible to victimisation or retaliation, or result in that characteristic, such as sexual orientation, being made public without their permission.

Consolidation of hate crime legislation (Question 66)

- We recommend that the hate crime legislation should be consolidated into a single piece of legislation.

Review of hate crime legislation (Questions 67, 68)

- We recommend that legislative changes to the hate crime legislation should be subject to post-legislative review, with

the review being carried out within 5 years of the legislation being passed so as to assess the overall effectiveness of the legislative changes in tackling hate crime.

Wider Issues

1.3 As regards **additional policy and legislative action** to improve the effectiveness of the hate crime legislation, we recommend the following measures are implemented.

- **Guidance and Training:** We recommend the production of guidance and training for criminal justice agencies, including the PSNI, PPS and judiciary.
- **Holistic approach:** We recommend the adoption of a holistic approach to tackling hate crime.
- **Outcome rates:** We recommend action to improve outcome rates for hate crime.
- **Increasing Hate crime:** We recommend that measures are in place to tackle any increase in hate crime due, for example, to Brexit and the Covid 19 pandemic.
- **Prejudicial attitudes:** We recommend the implementation of measures to eliminate discrimination, hate crime and tackle prejudicial attitudes and negative stereotypes against equality groups.
- **Equality Law:** We recommend measures to strengthen equality law, including against harassment and multiple discrimination.
- **Sharing in Education:** We recommend a move to a system of education which routinely teaches all pupils together via a shared curriculum in shared classes, in support of better advancing a shared society.
- **Bullying:** We recommend action to address bullying in schools including on prejudice- based grounds, including through the curriculum in an age appropriate way, and via leadership and commitment from Principals and Boards of Governors.

- **Shared and safe housing:** We recommend actions designed to incentivise and advance safe, shared housing and communities based on equality, dignity and respect.
- **Harassment when accessing health services:** We recommend that measures are taken to ensure that women, including women with multiple identities, are able to access all health services, including sexual and reproductive health services, free from discrimination or harassment. Measures should be compliant with human rights legislation.
- **Equality/Good relations Strategies:** We recommend prompt implementation of equality and good relations strategies, to include actions to address prejudicial attitudes, stereotypes and hate crime.

2 Introduction

2.1 The Equality Commission for Northern Ireland ('the Commission') welcomes the opportunity to respond to the consultation on *Hate Crime Legislation in Northern Ireland, An Independent Review* ('hate crime review')² by the Hate Crime Review Team, led by Judge Marrinan.

2.2 Further information on the role and remit of the Commission is set out in Annex A.

Our recommendations

2.3 Set out in the sections below are the Commission's recommendations in response to specific questions raised in the consultation paper. The Commission has responded only to those questions and issues within its remit and expertise.

2.4 Our recommendations have been informed by, and have taken into account, the views of a range of stakeholders representing a number of equality groups, as well as stakeholders represented on the Hate Crime Working Group of which the Commission was a member.

2.5 We have also set out our recommendation on additional actions that we consider are required to improve the effectiveness of the hate crime legislation. These are additional to our responses to the specific questions raised in the consultation paper.

2.6 These wider recommendations include recommendations on changes to policy, as well as legislative changes outwith the hate crime legislation; for example, changes to equality law so as to address gaps in protection against harassment experienced by equality groups. These wider recommendations are set out in **Annex B**.

² Hate Crime Review Team (2020), Hate crime legislation, Independent Review, Consultation Paper.

3 Working definition of hate crime (Question 2).

We recommend that the working definition of hate crime includes a reference to acts of ‘hostility’ (which in turn should include a reference to prejudice and hatred).

Supporting rationale

- 3.1 Our 2007 guidance, *Promoting Good Relations – A Guide for Public Authorities*, considers a number of related issues and includes a working definition of good relations. Further, in 2015 (in the context of the Northern Ireland Executive strategy on good relations, *Together: Building a United Community*) the Commission proposed that there should be a definition of good relations in statute, to ensure clarity and consistency of purpose in shaping actions and promoting good relations.
- 3.2 The Commission indicated that there are a number of elements that would be helpful in the formulation of such a definition, including that good relations could be said to exist where there is: a high level of dignity, respect and mutual understanding; an absence of prejudice, hatred, hostility; and a fair level of participation in society.
- 3.3 We consider that the above points are relevant to the development of a definition of hate crime.
- 3.4 In general, we consider that the working definition of hate crime should include references to three key concepts; ‘prejudice’, ‘hatred’ and ‘hostility’. In order to achieve this, we consider that the working definition should include a reference to acts of ‘hostility’, and, as set out below, the definition of ‘hostility’ should make clear that the term ‘hostility’ includes a reference to ‘prejudice and hatred’. In the event that the working definition of hate crime does not include references to these three key concepts, then consideration should be given to how best to encapsulate them within the hate crime legislation.
- 3.5 We note that Chakraborti and Garland comment ‘most credible definitions are consistent in referring to broader notions such as prejudice, hostility [our emphasis] or bias as key factors in the

classification of a hate crime³. In addition, we note that the Organisation for Security and Co-operation in Europe (OSCE) define hate crimes as ‘criminal acts motivated by bias or prejudice [our emphasis] towards particular groups of people’⁴.

3.6 In addition, the hate crime review consultation paper (2020) makes clear that ‘the boundaries of hate, which are central to the commission of a hate crime in most current definitions included broader notions such as prejudice, hostility [our emphasis] or bias and are key factors in the classification of a hate crime’⁵.

3.7 Further, we note that in the *Independent Review of Hate Crime Legislation in Scotland*⁶ (2018) (‘Scottish Review’), Lord Bracadale’s definition of hate crime included a reference to acts motivated by ‘hatred’ or ‘prejudice’, and he indicates that ‘prejudice’ is expressed in terms of hostility⁷. However, he makes clear that the definition is qualified in the sense that it is *not necessary to prove motivation*; as it is sufficient that the perpetrator demonstrates hostility based on a particular feature of the victim’s identity. We also note that the PSNI’s definition of hate crime includes reference to being motivated by ‘prejudice’ or ‘hate’⁸.

³ Chakraborti, N. and Garland, J. (2015) *Hate Crime: Impact, Causes and Responses*, 2nd edn. London: Sage, p.5, as cited in Hate Crime Review Team (2020), *Hate crime legislation, Independent Review, Consultation Paper* at para 1.6.

⁴ OSCE OD IHR Hate Crime Reporting (2019), Criminal Offence + Bias Motivation = Hate Crime. Available at: <https://hatecrime.osce.org/what-hate-crime>, as cited in Hate Crime Review Team (2020), *Hate crime legislation, Independent Review, Consultation Paper*, para 1.5.

⁵ Hate Crime Review Team (2020), *Hate crime legislation, Independent Review, Consultation Paper*, para 6.3.

⁶ Lord Bracadale (2018), *Independent Review of Hate Crime Legislation in Scotland: Final Report* (2018), Scottish Government.

⁷ Offences “which adhere to the principle that crimes motivated by hatred or prejudice towards particular features of the victim’s identity should be treated differently from ‘ordinary’ crimes.” Ibid, at page 10.

⁸ The definition of hate crime used by the PSNI is “any hate incident which constitutes a criminal offence perceived by the victim or any other person as being motivated by prejudice or hate.”, as cited in Hate Crime Review Team (2020), *Hate crime legislation, Independent Review, Consultation Paper*, para 6.3.

4 Enhanced sentencing and statutory aggravation models (Questions 7, 9)

We recommend the adoption of a statutory aggravation model similar to that adopted in hate crime legislation in Great Britain.

Supporting rationale

- 4.1 We consider that there are cogent reasons for strengthening and amending the current enhanced sentencing model in Northern Ireland. It is clear that there are operational and procedural difficulties with the implementation of the current legislative framework that urgently need addressed.
- 4.2 Research⁹ (2012) also indicates that hate crime legislation is used less often in Northern Ireland than in other parts of the UK, and with potentially limited use of enhanced sentencing provisions. In addition, we note, as highlighted in the hate crime review consultation paper, that research in 2017 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'¹⁰.
- 4.3 In 2004, the Commission indicated that 'it had consistently held the view that the specific aggravated offences in the Crime and Disorder Act 1998 should be extended to Northern Ireland'¹¹.; though we made it clear that lessons should be learnt from the operation of the hate crime legislation in Great Britain, including recent reviews of hate crime legislation in Great Britain, and should reflect best practice
- 4.4 We consider that there is merit in adopting a statutory aggravation model similar to that which exists in Great Britain, as we recognise that there are a number of benefits to the statutory aggravation model adopted in Great Britain; though as

⁹ Jarman, N. (2012): [Challenge Hate Crime, Deal with it: Criminal Justice Responses to Hate Crime in Northern Ireland](#), Institute for Conflict Research.

¹⁰ Jarman, N. (2017), *Acknowledgment, 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. As cited in the Hate Crime Review Team (2020), *Hate crime legislation, Independent Review, Consultation Paper*, at para 6.7

¹¹ See ECNI, (2004), [Submission to the NI Affairs Committee Hate crime Inquiry](#), para 19.

set out below, we stress that lessons should be learnt from the operation of this model in Great Britain.

- 4.5 Firstly, under this model, the aggravation will be recorded and taken into account when sentencing. The aggravation will appear on the offender's criminal record, whereas under the current enhanced sentencing model the fact that an offence was aggravated by hostility will not appear on the offender's criminal record, even though the offender's sentence may have been increased because of hostility.
- 4.6 The recording of the aggravation on criminal records will also allow trends to be identified and monitored. It also means that the aggravation can be taken into account by the court if the offender reoffends. The requirement to record under this model allows for a consistent and clear recording of aggravation, greater transparency of the justice system, and greater consistency in sentencing.
- 4.7 We also consider, as made clear in the hate crime review consultation paper (2020)¹², that an important benefit of the statutory aggravation model is the 'flagging' of aggravated offence in criminal justice records so that statutory agencies are aware of the hostility element of an individual's criminal history. This flagging helps identify repeat offenders and helps criminal justice agencies to tailor re-offending programmes¹³.
- 4.8 Further, it is clear from the hate crime review consultation paper (2020) that 'there is growing evidence from the experience in England and Wales that the aggravated offences model produces a more effective response by the criminal justice process as compared to offences in which hate crime is addressed only at sentencing'.
- 4.9 In addition, we note that academic research (2017) on hate crime legislation in Northern Ireland has recommended that Northern Ireland follow the England and Wales model rather than the enhanced sentencing model currently in use in Northern Ireland. Whilst, as highlighted in the hate crime review consultation paper, the research accepts that the Great Britain model is far from perfect, it concludes it is much less

¹² Hate Crime Review Team (2020), *Hate crime legislation, Independent Review, Consultation Paper*.

¹³ *Ibid*, para 7.32.

problematical than the Northern Ireland model. It also indicates that all the evidence suggests that the Great Britain paradigm is a better template for intervention on hate crime¹⁴.

- 4.10 We note that the Scottish Review (2018) recommended that statutory aggravations continue to be the core method of prosecuting hate crimes in Scotland, and that Lord Bracadale had concluded that the statutory aggravation model approach in Scotland had ‘worked reasonably well’¹⁵.
- 4.11 Further, we consider that adopting a statutory aggravation model will ensure that the hate crime element of the offence is considered and addressed throughout the criminal justice process, and not solely at the point of sentencing.
- 4.12 In addition, we consider that there would be symbolic value in having stand-alone ‘aggravated’ offences that attract higher maximum sentences. We consider that it would send out a clear message that such offences are not acceptable or to be tolerated. It has the potential to act as a deterrent to offending, increase public awareness of hate crime, and to encourage reporting of hate crime and public confidence in the criminal justice system’s ability to tackle hate crime.
- 4.13 However, we stress that in considering the exact statutory aggravation model to be adopted, consideration should take account of lessons learnt from the current operation of the hate crime legislation in Northern Ireland, as well as the legislation in Great Britain, and beyond, including recent reviews of hate crime legislation in Great Britain. The recommendations should also reflect best practice and international equality and human rights standards.
- 4.14 We stress that Government should ensure that, whatever its choice of legislative vehicle, it has the effect in practice of appropriately and effectively tackling the specific nature and extent of hate crime experienced by a range of equality groups, in the particular context of Northern Ireland.

¹⁴ McVeigh, R. (2017) “*Hate and the State: Northern Ireland, Sectarian Violence and Perpetrator less Crime*” in Haynes, A., Schweppe, J. and Taylor, S. (eds.) *Critical Perspectives on Hate Crime: Contributions from the Island of Ireland* London: Palgrave MacMillan , p.408, as cited in Hate Crime Review Team (2020), *Hate crime legislation, Independent Review, Consultation Paper*, at para 6.23.

¹⁵ Lord Bracadale (2018), [*Independent Review of Hate Crime Legislation in Scotland: Final Report*](#) , Scottish Government, at para 3.4.

We recommend the introduction of sentencing guidelines for hate crimes in Northern Ireland.

Supporting rationale

- 4.15 The introduction of sentencing guidelines will provide greater certainty and clarity for the judiciary and criminal justice agencies across a range of areas, including how courts should increase sentences to take into account statutory aggravations related to a protected ground.
- 4.16 It will also help ensure a consistent approach across the criminal justice system.

5 Coverage of Hate Crime Legislation: Protected Groups (Questions 11-14, 15, 18, and 19)

We recommend that the hate crime legislation is extended to cover the additional grounds of age, gender, gender identity and intersex.

Supporting rationale - Overarching points

- 5.1 There are a number of overarching reasons that apply across the additional protected grounds of age, gender, gender identity, and intersex, in support of protecting these equality grounds under the hate crime legislation.
- 5.2 Extending the hate crime legislation to cover these additional equality grounds, particularly in light of evidence that indicates that individuals, such as women and trans people, are subjected to hate crime on these grounds, is consistent with the legislative approach taken in relation to other equality grounds, including disability, race, sexual orientation, and religion.
- 5.3 It would ensure that there is not a 'hierarchy' of equality grounds; namely that, without justification, certain equality groups who experience hate crime are granted protection under the law, whereas as other equality groups, who also are subject

to hate crime, are not granted protection. It would also encourage victims to report crimes based on these grounds.

- 5.4 The inclusion of these equality grounds under hate crime legislation is also important as it will lead to an increased focus by the criminal justice agencies in ensuring that in those areas they are encouraging the reporting of crime; and ensuring the provision of services to support the victims of those hate crimes. It will also ensure a consistency in sentencing and recording, allowing statistics to be kept, and trends to be identified and monitored.
- 5.5 Further, we note that the Council of Europe ECRI (2015) definition of hate speech refers to a non-exhaustive list of personal characteristics or status that includes sex, gender, and gender identity¹⁶.
- 5.6 In addition, we note that a number of other countries have included gender, gender identity as categories of hate crime. In particular, specific provisions about offending based on prejudice/hatred related to sex or gender and gender identity are found in a number of European countries, including France, Germany, Greece and Croatia¹⁷. In particular, it will be noted that thirteen EU Member States have included “gender identity” as a protected ground¹⁸. Further, hate crime legislation in all other parts of the UK covers transphobic hate crime.
- 5.7 Further, we consider that the inclusion of these additional protected grounds under the hate crime legislation, will also assist in combatting hate crime experienced by people due to their multiple identities.
- 5.8 It will also assist in tackle negative stereotyping, prejudicial attitudes and stigmatisation on these additional grounds.
- 5.9 Further supporting arguments, specific to each ground are set out in more detail below.

¹⁶ ECRI (2015), [General Policy Recommendation No 15 on Combating Hate Speech](#), 8 December 2015, CRI (2016)15.

¹⁷ FRA (2018), [Hate crime recording and data collection practice across the EU](#)

¹⁸ Ibid.

Supporting rationale - age

- 5.10 We consider that there are a number of cogent reasons in support of ‘age’ being included as a protected ground under the hate crime legislation.
- 5.11 In particular, it will be noted that academic research (2017) has suggested that utilising those characteristics already present in the anti-discrimination legislation would provide a normative basis for hate crime legislation¹⁹. It also proposes a further stage which assesses whether the group named requires the extra protection afforded by criminal law.
- 5.12 Clearly, ‘age’ is a protected ground under the anti-discrimination legislation in Northern Ireland²⁰, as well as being a ground on which due regard to the need to promote equality of opportunity must be provided under Section 75 of the NI Act 1998²¹. Further age is a protected ground in the Charter of Fundamental Rights²², under Art 14 of the European Convention on Human Rights (ECHR)²³, and under the EU Victims Directive²⁴.
- 5.13 Further, it will be noted that the Council of Europe ECRI (2015) definition of hate speech includes ‘age’ as part of its non-exhaustive list of personal characteristics or status²⁵.
- 5.14 In addition, a number of European countries, including Austria, Latvia, Lithuania and Belgium have introduced legislation prohibiting hate crime based on age.
- 5.15 We note that the OSCE analysis of hate crime provisions in its 57 Member States identified “gender, age, mental or physical

¹⁹ Bakalis C. (2017) “*The Victims of Hate and the Principles for Criminal Law*”. Legal Studies. As cited in Hate Crime Review Team (2020), *Hate crime legislation, Independent Review, Consultation Paper*, at p.95.

²⁰ In the area of employment and vocational training.

²¹ S75 of the NI Act 1998

²² EU Charter of Fundamental Rights.

²³ In particular, Article 14 of the ECHR prohibits discrimination by reference to the substantive rights guaranteed by the Convention. In particular it states that: “The enjoyments of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.” It is important to note that “other status” includes age.

²⁴ [EU Victims Directive 2012/29/EU](#),

²⁵ ECRI (2015), [General Policy Recommendation No 15 on Combating Hate Speech](#), 8 December 2015, CRI (2016)15.

disability, and sexual orientation” as characteristics that are “quite frequently protected”²⁶.

- 5.16 Outside Europe, countries such as Canada²⁷, New Zealand and some US States prohibit hate crimes based on age.
- 5.17 Further, we note that the Scottish Review (2018)²⁸ recommended the creation of a new statutory aggravation based on age. In that review, Lord Bracadale considered there to be sufficient evidence of hostility based offences against older people to recommend the inclusion of age as a protected characteristic based on the current model of hostility. He also considered that the stirring up offences should be introduced in respect of each of the protected characteristics including any new protected characteristics.
- 5.18 We recognise, as noted in the hate crime consultation, that there are also arguments *against* the inclusion of age as a ground under the hate crime legislation; including that the majority of crimes against older people are committed due to their perceived vulnerability, rather than being motivated by hatred or hostility, and that there is limited evidence of offending against young people motivated by hostility based on age.
- 5.19 However, due to the overarching reasons set out above and the specific reasons highlighted below in the sections on older people and children and young people, we consider that, *on balance*, there is a need for the hate crime legislation to be extended to cover the ground of age.
- 5.20 We also highlight that as the Police Service of Northern Ireland (‘PSNI’) does not currently record separate ‘age based hate crimes’, this limits the available evidence on the extent of such hate crimes²⁹. As stated above, including age as a ground

²⁶ OSCE Office for Democratic Institutions and Human Rights (2009), *Hate Crime Laws: A practical Guide*, as cited in Hate Crime Review Team (2020), *Hate crime legislation, Independent Review, Consultation Paper*, at p91.

²⁷ For example, in Canada section 718.2(a)(i) of the Criminal Code provides that: “...evidence that the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or any other similar factor [should be taken into account in sentencing].”

²⁸ Lord Bracadale (2018), [*Independent Review of Hate Crime Legislation in Scotland: Final Report*](#), Scottish Government

²⁹ The PSNI does publish victim characteristics (including age) in relation to racist, homophobic and sectarian hate crimes. It has stated that victim characteristics are not available in relation to victims of faith/religion,

under the hate crime legislation should assist with both capturing the nature and extent of age based hate crime, as well as ensuring an increased focus by the criminal justice agencies on age based hate crime.

- 5.21 We also consider that, in line with the approach adopted in the vast majority of countries whose hate crime legislation includes age, the legislation should cover ‘age’; as opposed to being limited to certain ages, such as older people or younger people.
- 5.22 In addition, we highlight the link between the need to tackle discrimination, and ensuring adequate discrimination laws, and effectively tackling hate crime, including on grounds of age. Research (2016) in GB has found that ‘systemic discrimination, typically codified into operating procedures, policies or laws, may give rise to an environment where perpetrators feel a sense of impunity when victimising certain minority group members’³⁰.
- 5.23 The Commission has consistently recommended the introduction of age discrimination legislation in goods and services to protect people of all ages. Whilst we recognise that such legislation is outwith the hate crime legislation, the importance of this legislation being introduced and its role in challenging prejudicial attitudes towards people of different ages, and its linkage with hate crime, should be recognised. It is not, for example, currently possible in Northern Ireland to challenge any age- based harassment by service providers under equality law.
- 5.24 In addition, the lack of protection against age discrimination in Northern Ireland is in stark contrast to the protection enjoyed in other parts of the UK, under legislation introduced in GB in 2012.

disability or transphobic motivation as the number of person victims is too small to enable these details to be provided. See PSNI (2018), [User Guide to Police Recorded Crime Statistics in Northern Ireland](#).

³⁰ Mark A. Walters and R. Brown with S. Wiedlitzka, University of Sussex, commissioned by EHRC, (2016), [Causes and Motivations of Hate Crime](#) , page 8.

Older people

- 5.25 An initial consideration suggests that there is some evidence that offences committed against older people are motivated by hostility.
- 5.26 We note that the Scottish Review ³¹(2018) considered there to be sufficient evidence of hostility based offences against older people to recommend the inclusion of age as a protected characteristic based on the current model of hostility. The Review, for example, cited evidence from Action on Elder Abuse that it often received calls to its Helpline regarding verbal abuse, or harassment, with many older people telling the charity that they believed they were targeted due to their age³².
- 5.27 There is also evidence that older people are subjected to *elder abuse*. For example, research from 2007 has suggested that around 2.6 % of the population aged 65 or over had been victims of elder abuse in the UK.
- 5.28 A recent GB research report (2020)³³ has found that stereotypes and attitudes towards ageing and older people are almost always more negative than they are positive. It makes clear that such stereotypes and attitudes can result in prejudice and discrimination, both directly and indirectly.
- 5.29 It also found that, age combines with other identities resulting in a 'double jeopardy', whereby members of already marginalised groups are further stigmatised as they age; for example, women's ageing is often seen more negatively than men's ageing.
- 5.30 While it will be important to distinguish correlation from causation, a global study published in 2017 also estimated that one in six older people experiences some form of physical, emotional, sexual or financial abuse each year.
- 5.31 We also consider that the inclusion of age as a separate ground under the hate crime legislation has the potential to ensure a more co-ordinated and effective response by criminal

³¹ Lord Bracadale (2018), [Independent Review of Hate Crime Legislation in Scotland: Final Report](#), Scottish Government

³² Ibid, para 4.56.

³³ Centre for Ageing Better (2020), [Dodderly but dear? Examining age-related stereotypes](#).

justice agencies to crimes against older people due to prejudice or bias.

- 5.32 A legislative response to tackling violence and abuse against older people due to their age would be in keeping with international human rights obligations on the UK Government, including under the *United Nations Principles for Older Persons, the UNCRC*.
- 5.33 For example, the *United Nations Principles for Older Persons* make clear that: ‘Older persons should be able to live in dignity and security and be free of exploitation and physical or mental abuse’ and that ‘older persons should be treated fairly regardless of age, gender, racial or ethnic background, disability or other status, and be valued independently of their economic contribution.

Children and young people

- 5.34 We note that the All Party Parliamentary Group (APPG) on Hate Crime (2019)³⁴ highlighted that ‘children and young people are particularly vulnerable to hate crime both through absorbing harmful online content as well, as being exposed to the prejudices of adults in their daily lives, which can have lasting impacts on their lives’. It also indicated that ‘children and young people are often the victim of hate crime either through peer to peer bullying or by other individuals (for example, adults engaging hate speech online or in the street), and that this can have a profound effect on their mental and emotional health...’³⁵.
- 5.35 We further note that research (2017) commissioned by the Home Office in Great Britain has indicated that young people aged 16-24, particularly men, were more likely to be victims of personal hate crime³⁶.
- 5.36 There is also evidence of prejudicial and negative attitudes towards young people in NI due to their age. For example, the *Ark Young Life and Times Survey 2010*, highlighted that 83% of young people believed that they were judged negatively just because they were young; 30% of young people believed that

³⁴ All Party Parliamentary Group on Hate Crime (2019) [How do we build community cohesion when Hate Crime is on the rise?](#)

³⁵ Ibid at page 55.

³⁶ Home Office (2018) : [Hate crime: a thematic review of the current evidence](#)

they were treated with disrespect regularly or all the time because they were young³⁷.

- 5.37 The need for action to tackle prejudicial attitudes towards children and young people was highlighted in 2016, in the UN Committee on the Rights of the Child's Concluding Observations on the UK. In particular, it recalled "its previous recommendation that the State party take urgent measures to address the 'intolerance of childhood' and general negative public attitudes towards children, especially adolescents, within society, including in the media"³⁸.
- 5.38 Further, we are of the view that providing increased legislative protection for children and young people against hate crime based on age is consistent with an approach which recognises that age is the very factor that makes children and young people more vulnerable than adults³⁹.
- 5.39 These differences place children and young people at risk or at a disadvantage in comparison with adults and therefore they require special protective measures.

Supporting rationale - Gender

- 5.40 The Commission has consistently highlighted the need for effective strategies that tackle the nature and specific impact of gender-based violence on women and men⁴⁰. We consider that extending the hate crime legislation to cover the additional ground of gender will assist in tackling gender-based violence experienced by women and men.
- 5.41 We note that the Scottish Review⁴¹ (2018) has recommended the creation of a new statutory aggravation based on gender hostility. We also note that a review (2018)⁴² of sex discrimination law across the UK has also recommended that misogyny should be legally introduced as a hate crime.

³⁷ Ark,(2010), [Young Life and Times Survey 2010](#),

³⁸ UN Committee on the Rights of the Child (2016), [Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland](#).

³⁹ This vulnerability may stem from a range of factors including a lack of wisdom and maturity, physical ability, education, economic or other power over self-determination.

⁴⁰ ECNI (2016) , [Gender equality policy priorities and recommendations](#)

⁴¹ Lord Bracadale (2018), [Independent Review of Hate Crime Legislation in Scotland: Final Report](#) , Scottish Government.

⁴² See Fawcett Society (2018) [Sex Discrimination Law Review](#)

- 5.42 The European Commission has highlighted that women and girls, of all ages and backgrounds, are most affected by gender-based violence⁴³. Further, a report by the British Council (2016) has highlighted that violence against women and girls ‘remains one of the most serious and widespread inequalities in the UK’⁴⁴.
- 5.43 We recommend that the hate crime legislation should equally protect both men and women. Where a man or woman has been subjected to a crime due to hostility or prejudice *due to their gender*, then this scenario should be protected within the legal framework. Our recommendation is consistent with our view that there is a need for action to tackle the nature and specific impact of gender-based violence on both women and men. It is also consistent with the approach taken in the Sex Discrimination (Northern Ireland) Order 1976⁴⁵, and subsequent amendments which makes it unlawful to discriminate on grounds of sex.
- 5.44 We stress that policy approaches to tackling hate crime on grounds of gender should address the nature and impact of violence and abuse in a gender specific, not a gender neutral, context.
- 5.45 We note, for example, that research (2017) in Great Britain indicates that young people, particularly men were more likely to be victims of personal hate crime⁴⁶.
- 5.46 Further, an OFCOM (2018) survey on Internet users’ experience of online harms⁴⁷ found that equal percentages of men and women reported ‘hateful speech’ online (7%) with slightly more women (7%) than men (6%) reporting online ‘bullying\ harassment\ trolling’.
- 5.47 In addition, evidence from a study by Sheffield University (2018)⁴⁸ in GB which tracked trends on the frequency and direction of twitter abuse targeting MPs in the run up to the 2015, 2017 and 2019 general elections found that on average

⁴³ See, for example, European Commission (2020), [Article](#) on Gender based violence [accessed 30 April 2020].

⁴⁴ British Council (2016) [Gender Equality and Empowerment of Women and Girls in the UK: Meeting the challenge of the SDGs](#)

⁴⁵ [Sex Discrimination \(Northern Ireland\) Order 1976](#)

⁴⁶ Home Office (2018) : [Hate crime: A thematic review of the current evidence](#)

⁴⁷ OFCOM (2018): [Internet-users-experience-of-harm-online](#)

⁴⁸ See Sheffield University (2018), [News Article](#) of 23 August 2018. The research covered 840,000 tweets.

male MPs were more likely to receive online abuse than female MPs, but that women candidates were more likely to receive gendered abusive words.

- 5.48 Also in GB, the Committee on Standards in Public Life's (2017) review on *Intimidation in Public Life*⁴⁹ found that some groups were disproportionately more likely to be the targets of intimidation and abuse both online and offline, and that candidates who are female, black minority ethnic or LGBT were disproportionately targeted in terms of scale, intensity and vitriol.
- 5.49 Evidence to the UK Parliament's Home Office's Inquiry on hate crime (2017) included that 'women in particular have become targets for abuse and misogynistic harassment on social media'^{50 51}.
- 5.50 A legislative response to tackling violence and abuse against individuals due to their sex would also be consistent with international obligations to prevent and protect against discrimination and violence targeted at women and girls. These include the Council of Europe's *Convention on preventing and combating violence against women and domestic violence* (the Istanbul Convention (2014))⁵².
- 5.51 It also includes the *UN Sustainable Development Goals* (2015)⁵³ which have been adopted by the UK Government and which includes the Goal (Goal 5) on Gender Equality and the underpinning target to eliminate all forms of violence against all women and girls *in the public and private spheres*. It also consistent with the UK Government's obligations under the *Convention for the Elimination of Discrimination Against Women* (CEDAW) and *UN Security Council Resolutions*, including UNSCR 1325⁵⁴.

⁴⁹ Committee on Standards in Public Life's (2017) , [Intimidation in Public Life](#)

⁵⁰ Home Affairs Committee, (2017), [Hate crime: abuse, hate and extremism online](#), 1 May 2017, HC 609, paras 15-16.

⁵¹ The UK Government has also indicated that there is evidence that women, as well as minority racial and religious groups, the LGBT community and disabled people, are disproportionately at risk of harmful conduct online. See UK Government (2019), [Code of Practice for providers of online social media platforms](#).

⁵² The [Istanbul Convention](#) is based on the understanding that 'violence against women' is a form of gender-based violence. "*Violence against women*" is considered to be a "violation of human rights and a form of discrimination against women...".

⁵³ See [UN Sustainable Development Goals](#) 2015

⁵⁴ [UN SCR 1325](#) (2000) on women, peace and security. UN SCR 1325 recognises that women and girls have critical roles to play as active agents in conflict prevention and resolution, peace negotiations, peace building

5.52 The inclusion of gender within the current offence of ‘chanting at regulated matches’ would be consistent with action to increase women’s participation in sport, as recommended by the Commission^{55 56}.

Supporting Rationale - Gender Identity

5.53 There is a need for the hate crime legislation to cover gender identity beyond a traditional binary model. The Commission has consistently highlighted the need for effective strategies that tackle the nature and specific impact of gender-based violence due to a person’s gender identity⁵⁷.

5.54 Whilst recognising that the number of reported transphobic incidents and crimes appears relatively low (though increasing⁵⁸) compared to other categories of hate crime, in interpreting these figures, account must be taken of the following factors; the relative small size of the trans population in Northern Ireland compared to other equality groups monitored under hate crime monitoring; and that the data captures only reported incidents/ crime. The Commission has highlighted the need to address the issue of under reporting of transphobic hate crime.

5.55 Research (2013) has highlighted that trans people, particularly young trans people, are subjected to significant harassment and abuse due to their gender identity, and are the victims of hate crimes, including crimes against the person and property related crimes⁵⁹.

5.56 Although not currently a protected ground under the hate crime legislation, we note that the PSNI monitors transphobic hate crime.

and post conflict reconstruction. Other UN SCRs pertain including [UN SCR 2122](#) on involving women in decision making in post conflict reconstruction.

⁵⁵ ECNI (2016), [Gender equality policy priorities and recommendations](#).

⁵⁶ Examples of where women in Northern Ireland have been subjected to sexist abuse and harassment by spectators at matches include an incident where a female referee was subjected to sexual harassment and abuse at a rugby match. [BBC news report](#), 28 October 2018 [accessed 20 April 2020].

⁵⁷ ECNI (2016), [Gender equality policy priorities and recommendations](#).

⁵⁸ PSNI Hate crime statistics (Dec 2019) indicate that transphobic incidents increased from 32 to 60 and crimes increased from 10 to 30. PSNI (2020), [Incidents and Crimes with a Hate Motivation Recorded by the Police in Northern Ireland](#).

⁵⁹ McBride (2013), [Grasping the Nettle: The Experiences of Gender Variant Children and Transgender Youth Living in Northern Ireland](#).

- 5.57 The inclusion of gender-identity within the current offence of ‘chanting at regulated matches’ would be consistent with action to tackle transphobia in sport, as recommended by the Commission⁶⁰.
- 5.58 Further, it will be noted that the Council of Europe ECRI (2015) definition of hate speech includes ‘gender identity’ as part of its non-exhaustive list of personal characteristics or status⁶¹.
- 5.59 In addition, as noted above, thirteen EU Member States have included “gender identity” as a protected ground, and hate crime law in all other parts of the UK provides protection against transphobic hate crime.

Definition of ‘gender identity’

- 5.60 The definition of ‘gender identity’ within the hate crime legislation should be widely defined so as to also cover a range of people whose gender identity differ in some way from traditional gender assumptions, including those made about them when they are born.
- 5.61 The definition should therefore be sufficiently wide to cover all forms of hate crime experienced by trans people. It will be noted that hate crime law in Scotland provides protection against hate crime on the grounds of ‘transgender identity’, and in England and Wales, the hate crime legislation covers ‘hostility towards those who are transgender’.
- 5.62 The definition of ‘gender identity’ should be up to date, reflect best practice and be informed by the views of key stakeholders, particularly trans people and organisations representing trans people.
- 5.63 The definition should not be restricted to the narrow ground of ‘gender reassignment’ (the ground which is currently protected under the sex equality legislation in Northern Ireland). We also note that in the Scottish review ⁶²(2018) has recommended that consideration should be given to removing outdated terms such as ‘transvestism’ and ‘transsexualism’ from any definition of

⁶⁰ See ECNI (2016), [Gender equality policy priorities and recommendations](#)

⁶¹ ECRI (2015), [General Policy Recommendation No 15 on Combating Hate Speech](#), 8 December 2015, CRI (2016)15.

⁶² Lord Bracadale (2018), [Independent Review of Hate Crime Legislation in Scotland: Final Report](#), Scottish Government.

transgender identity (without restricting the scope of the definition).

Supporting Rationale - Intersex people

- 5.64 There is also a need to ensure that intersex people are protected under the hate crime legislation.
- 5.65 We note that the Council of Europe has recommended that the framework for tackling hate crimes and “hate speech” also expressly covers violence against intersex people^{63 64}.
- 5.66 We also note that in Scotland the hate crime legislation provides for protection against hate crime on the basis of actual or presumed “intersexuality” within the meaning of “transgender identity”⁶⁵.

We recommend protections under the hate crime legislation for individuals who are presumed to have a characteristic, or who have an association with an individual with that particular identity, should also be extended to the grounds of age, gender, gender identity, and intersex.

Supporting rationale

- 5.67 Our recommendation to extend these protections reflects current practice under the hate crime legislation whereby association and perception on a protected ground is covered.
- 5.68 Hate crime legislation should, for example, cover incidents not only where a crime is committed against a trans person, but should also be extended to confer protection where an individual is (incorrectly) perceived to a trans person, or where a friend or family member is targeted due to their association with the trans person.

⁶³ Council of Europe, (2015), [Issue Paper: Human rights and intersex people](#).

⁶⁴ This is a term used to describe people born with external genitals, internal reproductive systems or chromosomes that are in-between what is considered clearly male or female. There are many intersex conditions. See definitions referred to in ECNI (2016), [Gender equality policy priorities and recommendations](#).

⁶⁵ Section 2(8) section 2 of the Offences (Aggravation by Prejudice) (Scotland) Act 2009 defines transgender identity as: a) transvestism, transsexualism, intersexuality or having, by virtue of the Gender Recognition Act 2004 (c.7), changed gender, or b) any other gender identity that is not standard male or female gender identity. However, we are aware that that consideration is being given in Scotland as to whether or not intersex should be seen as a separate characteristic rather than as a sub-category of transgender identity.

5.69 We note that the Scottish Review ⁶⁶(2018) has recommended that ‘the statutory aggravations should also apply where hostility based on a protected characteristic is demonstrated in relation to persons who are presumed to have the characteristic or who have an association with that particular identity’.

We recommend, in the event that the hate crime legislation does not cover offences targeted at equality groups ‘by reason of’ their membership of an equality group, that consideration be given to how to best ensure those offences are protected out with the hate crime legislation.

Supporting rationale

5.70 As set out above, we recommend that the hate crime legislation provides protection against offences committed against, and targeted at, equality groups, not only due to hatred or hostility, but also ‘by reason of’ their membership of a particular equality group. This approach, for example, would ensure that crimes committed because of perceived vulnerability of an individual due to being a member of a particular equality group are covered within the hate crime legislation.

5.71 We also consider, for the reasons set out below, that rather than introducing, within the hate crime legislation, a general statutory aggravation that is framed in terms of the ‘vulnerability’ of a victim, the most appropriate legislative approach is to introduce the ‘by reason of’ threshold.

5.72 However, in the event that it is decided that the hate crime legislation will *not* include the ‘by reason of’ threshold⁶⁷, there is a clear need for offences, targeted at equality groups, where there is no evidence of hostility, but due to their perceived vulnerability to be covered outwith the hate crime legislation.

5.73 Such further consideration should also include ensuring that offences committed against older or younger people, not due to hostility, but due to perceived vulnerability, are also protected. Such a legislative approach could, for example, cover crimes,

⁶⁶ Lord Bracadale (2018), [Independent Review of Hate Crime Legislation in Scotland: Final Report](#), Scottish Government, at page iv.

⁶⁷ Or to include within the hate crime legislation a statutory aggravation covering victim vulnerability.

such as elder abuse, abuse of financial trust, care home neglect or exploitation committed against older people, not due to hatred, but by reason of their age.

- 5.74 We note that the Scottish Review (2018) considered that offending behaviour which involves the exploitation of vulnerabilities should not be treated as a hate crime, and recommended that consideration should be given to the introduction of a general statutory aggravation covering *victim vulnerability and/or exploitation of vulnerability* out with the hate crime legislation.
- 5.75 However, in considering the most appropriate legislative vehicle to use, care must be taken to ensure that the legislative approach does not perpetuate negative stereotypes towards people of different equality groups.
- 5.76 In particular, whilst we recognise that crimes may be targeted at some equality groups, including older people and disabled people, because they may be *perceived* by some to be vulnerable, we draw attention to the concerns of some equality groups, including some older people and disabled people, who do not wish to be stereotyped as ‘vulnerable’.
- 5.77 For example, we note that research carried out by the Commissioner for Older People in NI (COPNI) (2019) makes clear that: ‘Although certain factors can make older people more vulnerable to the impact of crime, care must be taken to avoid labelling all older people as vulnerable or lacking resilience, as this strips away the autonomy and individuality of people based on their age’⁶⁸.
- 5.78 In addition, the GB Parliamentary Inquiry into *Online abuse and the experience of disabled people*⁶⁹ makes clear that: ‘The criminal justice system is too quick to categorise disabled people as “vulnerable”. The vulnerability designation perpetuates damaging stereotypes about disabled people, which in turn may reinforce the beliefs and attitudes that lead to disabled people being marginalised and abused’.

⁶⁸ NI Commissioner for Older People (2019), [Crime and Justice: The Experience of Older People in Northern Ireland](#), p. 10.

⁶⁹ Parliamentary Inquiry (2019), [Online abuse and the experience of disabled people](#).

- 5.79 As noted above, the GB Parliamentary Inquiry cautioned against the use of the terms ‘vulnerability’ and recommended the creation of an offence within the hate crime legislation. It stated that it should be enough to prove that an offence was committed by “by reason of” their disability’.
- 5.80 We therefore consider that the most appropriate legislative approach is to provide protection for equality groups under the hate crime legislation by introducing the ‘by reason of’ threshold, rather than through the introduction, within the hate crime legislation, of a general statutory aggravation that is framed in terms of the ‘vulnerability’ of a victim.

We recommend that the hate crime legislation effectively address hate crime experienced by people due to their multiple identities.

Supporting rationale

- 5.81 There is a need to ensure that the hate crime legislation and policy responses effectively address hate crime experienced by people who, due a combination of factors, such as sex, disability or race, may be subject to multiple and intersectional forms of prejudice, and as a result be the target of hate crime. .
- 5.82 Account should also be taken of the UK Government’s obligations under the UNCRPD (Art 6) that requires that it recognises that women and girls with disabilities are subject to multiple discrimination, and to take measures to ensure the full and equal enjoyment of all human rights and fundamental freedoms.
- 5.83 An individual may be the target of hate crime due to their multiple identities; for example, minority ethnic women, or disabled women. It will be noted that research (2016) in Great Britain has, for example, highlighted that ‘perpetrators of hate crimes are not always motivated by a single type of prejudice or hatred but can be influenced by a combination of different prejudices’⁷⁰.
- 5.84 Whilst hate crimes can be recorded under more than one ground, there is a need, in terms of judicial considerations, and

⁷⁰ Mark A. Walters and R. Brown with S. Wiedlitzka, University of Sussex, commissioned by EHRC, (2016), [Causes and Motivations of Hate Crime](#) , page 8.

policy responses, including support for the victim, to effectively address situations where a hate crime is committed due to an individual's multiple identity.

- 5.85 For example, as regards the ground of gender, the need for Government action to consider the needs of women with multiple identities has been highlighted by the Council of Europe, in its Recommendation on gender equality standards and mechanisms (2007).
- 5.86 In particular, it has set out how certain groups of women are in an especially vulnerable position and recommended that Governments pay special attention to the specific needs of women with multiple identities⁷¹. In addition, a UN report (2017) has made clear that women and girls with disabilities experience gender-based violence at disproportionately higher rates and in unique forms owing to discrimination and stigma based on both gender and disability⁷².
- 5.87 As highlighted in the consultation paper, the consolidation of the hate crime legislation into a single piece of legislation, which we recommend, should also assist with the adoption of measures to tackle hate crime experienced by people due to their multiple identities.
- 5.88 We agree, as recognised in the consultation paper, that the lack of single equality legislation in Northern Ireland that protects against multiple or intersectional discrimination, has made it difficult for individuals who experience such discrimination to seek address through the courts.
- 5.89 Aligned to this, we recommend, as set out in more detail in Annex B, that, whilst outwith the hate crime legislation, the hate crime review should include a recommendation supporting reform of equality law, including to introduce protection against multiple discrimination.
- 5.90 In addition, we consider that the inclusion of additional protected grounds under the hate crime legislation, in particular, age, gender, gender identity, and intersex, which we

⁷¹ Council of Europe [Recommendation](#) 17 (2007)

⁷² UN Assembly (2017), [Situation of women and girls with disabilities and the Status of the Convention on the Rights of Persons with Disabilities and the Optional Protocol thereto](#).

recommend, will also assist in combatting hate crime experienced by people due to their multiple identities.

We recommend measures to improve data collection on hate crime experienced by people due to their multiple identities.

Supporting rationale

- 5.91 In order to better understand, monitor, and identify trends in hate crime, including online hate crime, experienced by people with multiple identities, there is a need to ensure the collection of reliable, up to date, disaggregated data across the different equality grounds protected under the hate crime legislation.
- 5.92 The publication of disaggregated disability hate crime/incidents data, for example, as regards the gender and age of victims, would assist in monitoring trends in disability hate crimes. Appropriate steps should be taken to ensure sample sizes allow for robust analysis (e.g. aggregation over time) and that publication does not result in a breach of data confidentiality.
- 5.93 Steps to improve disaggregated equality data is consistent, for example, with recommendations of international human rights monitoring bodies and the UN Sustainable Development Goals (SDGs).
- 5.94 For example, the UNCRPD Committee recommendation that the UK Government, in line with Goal 17 of the SDGs, increase significantly the availability of high-quality, timely and reliable data disaggregated related to disability, including by a range of factors including disability, age and gender and race⁷³.
- 5.95 Further, we note that the All Party Parliamentary Group (APPG) on Hate Crime (2019) highlighted that ‘hate crimes are often intersectional; victims are attacked because of their multiple identities’ and that the ‘current reporting tools were far too crude to allow for a truly nuanced analysis to take place’⁷⁴.

⁷³ UNCRPD Committee (2017), [Concluding Observations on the UK](#).

⁷⁴ All Party Parliamentary Group on Hate Crime (2019) [How do we build community cohesion when Hate Crime is on the rise?](#), p.11.

6 Thresholds in hate crime legislation (Questions 27-28).

We recommend that the hate crime legislation includes an additional threshold so as to provide protection against crimes which are committed against, or targeted at, individuals ‘by reason of’ their membership of a particular protected group/s, and this protection should apply to equality groups covered by the hate crime legislation.

Supporting rationale

- 6.1 If the hate crime legislation is amended to follow the statutory aggravation model as is currently in GB, as we recommend, we consider that there are cogent reasons in support of the hate crime legislation providing protection against offences committed against, and targeted at, equality groups covered by the hate crime legislation, not only due to hostility, but ‘by reason of’ their membership of a particular equality group. This protection should apply to all equality groups covered by the hate crime legislation.
- 6.2 We recognise that the Scottish Review (2018) considered this potential approach but ultimately decided not to recommend it. In particular, we note the Scottish Review highlighted a difficulty with defining hate crime around vulnerability, in that the concept of hate crime becomes diluted and it loses its “special symbolic power”⁷⁵.
- 6.3 It recommended that consideration be given to the introduction, outwith the hate crime legislation, of an offence of aggravation covering exploitation and vulnerability. However, for the reasons outlined below, we consider that, *on balance*, there is merit in adopting the ‘by reason of’ threshold.
- 6.4 In particular, the introduction of an additional ‘by reason of’ threshold has the potential for the hate crime legislation to cover crimes against equality groups where there is no outward

⁷⁵ Lord Bracadale (2018), [Independent Review of Hate Crime Legislation in Scotland: Final Report](#), Scottish Government.

visible manifestation of hostility or evidence to show the person was motivated by hostility. It would, for example, cover crimes committed because of perceived vulnerability of an individual due to being a member of a particular equality group.

- 6.5 This would mean that offences against disabled people, or people from different religious or racial backgrounds, who are targeted ‘by reason of’ their membership of these equality groups, but where there is no evidence of hostility, would come within the protection of the hate crime legislation.
- 6.6 If, as recommended by the Commission, the equality grounds protected under the hate crime legislation are extended to include gender, gender identity, intersex, and age, then there is the potential for the hate crime legislation to also cover such offences against all individuals covered within these equality categories.
- 6.7 Our recommendation is also consistent with the recommendations of the GB Parliamentary Inquiry into *Online abuse and the experience of disabled people*⁷⁶. It stated: ‘To ensure that the law applies where a victim had been selected because they were disabled, we recommend that it abolish the need to prove that hate crime against disabled people is motivated by hostility. It should be enough to prove that an offence was committed by “by reason of” their disability’.
- 6.8 We note the GB Parliamentary Inquiry into *Online abuse and the experience of disabled people*⁷⁷ also stated: ‘In hate crime against disabled people, hostility and perception of vulnerability often go hand in hand. It is also not always clear whether a person was targeted because they were vulnerable (or perceived vulnerable) or whether they were targeted because of hatred or hostility⁷⁸’.
- 6.9 We consider the introduction of such a threshold will send a clear message that such crimes are unacceptable. It will also recognise the impact of such crimes on particular equality groups, including older people and disabled people, who are targeted not due to hostility, but because of an equality characteristic. It could also lead to better recording of such

⁷⁶ Parliamentary Inquiry (2019), [Online abuse and the experience of disabled people](#).

⁷⁷ Ibid.

⁷⁸ Ibid

crimes, and as it will be recorded on a criminal record, it will allow a judge to take into account when considering repeat offenders. It could also lead to a consistency of approach in terms of sentencing.

- 6.10 In addition, it is important that such an offences covers situations where people are targeted because of their multiple identities; for example, an older disabled person, or a younger woman from a minority ethnic background.
- 6.11 We note that other European countries, including France and Bulgaria, have used a version of the discriminatory selection model in legislation against hate crime⁷⁹ and that this approach is reflected in the criminal code of Illinois (USA). For example, in Illinois, under the hate crime legislation, a person commits a crime when, *by reason of* the actual or perceived race, sexual orientation, gender, etc. of the individual, he commits assault etc. ...⁸⁰. We also note that the OSCE⁸¹ guide on hate crime indicates that many states do not mention hatred or hostility at all in their hate crime laws but require that the offender acted 'because of 'or 'by reason' of the victim's protected characteristic⁸².
- 6.12 We further note that a report into hate crime (2017) in England and Wales has recommended changes to the hate crime legislation in GB to include offences committed 'by reason of' the victim's membership (or presumed membership) of specific equality categories⁸³.
- 6.13 We consider such an approach will strengthen the hate crime legislation and make it more effective in tackling crimes due to identity based prejudice.
- 6.14 Further, we consider that the introduction of such measures would protect disabled people against abuse in a way that is consistent with the recommendations of the UNCRPD Committee in its Concluding Observations on the UK (2017). In particular, it recommended that the UK Government: ' Establish

⁷⁹ As highlighted in Hate Crime Review Team (2020), *Hate crime legislation, Independent Review, Consultation Paper*, at p.149.

⁸⁰ Ibid

⁸¹ Organisation for Security and Cooperation in Europe

⁸² As highlighted in Hate Crime Review Team (2020), *Hate crime legislation, Independent Review, Consultation Paper*, at p.149.

⁸³ Walters and al. University of Sussex (2017), [Hate crime and the legal process-options for Law Reform-Final report.](#)

measures to ensure equal access to justice and to safeguard persons with disabilities, particularly women, children, intersex people and elderly persons with disabilities from abuse, ill-treatment, sexual violence and/or exploitation’; and to ‘define comprehensively the offense of disability hate crime, and ensure appropriate prosecutions and convictions’⁸⁴.

7 Statutory definition of ‘hostility (Questions 29, 30).

We recommend the introduction of a statutory definition of ‘hostility’ that includes a reference to ‘prejudice and hatred’.

Supporting rationale

- 7.1 We support the introduction of a statutory definition of the term ‘hostility’, as this will provide greater legal certainty and clarity, including for individuals, as well as for criminal justice agencies who seek to enforce the law.
- 7.2 As set out above, the hate crime legislation, and the definitions therein on what constitutes a hate crime, should make clear that crimes motivated by, or which demonstrate, ‘prejudice and hatred’ are captured by the hate crime legislation.
- 7.3 Further, as indicated above, the Scottish Review (2018) report indicates that the definition of hate crime includes a reference to acts motivated by ‘hatred’ or ‘prejudice’, and that ‘prejudice’ is expressed in terms of hostility.
- 7.4 The inclusion of the term ‘prejudice’ within the definition, for example, will provide legal clarity and certainty that prejudice is considered a form of hostility within the hate crime legislation.

⁸⁴ UNCRPD Committee (2017), [Concluding Observations on the UK](#).

8 Public Order Incitement to Hatred Offences (Questions 31, 35, 36, 37, 39, 45)

We recommend that legislative gaps in protection against hate crime under the Public Order legislation are addressed; ensuring that the legislative vehicle chosen is the most appropriate and effective means to combat hate crime across the equality grounds.

Supporting rationale

- 8.1 There are clear gaps in protection under *The Public Order (Northern Ireland) Order 1987* compared to provisions which exist in GB.
- 8.2 In particular, in Northern Ireland we note that there are no equivalent provisions as those which exist in England and Wales under the Public Order Act 1986 (Sections 4, 4A and 5). These provisions make it an offence to use words, behaviour, display writing, sign or other visible representation which is threatening, abusive or insulting, and which causes harassment, alarm or distress, with intent to do, or is likely to cause. There are a number of defences to these offences. The offences apply the offence is committed in a public or private place.
- 8.3 We note that this gap in protection is highlighted in the hate crime review (2020) which states that there is a clear gap in the law in relation to offline hate crime which, arguably, needs to be redressed by introducing similar provisions in Northern Ireland⁸⁵.
- 8.4 It is also significant that, as made clear in the hate crime review (2020) consultation paper, the absence of these offences in Northern Ireland means that some types of abuse would not be covered under provisions in Northern Ireland relating to disorderly behaviour. It gives by way of example racial abuse which is not committed in a public place; for example, someone shouting racial abuse whilst standing in their garden⁸⁶. We

⁸⁵ See Hate Crime Review Team (2020), *Hate crime legislation, Independent Review, Consultation Paper*, p213.

⁸⁶ *Ibid*, at page 173.

consider it essential that there is protection against abuse of this nature, including similar abuse against other equality groups, under the hate crime legislation in Northern Ireland.

- 8.5 The hate crime review (2020) consultation paper also states such offences in GB cover one-off events and will therefore cover more behaviour than the protection against harassment (PHO 1997⁸⁷) offences that exist in Northern Ireland⁸⁸.
- 8.6 Government should ensure, in addressing these gaps in protection, that they have the effect in practice of appropriately and effectively tackling the specific nature and extent of hate crime experienced by a range of equality groups, in the particular context of Northern Ireland.
- 8.7 Government should also take account of lessons learnt from the operation of this legislation in Great Britain, as well as reflect best practice and international equality and human rights standards.

We recommend that the Public Order incitement to hatred provisions are extended to cover the additional grounds of age, gender, gender identity and intersex

Supporting rationale

- 8.8 For the reasons set out above, we consider that there are cogent reasons for the hate crime legislation to be extended to cover the additional grounds of age, gender, gender identity and intersex.
- 8.9 In order to ensure a harmonised and consistent approach, particularly in the context of the hate crime legislation being consolidated into a single piece of legislation, which we recommend, these additional grounds should also be protected in those provisions relating to incitement to hatred.

The Commission is not persuaded that express defences to the Public Order incitement to hatred offences relating to freedom of expression are

⁸⁷ Protection against Harassment Order 1997

⁸⁸ See Hate Crime Review Team (2020), *Hate crime legislation, Independent Review, Consultation Paper*, p217.

necessary. However, if such defences are to be introduced, we recommend that Government ensures that such defences are narrowly defined and objectively justifiable, and are in compliance with equality and human rights law.

Supporting rationale

- 8.10 Whilst we recognise that there are arguments for⁸⁹ and against the inclusion of express defences to the Public Order incitement to hatred offences relating to freedom of expression, *on balance*, we are not persuaded that there is a clear need for such defences.
- 8.11 We note, for example, that subsequent to their introduction, the Law Commission in England and Wales in 2013, made clear, as regards both the defences protecting freedom of expression for religion and sexual orientation, that it was difficult to assess the practical effect and scope of these provisions due to the lack of prosecutions and the lack of judicial interpretation⁹⁰. It also highlighted, for example, that the freedom of expression defence did not assist the defendants in the single case in which acts stirring up hatred on grounds of sexual orientation have been successfully prosecuted⁹¹.
- 8.12 As set out below, the Law Commission also highlighted the difficulties, as regards expressions to be protected under the defences of freedom of expression on religion and sexual orientation, in terms of drawing certain distinctions in practice; for example, as regards the defence of sexual orientation, the

⁸⁹ For example, as regards the defences contained in the Public Order legislation in England and Wales, we note that a number of arguments were advanced in favour of such defences prior to their introduction; including that they prevent a chilling effect resulting from the new offences; provide clarification as to the scope of the new offences, by offering guidance on the threshold for prosecution in light of Articles 9 and 10 of the European Convention on Human Rights (EHRC); and curb over-zealous reliance on the offences by police officers and prosecutors .

⁹⁰ Law Commission (2013), [*Hate Crime: The case for extending the existing offences \(2013\). Consultation Paper No 213.*](#)

⁹¹ Ibid at para 2.114. The paper cited the case of *Ali, Javed and Ahmed* , in which the defendants were all convicted of distributing material with the intention of stirring up hatred on grounds of sexual orientation. The paper states: ‘They sought to rely on their “freedom to preach strongly held beliefs: beliefs which may have some foundation in scripture”. However, the court held that, whilst Parliament had sought to preserve the right to debate issues around homosexuality by introducing the freedom of expression provision, the protection did not extend to the leaflets distributed by the defendants, which showed a picture of a hangman’s noose and stated that “the only debate among classical authorities about how to punish homosexuality was the method of carrying out the execution ... [because] the death sentence was the only way that the immoral crime [of homosexuality] can be erased from corrupting society’.

distinction between expressions that criticise homosexual practices, but which could be experienced as criticism of a homosexual person.

8.13 Further, we note that the consultation paper on the hate crime review (2020) highlights some arguments that have been raised against the introduction of such defences; including ‘that the impact of the Good Friday Agreement in the context of the European Convention on Human Rights and Fundamental Freedoms means that freedom of expression does not require explicit enunciation in legislation’; that ‘some may be uncomfortable with a legislative position, which could be seen to sanction explicitly homophobia and anti-religious discourses’; and that ‘were such defences to be introduced or maintained in law , a further defence may have to be developed to allow for transphobic discourses’⁹² .

8.14 In addition, we note that the defences under the Public Order legislation in England and Wales are limited to freedom of expression for religion and sexual orientation, and for same-sex marriage. Whilst we stress that we are not persuaded that there is a need for such defences, we are concerned that should those defences be introduced and limited to certain equality areas, it creates an apparent hierarchy. We are also concerned that if such defences were introduced, there is the potential that such defences could be expanded to cover other equality groups, such as Trans individuals.

8.15 However, if such defences are to be introduced, Government should ensure that such defences are narrowly defined and objectively justifiable, and are in compliance with equality and human rights law.

Narrowly defined and objectively justifiable

8.16 The Commission has consistently made clear that any exception to the law must be narrowly defined and objectively justifiable. We do not support exceptions to either equality law or other law, including hate crime law, that do not meet these essential requirements.

8.17 The Department of Justice should assess, including by taking into account the views of protected groups, including Lesbian,

Gay and Bisexual (LGB) individuals, as well as religious organisations, obtained as part of the hate crime review consultation, and through reviewing the impact of the operation of these provisions in other jurisdictions, including other parts of the UK, the degree to which any proposed defences on freedom of expression, including on religion, sexual orientation, and/or same-sex marriage, are objectively justifiable.

- 8.18 At the outset, we stress that any defences protecting freedom of expression, including for religion and sexual orientation, and/or for same-sex marriage, if introduced, should not permit individuals to express words or behaviour that would amount to discrimination or harassment prohibited under the equality legislation, including relating to employment or the provision of goods and services.
- 8.19 In particular, words or behaviour should not be permitted that would amount to harassment prohibited under equality legislation, against protected groups; namely, unwanted conduct that has the purpose or effect of violating a person's dignity, or of creating an intimidating, hostile, degrading, humiliating or offensive environment. It should be noted that harassment under equality legislation can also include conduct such as sectarian banter in the workplace⁹³.
- 8.20 We note that under the Public Order legislation in England and Wales there are defences protecting freedom of expression for religion and sexual orientation, and for same-sex marriage⁹⁴.
- 8.21 Specifically, as regards the defence of freedom of expression on religion that the legislation does not prohibit or restrict 'discussion, criticism or expressions of antipathy, dislike, ridicule, insult or abuse of particular religions or the beliefs or practices of their adherents, or of any other belief system or the beliefs or practices of its adherents, or proselytising or urging adherents of a different religion or belief system to cease practising their religion or belief system'⁹⁵.
- 8.22 In addition, as regards the defence of freedom of expression on sexual orientation that the legislation, for the avoidance of

⁹³ See ECNI (2016), [A Unified Guide to Promoting Equal Opportunities in Employment](#). See p.13

⁹⁴ Specifically that the discussion or criticism of same-sex marriage is not to be taken of itself to be threatening, abusive or insulting or intended to stir up hatred or arouse fear' as set out in Art 8 (2) of the 1987 Order.

⁹⁵ As set out in S29J of the POA 1986 Order.

doubt, the discussion or criticism of sexual conduct or practices or the urging of persons to refrain from or modify such conduct or practices shall not be taken of itself to be threatening or be taken of itself to be threatening or intended to stir up hatred⁹⁶⁹⁷.

- 8.23 Further, we are aware that the *Marriage (Same-sex Couples) and Civil Partnership (Opposite sex Couples) (Northern Ireland) Regulations 2019* which come into force on 13 January 2020 already includes a defence relating to the discussion/criticism of same-sex marriage, and that it proposed by Government that a similar defence is included in the legislation relating to religious same-sex marriage.
- 8.24 We agree with the view of the hate crime review team (2020), as regards this legislative change to the Public Order legislation introduced in January 2020, that it 'is unfortunate that the work of the review has been to this extent pre-empted by the change in the law without awaiting the results of the consultation process and the final report of the review'⁹⁸.
- 8.25 It is important to note that there are already differences between the scope of the Public Order offences on religion and sexual orientation, and the corresponding defences (as regards the discussion or criticism of same-sex marriage), which currently operate in England and Wales, and those that exist in Northern Ireland.
- 8.26 For example, the incitement to hatred offences under the Public Order legislation in Northern Ireland in relation to religion and sexual orientation, and the defence as regards the discussion or criticism of same-sex marriage, have a wider scope than the provisions in England and Wales
- 8.27 In particular, the offences in England and Wales relating to religious hatred and sexual orientation require that the words or conduct must be threatening (not merely abusive or insulting). In addition, the defence on same-sex marriage means that the discussion or criticism of same-sex marriage is not to be taken

⁹⁶ Ibid.

⁹⁷ It will be noted that guidance on the offences of stirring up hatred on grounds of sexual orientation, the Ministry of Justice states: The term does not extend to orientation based on, for example, a preference for particular sexual acts or practices. It therefore covers only groups of people who are gay, lesbian, bisexual or heterosexual. As cited in Law Commission (2013), [Hate Crime: The case for extending the existing offences \(2013\), Consultation Paper No 213](#).

⁹⁸Hate Crime Review Team (2020), *Hate crime legislation, Independent Review, Consultation Paper*, para 11.21.

of itself to be ‘threatening’. This contrasts with the position in Northern Ireland, where the stirring up offences relating to religious hatred and sexual orientation cover threatening, *as well as* abusive or insulting words or behaviour, and the defence relating to the discussion or criticism of same- sex marriage is not to be taken of itself to be threatening, *as well as* abusive or insulting⁹⁹.

- 8.28 When considering the scope of any proposed defences in Northern Ireland, and whether or not the scope should be similar to that of defences that exist in England and Wales, it is important that account is taken of any potential impact arising from those differences.

Defence of freedom of expression on religion

- 8.29 As set out above, as regards the *defence of freedom of expression on religion* in England and Wales, we note that this means that the hate crime legislation does not prohibit or restrict ‘discussion, criticism or expressions of antipathy, dislike, ridicule, insult or abuse of particular religions or the beliefs or practices of their adherents’.
- 8.30 We agree with the view of the Law Commission in England and Wales (2013), which, when stating that this provision was created to ‘protect believers without protecting beliefs’, noted that ‘in practice this distinction may be difficult to draw; and that ridicule towards the central tenets of a person’s religion may be experienced, and intended as, ridicule of a person who is an adherent of that religion’¹⁰⁰.
- 8.31 This difficulty in drawing such a distinction is particularly concerning considering that the defence in England and Wales permits expressions of *insult or abuse* of particular religions or the beliefs or practices of their adherents.

Further, in considering the scope of any proposed defence of freedom of expression on religion, account should be taken of the need for the hate crime legislation, and policy responses, to effectively tackle sectarianism, and other expressions of

⁹⁹ It will be noted that there are other differences between the position in NI and England and Wales. For example, in England and Wales there must be an intention to stir up hatred (a likelihood that it might be stirred up is not enough).

¹⁰⁰ Law Commission (2013), [*Hate Crime: The case for extending the existing offences \(2013\). Consultation Paper No 213.*](#)

religious hatred, across all areas, such as employment, delivery of services and public spaces; including those areas *not* covered by the equality legislation.

Defence of freedom of expression on sexual orientation

- 8.32 As regards the *defence of freedom of expression on sexual orientation* in England and Wales, we note that the hate crime legislation states that the discussion or criticism of sexual conduct or practices or the urging of persons to refrain from or modify such conduct or practices shall not be taken of itself to breach the legislation.
- 8.33 The Law Commission in England and Wales (2013) has stated that the focus of this provision is expression relating to conduct or practices undertaken by people on account of their sexual orientation, rather than hatred of those individuals themselves
- 8.34 Again, we agree with the view of the Law Commission in England and Wales (2013) that ‘this distinction may be difficult to draw in practice, and that criticism of homosexuality may be experienced, and intended as, criticism of a homosexual person’¹⁰¹.

Content and Context

- 8.35 As set out in more detail in the section below on ensuring compliance with international human rights obligations, we consider, in assessing whether or not words or behaviour, including on matters relating to religion, sexual orientation and/or same-sex marriage should be prohibited under the hate crime legislation, and therefore in considering the scope of any proposed defences, there is a need to consider both the *content* of the form of expression and *context* in which the words or behaviour are used. This should include the tone and choice of language, the standing or position of the speaker; the intent; and the nature of the audience. In terms of a consideration of the context and content, it is important to note that hate speech can take the form of inappropriate humour.
- 8.36 There should, for example, be a distinction made between words or behaviour designed to stir up hatred of protected groups, as opposed to that which is designed to contribute to meaningful public debate and which takes the form of rational

¹⁰¹ Ibid.

argument. We consider that any defences should only protect views which are expressed in reasonable and moderate terms.

Human rights obligations

- 8.37 It is also essential that any defences protecting freedom of expression for religion and sexual orientation, and/or for same-sex marriage within the hate crime law are in compliance with human rights law, and the UK Government's international human rights obligations.
- 8.38 At the outset, we recognise, as highlighted by the UN Special Rapporteur on freedom of religion or belief (2019), that both freedom of religion or belief and freedom of expression are rights that 'are fundamental to a democratic society and individual self-fulfilment and are foundational to the enjoyment of human rights'¹⁰².
- 8.39 We also recognise that there is a need to balance rights of freedom of expression protected under human rights law with addressing hate speech.
- 8.40 In terms of human rights obligations, guidance by the Equality and Human Rights Commission (EHRC) (2015) makes clear that any restrictions on freedom of expression should be clearly set out in law, necessary in a democratic society for a legitimate aim, and proportionate. It states that:
- 'Subject to these conditions, freedom of expression may be limited in certain circumstances, including in order to protect others from violence, hatred and discrimination, and in particular, freedom of expression does not protect statements that unlawfully discriminate against or harass, or incite violence or hatred against, other persons and groups, particularly by reference to their race, religious belief, gender, or sexual orientation'¹⁰³.
- 8.41 While Article 10 of the ECHR protects expressions that offend, shock and disturb the state or any section of the population, the European Court of Human Rights (ECtHR) has refused to uphold freedom of expression rights in cases involving the

¹⁰² Human Rights Council (2019) [Freedom of religion or belief, Report of the Special Rapporteur on freedom of religion or belief](#), A/HRC/40/58.

¹⁰³ EHRC (2015), [Guidance: Legal Framework, Freedom of Expression](#), at page 3.

circulation of homophobic leaflets in a school¹⁰⁴; and the public display of a poster involving hostility against a religious group¹⁰⁵.

- 8.42 In terms of ensuring the correct balance is struck between freedom of expression and addressing hate crime and the formulation of any defences on freedom of expression, Government should ensure that it complies with its international human rights obligations relating to incitement to hatred, including under the UN International Convention on Civil and Political Rights (ICCPR) and UN Convention on the Elimination of Racial Discrimination (CERD).
- 8.43 It will be noted, for example, that the CERD Committee in its General Recommendation 35 on combating racist hate speech has set out contextual factors that should be taken into account when considering what incitement offences should be prohibited by law; in particular, the content and form of the speech; objectives of the speech; position and status of the speaker; the economic, social and political climate, and the reach of the speech¹⁰⁶.
- 8.44 In addition, guidance set out in the UN Rabat Plan of Action¹⁰⁷, which considers the distinction between freedom of expression and incitement to hatred, includes a six stage threshold test for incitement to hatred. It makes clear the need to consider the context in which the hate speech is being used; the standing or position of the speaker; the intent; the content or form; the extent of the speech (for example, its public nature); the likelihood (for example, degree of risk of harm).
- 8.45 Finally, guidance from the EHRC (2015) makes clear that the particular level of protection under Article 10 of the EHRC can vary considerably depending on the *type* of expression involved, and that political campaigning, journalism and commentary on matters of public interest are generally given a high degree of protection¹⁰⁸.

¹⁰⁴ Vejdeland and Others v. Sweden (Application no. 1813/07) Chamber Judgment 9 February 2012, as cited in European Court of Human Rights, (2020) [Factsheet on Hate Speech](#).

¹⁰⁵ Ibid, Norwood v the United Kingdom (Application no 23131/03)

¹⁰⁶ UN CERD Committee (2013), CERD/C/GC/35, [General Recommendation 35 on combating racist hate speech](#).

¹⁰⁷ UN (2013), [UN Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence](#).

¹⁰⁸ EHRC (2015), [Guidance: Legal Framework, Freedom of Expression](#), at page 6.

We recommend that the ‘incitement to hatred’ legislation should prohibit ‘incitement to discriminate’ on the protected grounds.

Supporting rationale

- 8.46 This is consistent with international standards set out in the International Covenant on Civil and Political Rights (ICCPR), which enshrines protection from incitement to hatred in Article 20. In particular, under Article 20: ‘Any advocacy of national, racial or religious hatred that constitutes *incitement to discrimination*, hostility or violence shall be prohibited by law’¹⁰⁹.
- 8.47 In addition, we note that the UN Convention on the Elimination of Racial Discrimination (CERD) in relation to racism has also called on State Parties to sanction as offences punishable by law, incitement to hatred, contempt or discrimination against members of a group on grounds of race¹¹⁰.
- 8.48 We also note that concerns have been raised by stakeholders regarding the failure of the incitement to hatred legislation in Northern Ireland to integrate incitement to discriminate on protected grounds as a criminal offence¹¹¹.

9 Online hate speech (Question 40).

We recommend further action to tackle online hate speech and abuse targeted at different equality groups.

- 9.1 We recommend stronger action to tackle online hate speech and abuse targeted at equality groups.

¹⁰⁹ International Covenant on Civil and Political Rights, Art 20.

¹¹⁰ UN Convention on the Elimination of Racial Discrimination (CERD) Article 4.

¹¹¹ It will be noted that research (2018) has stated that ‘the prohibition on incitement to discrimination which is pervasive in international human rights standards, is missing in UK domestic law as well as in Northern Ireland in the Public Order (NI) Order 1987. Any review of incitement to hatred legislation should commit to explicitly integrating incitement to discriminate on protected grounds as a criminal offence’. R. McVeigh (2017) [Incitement to hatred in northern-ireland research report](#) p7.

9.2 Actions should include to:

- ensure the hate crime legislation more effectively tackles online hate speech, including through placing greater responsibility on Social Media Companies (SMCs) to remove online hate speech; ensuring mechanisms and settings for managing content are accessible, including for disabled people; and providing additional support so as to ensure equality groups stay safe online from hate speech or other forms of abuse.
- increase awareness and understanding of the scale, nature and impact of online hate speech and abuse against equality groups, and the protections available under the hate crime legislation, including with equality groups, criminal justice agencies, and the general public;
- tackle prejudicial attitudes towards a range of equality groups, including disabled people, LGB and Trans individuals, and minority ethnic groups; as offline attitudes influence online behaviour. There is also a need to tackle sectarianism, gender stereotypes and gender based violence;
- encourage positive attitudes towards equality groups including through taking steps to increase their representation in public life and ensure a more positive portrayal of equality groups in the media; and
- improve data collection and undertake research so as to better understand the nature, extent and impact, of online hate speech and abuse against equality groups, particularly as regards groups who are the particularly vulnerable to hate speech, such as disabled people, and women.

Supporting rationale

9.3 We consider that is a clear need for greater action to tackle online hate speech and abuse experienced by a range of equality groups in Northern Ireland.

9.4 We note, for example, that a GB Parliamentary Inquiry (2019) into *Online abuse and the experience of disabled people* made clear that the current law on online abuse was 'not fit for

purpose'¹¹². It highlighted that 'there is clear confusion among the public and the police about how the law applies to online behaviour. That alone is an argument for reform'.

9.5 When considering action to tackle online hate speech it is important to recognise the distinct features of online abuse that make it different to offline abuse.

9.6 As highlighted in the hate crime review consultation paper (2020), these distinct features include the public element of online hate speech and the potential for reputational damage and public humiliation; and the potentially permanent nature of hate speech, which can mean that online hate speech can remain even if a perpetrator is caught¹¹³.

9.7 It should also be recognised that online hate can deter equality groups from using social media, including disabled people and older people, which can in turn lead to their greater isolation.

Social media companies (SMCs)

9.8 There is a need to place greater responsibility on SMCs to remove online hate speech, and to ensuring that mechanisms and settings for managing content are accessible, including for disabled people, and to providing additional support so as to ensure equality groups stay safe online from hate speech or other forms of abuse.

9.9 We note, for example, that a GB Parliamentary Inquiry (2019) into *Online abuse and the experience of disabled people* has highlighted that 'Self-regulation of social media has failed disabled people'¹¹⁴. It made clear that SMCs 'must ensure that their mechanisms and settings for managing content are accessible to and appropriate for all disabled people' and that 'they need to be more proactive in searching for and removing hateful and abusive content'.

9.10 We recognise that efforts have been made to encourage social media companies (SMCs) to sign up to voluntary codes of conduct to remove offending material, though note the success of these codes has been mixed¹¹⁵. In light of this, we consider

¹¹² Parliamentary Inquiry (2019), [Online abuse and the experience of disabled people](#)

¹¹³ Hate crime review (2020), *Hate crime legislation, Independent Review, Consultation Paper*, at p197.

¹¹⁴ Parliamentary Inquiry (2019), [Online abuse and the experience of disabled people](#)

¹¹⁵ Hate crime review (2020), *Hate crime legislation, Independent Review, Consultation Paper*, at p205.

there are cogent reasons in support of stronger regulation of SMCs so as to ensure offending material is removed within a reasonable timeframe.

Tackle prejudicial attitudes/promote positive attitudes

9.11 The Commission has made clear the need to tackle prejudicial attitudes towards a range of equality groups, including disabled people, LGB and Trans individuals, minority ethnic groups, and women etc., as offline attitudes influence online behaviour.

9.12 We have also called for stronger actions to encourage positive attitudes towards equality groups, including through taking steps to increase their representation in public life and ensure a more positive portrayal of equality groups in the media. As regards disabled people, such action by public bodies is consistent with the disability duties on public bodies under the disability legislation.

Improve data collection

9.13 We consider that there is a clear need to improve data collection and undertake research on hate crime, including online hate speech, on the nature and extent of hate crime against equality groups in Northern Ireland.

9.14 We note that a 2018 UK Inquiry found that research is limited into whether the trends in relation to age, gender, race and sexuality found in offline bullying are mirrored in cases of cyber bullying¹¹⁶. A key finding from the Inquiry was that children and young people who were currently experiencing a mental health problem were more than three times more likely to have been bullied online in the last year.

9.15 Particularly if the hate crime legislation is extended to cover the additional grounds of gender, gender identity, intersex and age, there is a clear need to understand the nature, extent and impact, of online hate speech and abuse against specific equality groups in Northern Ireland. This would include groups who are the particularly vulnerable to hate speech, such as disabled people, women and children and young people.

¹¹⁶ The Children's Society and Young Minds (2018), [*Safety Net: Cyberbullying's impact on young people's mental health -Inquiry Report*](#).

- 9.16 Further, in order to better understand and identify trends in online hate speech, steps should also be taken to ensure disaggregated data across the different equality grounds.
- 9.17 This should include recording levels of hate speech against disabled people with different types of disability, as well as disaggregated data relating to race and religion, for example, individuals from a Muslim background. Data should also be collected so as to capture hate speech trends relating to people with multiple identities, such as, hate speech against minority ethnic women, or disabled women,. Importantly, this disaggregated data should be collected in relation to both online and offline hate crime¹¹⁷.
- 9.18 This approach is consistent with the UNCRPD Committee's recommendation that the UK, in line with Goal 17 of the Sustainable Development Goals, increase significantly the availability of high-quality, timely and reliable data disaggregated related to disability, including by a range of factors including disability, age and gender and race¹¹⁸.
- 9.19 We note that the All Party Parliamentary Group (APPG) on Hate Crime (2019) highlighted that 'hate crimes are often intersectional; victims are attacked because of their multiple identities' and that the 'current reporting tools were far too crude to allow for a truly nuanced analysis to take place'¹¹⁹.

Increase awareness and understanding

- 9.20 There is also a need to increase awareness and understanding of the scale, nature and impact of online hate speech and abuse against equality groups, and the protections available under the hate crime legislation, including with equality groups, criminal justice agencies, and the general public.
- 9.21 This is particularly important in the context of raising awareness of any changes to the legislation following the hate crime review. If new equality grounds are protected under the hate crime legislation, measures should be put in place to raise awareness with individuals and representative organisations of those equality groups so as to raise awareness of hate crime,

¹¹⁷ As regards the publication of data, consideration should be given to ensuring there is no breach of data confidentiality, particularly as sample sizes decrease.

¹¹⁸ UNCRPD Committee (2017), [Concluding Observations on the UK](#).

¹¹⁹ All Party Parliamentary Group on Hate Crime (2019) [How do we build community cohesion when Hate Crime is on the rise?](#)

encourage reporting of hate crime, and to ensure these equality groups have the opportunity to engage, and work with criminal justice agencies on action to tackle hate crime.

10 Sectarianism and hate crime legislation (Questions 51, 52)

We recommend a specific reference to the term ‘sectarian’ within the hate crime legislation.

Supporting rationale

- 10.1 We consider that there is merit in including a specific reference to ‘sectarianism’ within the hate crime legislation.
- 10.2 This would have a symbolic value by sending a clear message, to victims, perpetrators and the general public that sectarian hate crime is unacceptable. It will also make clear that one of the aims and purposes of the hate crime legislation is to protect against sectarian hate crime.
- 10.3 Further, we note that the term ‘sectarian’ is already contained within the hate crime legislation protecting against sectarian chanting at sports matches. It is also contained within the fair employment legislation, which outlaws sectarian harassment, though none of these provide a further definition of the term.
- 10.4 The specific reference to ‘sectarianism’ in the hate crime legislation would also be a recognition of the high level of sectarian hate crime and incidents that occur in Northern Ireland, as well as the damaging impact of those crimes/incidents on different communities and individuals.
- 10.5 In addition, we note that the parties to the *New Decade New Approach* framework (2020) has indicated their ‘wish to see sectarianism given legal expression as a hate crime’¹²⁰. A reference to sectarianism is in our view in keeping with the

¹²⁰ UK Government, Irish Government, (2020), [New Decade New Approach](#), at page 43.

Executive's clear focus on tackling sectarianism in the *New Decade New Approach* Framework.

We recommend the indicators of sectarianism are expanded so that they include: religious belief, national identity, nationality and citizenship; legislative gaps in protection relating to sectarian hate crime should be addressed; and that there is recognition that victims of sectarian hate crime can be targeted due to their multiple identities.

Supporting rationale

- 10.6 We of the view that the following considerations are relevant to the question as to what are the indicators of sectarianism.
- 10.7 In particular, consideration should be given to what is generally understood in the context of Northern Ireland to be sectarian motivated offences (the principle of 'fair labelling'¹²¹).
- 10.8 Whilst recognising there are a range of views on what constitutes sectarianism, we are aware that these views include that sectarian offences would cover offences based on prejudice on some or all of the following grounds; namely towards a victim's actual or perceived religious belief, community background, political opinion, national identity, nationality, or citizenship.
- 10.9 Further, due to the fact, as highlighted earlier, perpetrators of hate crime are not always motivated by a single type of prejudice but can be influenced by a combination of different prejudices, we consider a victim can be the subject of sectarian hate crime due to a *combination* of these grounds. It is important that any consideration of sectarianism, and policy responses to deal with sectarianism, takes this into account and recognises that victims can be targeted due to multiple

¹²¹ See the view highlighted in the [Final Report of the Working Group on Defining Sectarianism in Scots law](#) (2018), that stated: 'In taking forward the principle of fair labelling we recognise that the language of sectarianism is widely used in society even if it has not been previously defined in law'.

prejudices, such as gender. For example, men are particularly vulnerable to sectarian hate crime¹²²

- 10.10 Further, both religious belief and political opinion are protected as separate grounds under the fair employment legislation which makes it clear that it protects against ‘sectarian’ harassment.
- 10.11 We note that the hate crime review consultation paper (2020) states that ‘religious belief’ is the sole indicator for sectarianism in the hate crime legislation.
- 10.12 As highlighted in the consultation paper, the fact that ‘religious group’ is the only current indicator for sectarianism is due to a number of reasons including the following: the definition of ‘religious group’ simply refers to a ‘group of persons defined by reference to religious belief or lack of religious belief’; the definition of ‘racial group’ explicitly excludes sectarianism; and the category of ‘political opinion’ is not included in hate crime legislation¹²³.
- 10.13 As regards the category of ‘political opinion’, the consultation paper highlights that there were ‘concerns 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’¹²⁴.
- 10.14 We recognise the need to balance the protection of freedom of expression under Article 10 of the ECHR with the need to tackle hate speech. We also recognise that the right to freedom of speech is not absolute and is subject to the restrictions considered necessary in a democratic society, including public safety or the prevention of disorder or crime. Government should ensure that any proposed provisions relating to tackling

¹²² For example, in 2018/19, 310 sectarian crimes were reported in relation to male victims, compared to 176 sectarian crimes in relation to female victims. See PSNI (2020), [Incidents and Crimes with a Hate Motivation Recorded by the Police in Northern Ireland](#).

¹²³ In particular it is not included in the 1987 or 2004 Orders, nor is it included in Section 37 of the Justice Act (Northern Ireland) 2011; which creates an offence of chanting at a regulated match where the chanting is of an indecent nature; a sectarian or indecent nature; or is threatening, abusive or insulting to a person by reason of colour, race, nationality, ethnic or national origins, religious belief, sexual orientation or disability. It was not included due to concerns that its inclusion would risk capturing legitimate political speech, and conflict with human rights obligations on freedom of expression. As cited in consultation paper page 239.

¹²⁴ See Hate crime review (2020) *Hate crime legislation, Independent Review, Consultation Paper*, at p. 239.

sectarian hate crime are compliant with the human rights legislation.

- 10.15 There are clearly also other restrictions on individuals' ability to express their political opinions in certain contexts covered by the equality legislation; for example, individuals cannot breach the provisions prohibiting discrimination or harassment on grounds of political opinion under the equality legislation both inside and outside employment.
- 10.16 We consider, as set out below, that there are clear gaps in protection under the hate crime legislation in terms of addressing sectarian hate crime that urgently need addressed.
- 10.17 We note the consultation paper highlights examples of abuse and attacks against individuals due to wearing of a GAA or NI football top, or a shamrock or poppy, as well as because of speaking Irish or Ulster Scots, and the potential that such offences would not be covered by the ground of 'religious belief'.
- 10.18 Firstly, the Commission is clear that crimes of this nature committed against individuals due to wearing of a GAA or NI football top, or a shamrock or poppy, or because of speaking Irish or Ulster Scots, whether Catholic, Protestant or no religion, should be covered by the hate crime legislation, and that any such gaps in protection should be rectified.
- 10.19 We are also of the view that crimes targeted at individuals due to their 'community background', either actual or perceived, or because of their association with someone of a particular community background, should fall within the ambit of the hate crime legislation and should be considered as sectarian.
- 10.20 We also consider that there is a need for the indicators of sectarianism to be expanded; this is particularly the case in the event that 'political opinion' is not included as a protected ground within the hate crime legislation. In that context, we are of the view that consideration should be given to including the following indicators of sectarianism: religious belief, national identity, nationality and citizenship.
- 10.21 We also note the approach set out in the Executive's *Race Equality Strategy 2015- 2025* that there is a clear link between

sectarianism and racism and that both of these need tackled simultaneously.

- 10.22 We recognise that both the UN and Council of Europe (CofE) treaty bodies have held that sectarianism in Northern Ireland is to be treated as a specific form of racism; in the context that ‘religious belief’ intersects with other ethnic indicators (e.g. nationality, descent, etc.).
- 10.23 In addition, we note that there are mixed views amongst stakeholders as to whether or not sectarianism in Northern Ireland should be treated as a specific form of racism¹²⁵ ¹²⁶.
- 10.24 Further, we note that the limited indicators for sectarianism also creates difficulties in terms of monitoring sectarian crimes/incidents. In particular, the PSNI’s hate monitoring incidents categories do include ‘sectarian motives’ and indicates that this term, although not clearly defined, is a term almost exclusively used in Northern Ireland to describe incidents of bigoted dislike or hatred of members of a different religious or political group¹²⁷. Clearly, political opinion is not a protected category within the hate crime legislation. We note, as highlighted in the consultation paper, this means that there is an inconsistency between how sectarian is defined by PSNI for monitoring purposes and as regards what is covered by the hate crime legislation.
- 10.25 In addition, we highlight the link between the need to tackle discrimination on grounds of race, and ensuring adequate discrimination laws, and effectively tackling hate crime, including on grounds of race. The Commission has called for the race equality legislation to be strengthened to ensure stronger protection against racial harassment both inside and

¹²⁵ Equality Coalition (2014), Robbie McVeigh, [Sectarianism in Northern Ireland :Towards a definition in law Expert paper](#), It states that racism is a clearer and better descriptive for sectarianism in Northern Ireland than ‘institutional religious intolerance’ and that sectarianism is a form of racism and that ‘perceived religion’ or ‘community background’ is an ethnicity.

¹²⁶ Further, the NIHRC has considered that sectarianism in NI be treated as a form of racism, and thus draw on definitions and protections that are in international standards relating to racism. However, NICEM has not supported such an approach expressing concern that the racial equality agenda would be subsumed by majority concerns. See [evidence](#) by NICEM to CERD Committee in 2011.

¹²⁷ It also states: It is broadly accepted that within the Northern Ireland context an individual or group must be perceived to be Catholic or Protestant, Nationalist or Unionist, or Loyalist or Republican. However sectarianism can also relate to other religious denominations, for example, Sunni and Shi’ite in Islam.

outside the workplace¹²⁸. We recommend these gaps in protection are addressed outwith the hate crime legislation.

11 Removing Hate Expression From Public Space: Duties on public bodies (Question 53).

We recommend the greater regulation of the display of flags and emblems, and greater leadership by public bodies as regards their existing equality duties.

Supporting rationale

- 11.1 The Commission has highlighted issues regarding flags and emblems, making a number of recommendations on good and harmonious spaces; and on regulating displays of flags and emblems.
- 11.2 For example, it has called for the greater regulation of the display of flags. It has recommended that the principles contained in the Flags (NI) Order and its associated regulations should form the basis of a regulatory framework for local councils¹²⁹. It has also recommended that a regulatory framework should be considered which clarifies the types of flags and emblems that could be displayed, the duration of such displays, and sanctions if not adhered to.
- 11.3 We recommended a range of steps to facilitate expressions of identity in a sensitive and non-divisive manner, while also recommending consideration of the extent to which flags and emblems on private property increase community tensions and discourage the two communities from sharing public spaces.
- 11.4 The Commission has not recommended any changes to Section 75 of the NI Act 1998, including the good relations duty under Section 75(2). However, it continues to call for increased leadership and compliance by public bodies with their existing duties under Section 75 duties, including having regard for the

¹²⁸ See ECNI (2014), [Race Equality law reform recommendations](#).

¹²⁹ See ECNI (2013), [Submission to the Panel of Parties](#)

desirability of promoting good relations between persons of different religious belief, political opinion or racial group, and the disability duties.

- 11.5 We consider that there is also an urgent need to address, out with the hate crime legislation, gaps in protection for equality groups against harassment and discrimination, including in the exercise of public functions by public bodies. We have, for example, highlighted the absence of protection against discrimination and harassment in the area of sex discrimination as regards the exercise by public bodies of public functions; protection which exists in other parts of the UK.
- 11.6 We recognise the additional duties to be placed on public bodies in the context of the proposed legislation on the establishment of the Office of Identity and Culture.
- 11.7 This includes duties on public bodies to have due regard to a number of principles, including the need to respect the freedom of all persons in Northern Ireland to choose, affirm, maintain and develop their national and cultural identity¹³⁰; and the need to encourage and promote reconciliation, tolerance and meaningful dialogue between those of different national and cultural identities. The Commission will give consideration to these proposed duties in due course, including the degree to which they are relevant to tackling hate expression in public space.

12 Victims: Under reporting (Question 59)

We recommend robust action to improve under-reporting of hate crime.

Supporting rationale

- 12.1 The Commission has consistently highlighted the need for the under-reporting of hate crime to be effectively addressed. Most recently we have recommended in our *Equality in Housing and*

¹³⁰ In addition the need to celebrate and express that identity in a manner which takes into account the sensitivities of those with different national or cultural identities and respects the rule of law. See UK Government, Irish Government, (2020), *New Deal, New Approach*.

Communities Policy Recommendations (2019)¹³¹, that action must be taken to further tackle the under-reporting of hate incidents and crimes (against persons and dwellings), and to improve outcome rates.

- 12.2 We note that a range of criminal justice agencies, including the Criminal Justice Inspectorate¹³², the Northern Ireland Policing Board¹³³, and the PSNI have recognised the issue of the under-reporting of hate crimes experienced by a range of equality groups, including by minority ethnic, LGB and Trans individuals.
- 12.3 Whilst recognising and welcoming steps already implemented by a range of organisations/bodies to address under-reporting, there is a need for additional steps to be taken.
- 12.4 These actions include to raise awareness of hate crime, the impact of hate crime, and the methods to report hate crime, amongst equality groups, as well as the general public.
- 12.5 There is also a need to continue to build trust and confidence in the criminal justice system amongst victims of hate crime, as a lack of confidence that their complaints will be taken seriously or dealt with effectively can discourage reporting.
- 12.6 The Commission has also stressed the importance of people in positions of influence to avoid language/ behaviour that would increase the vulnerability of people under threat of attack, including due to religion or race. Sending a clear message, including by people in positions of influence, that hate crime is unacceptable and that robust action will be taken to address it by criminal justice agencies, is also crucial in building trust and confidence in the criminal justice system.
- 12.7 These actions will be particularly important to take in the event that additional grounds, such as gender, gender identity, intersex and age, which we recommend are protected, are protected under the hate crime legislation.

¹³¹ ECNI (2019), [Equality in Housing and Communities Policy Recommendations](#)

¹³² The Criminal Justice Inspectorate NI reported (2017) that: 'Hate incidents are greatly under-reported so the rate of incidents perpetrated against people because they are perceived to be different in some way is much higher'. See Criminal Justice Inspection Northern Ireland (2017), [Hate Crime an Inspection of the Criminal Justice System's response to Hate Crime in N.I.](#)

¹³³ NIPB (2017), [Thematic Review of Policing Race Hate Crime](#)

- 12.8 We note, for example, that an evaluation of the Nottinghamshire police’s policy of recording misogyny hate crime, published in June 2018, found that, while there was high public support for the policy once it was explained, there was little awareness of it and it had not improved the generally low rate of reporting by victims. As highlighted by the UK Parliament’s Women and Equalities Committee in its Inquiry into sexual harassment of women and girls in public places (2018)¹³⁴, *‘this suggests the need for policies such as this to be backed up by public awareness campaigns and promotion if they are to be effective’*.
- 12.9 As set out in more detail in our recommendations in Annex B on improving the effectiveness of the hate crime legislation, other actions should include the provision of training and guidance on equality and human rights for police officers.
- 12.10 In addition, we recommend that the criminal justice agencies improve the accessibility of reporting for those victims who have English as an additional language and take appropriate steps to increase ethnic minority *representation among police and criminal justice staff*¹³⁵.

13 Victims: Anonymity (Questions 64,65)

We recommend that, in certain circumstances, press reporting on the identity of a complainant or witness in a hate crime should not be permitted. Such circumstances should include a consideration of whether, the disclosure of a person’s identity will make the complainant or witness, due to an equality characteristic(s), more susceptible to victimisation or retaliation, or result

¹³⁴ Women and Equalities Committee (2018), [Inquiry into Sexual harassment of women and girls in public places](#).

¹³⁵ See ECNI (2014), [Racial Equality Priorities and Recommendations](#).

in that characteristic, such as sexual orientation, being made public without their permission.

Supporting rationale

- 13.1 In certain circumstances, we consider that a lack of anonymity for complainants or witnesses in hate crime cases, in terms of press reporting, can act as a barrier to certain complainants to participating in court proceedings.
- 13.2 In particular, the disclosure of a complainant's, or witness's identity, and the fact that they belong to a particular equality group, may make them more vulnerable to victimisation or retaliation, or result in that equality characteristic being made public, without their permission.
- 13.3 For example, consideration should be given as to whether or not press reporting of the identity of a victim, who is LGB and has reported a homophobic hate crime, would result in the complainant being 'outed' as a result of the court proceedings.
- 13.4 Further, consideration should be given as to whether or not press reporting of the identity of a victim, who is a trans individual and has reported transphobic hate crime, would result in that person's gender identity being made public, in circumstances where they did not wish to publically disclose their gender identity.
- 13.5 In addition, consideration should be given to the fact that other complainants or witnesses due, for example, to their age or disability, or due to having multiple identities, may be particularly targeted as regards victimisation or retaliation.
- 13.6 We consider that each case should be decided on a case by case basis and should focus on the particular circumstances and nature of the hate crime, and the potential impact that disclosing the complainant's (or witnesses') identity will have on them.
- 13.7 Whilst we recognise that courts already have a general power to withhold the identity of a complainant¹³⁶ from the public, we considered it would be beneficial for the hate crime legislation

¹³⁶ Contempt of Court Act 1981 (section 11).

to make express provision for courts to make restrict press reporting in certain circumstances. Such a legislative provision could be underpinned by guidance for courts on the particular circumstances they should take into account. Such an approach would provide clarity and certainty both for the courts and for complainants, and witnesses.

- 13.8 Further, there is already clear evidence of under-reporting of hate crime, including by LGBT individuals. It is important that fears due to lack of anonymity during and after court proceedings do not act as a barrier to LGBT people or other equality groups seeking, and being provided with, protection against hate crime.
- 13.9 It will be noted that research jointly commissioned by the Equality Commission and the Equality Authority entitled *Enabling Lesbian, Gay and Bisexual Individuals to Access their Rights under Equality Law*¹³⁷ (2008) identified that publicity attached to assertion of rights was seen as a major obstacle for access to rights for LGB people. It also notes that the Commission (and the EA) had faced difficulty in encouraging sexual orientation complaints in situations where LGB complainants must compromise their privacy¹³⁸. The report recommended provisions to secure anonymity on the grounds of sexual orientation and other 'sensitive' claims before tribunals and in the wider court system.
- 13.10 Barriers associated with reporting of hate crime LGB and trans people due to a lack of anonymity were also highlighted in research in GB (2016) which found that one of key themes to emerge was that both victims and witnesses would be more inclined to report hate crime if they could do so anonymously¹³⁹.
- 13.11 This recommendation is consistent with our longstanding recommendation that there is an express power for tribunals to make a register deletion Order, a restricted reporting Order and/or a restricted attendance Order in circumstances where

¹³⁷ J. Walsh, C Conlon, B Fitzpatrick and U Hansson, (2008), [*Enabling Lesbian, Gay and Bisexual Individuals to Access their Rights under Equality Law*](#).

¹³⁸ Ibid p139.

¹³⁹ Professor Neil Chakraborti and Dr Stevie-Jade Hardy, University of Leicester, commissioned by EHRC. (2016), [*LGB&T Hate Crime Reporting Identifying Barriers and Solutions*](#), at page 31.

the applicant would otherwise be deterred from proceeding with his or her case¹⁴⁰.

14 Consolidation of hate crime legislation (Question 66)

We recommend that the hate crime legislation should be consolidated into a single piece of legislation.

Supporting rationale

- 14.1 We consider that there are clear benefits to the hate crime legislation being updated, harmonised and strengthened into a single piece of consolidated legislation.
- 14.2 We consider such approach will make the legislation easier to understand, provide greater clarity and certainty and ensure a consistent approach, including to addressing hate crime across a number of equality groups. This approach also provides an opportunity to address gaps and anomalies with the legislative framework and help ensure it is fit for purpose.
- 14.3 The hate legislation has developed in a piecemeal way in Northern Ireland over several decades and provisions relating to hate crime are contained in a multitude of legislative vehicles. In addition, changes to the legislation have evolved including the addition of new protection for certain equality groups. In light of the potential for additional changes to the current legislation being implemented as a result of the review, it makes sense to take this opportunity to consolidate the legislation at this stage in the legislation's development.

¹⁴⁰ ECNI (2014), [*Response to the Department for Employment and Learning's consultation on resolving workplace disputes*](#).

- 14.4 We note Lord Bracadale in the Scottish review (2018) recommended the consolidation of the hate crime legislation in Scotland¹⁴¹.
- 14.5 Our recommendation is consistent with our longstanding recommendation that equality legislation should be harmonised and simplified to address anomalies and inconsistencies, and consolidated into single equality legislation.

15 Review of hate crime legislation (Questions 67-68).

We recommend that legislative changes to the hate crime legislation should be subject to post-legislative review, with the review being carried out within 5 years of the legislation being passed so as to assess the overall effectiveness of the legislative changes in tackling hate crime.

- 15.1 Specifically, we recommend that the five-year review should include, as a minimum, a consideration of:
- an overall assessment of the impact and effectiveness of the legislative changes, so as to assess whether the policy objectives of the legislation are being met;
 - the merits or otherwise of including additional protected equality grounds within the protection of the hate crime legislation;
 - any review arising out of the implementation of hate crime legislation in GB;
 - wider developments, for example, the impact of Brexit.

¹⁴¹ Lord Bracadale (2018), [Independent Review of Hate Crime Legislation in Scotland: Final Report](#), Scottish Government.

Supporting rationale

- 15.2 We consider that there cogent reasons in support of the Government undertaking a post-legislative review of legislative changes to the hate crime legislation.
- 15.3 It will enable an assessment to be made of the overall impact and effectiveness of any changes to the legislation that have been introduced following the review of the legislation in 2020. Ensuring changes to legislation have been effective in tackling hate crime is important as a means of maintain public confidence in the value of the legislation. The review should, as a minimum, considers the points set out above.
- 15.4 We consider that 5 years is an appropriate timescale for a review, so as to allow sufficient time for the legislation to bed in, accompanying guidance and changes to policy to be applied, and for public awareness and understanding of the legislation, including any changes to the legislation, to be raised. We note that a 5 year review requirement was included in the gender pay reporting regulations in GB.
- 15.5 Further, carrying out such a review is also consistent with review requirements set out in other forms of legislation. For example, under the gender pay reporting requirements in GB, the Secretary of State is required to carry out a 5 review of the Regulations, to publish a report of findings, and ensure subsequent reviews at least every 5 years^{142 143}.

16 Wider recommendations to improve the effectiveness of the hate crime legislation

- 16.1 Summarised below are wider recommendations aimed at further improving the effectiveness of the hate crime legislation. These are in addition to the recommendations highlighted above in response to specific consultation questions

¹⁴² For example, under the GB GPGR Regulations, the Secretary of State is required to carry out a review of the Regulations, and to publish a report that includes an assessment of the degree to which the objectives intended to be achieved by the Regulations has been achieved. The first review report must be published within 5 years of the Regulations coming into force. Subsequent reports are to be published at intervals not exceeding five years.

¹⁴³ See [The Equality Act 2010 \(Gender Pay Gap Information\) Regulations 2017](#), Section 16.

16.2 These wider recommendations cover both policy responses to hate crime, as well as changes to wider legislation, aimed at improving the overall effectiveness of the hate crime legislation.

16.3 We consider that these wider recommendations, whilst they are not in response to a specific question/s raised in the hate crime review consultation paper, will be of assistance to the hate crime review team with regards to formulating comprehensive recommendations to tackle hate crime.

We recommend additional wider actions to improve the effectiveness of the hate crime legislation.

16.4 The Commission continues to stress the need for the overall implementation of the hate crime legislation to be improved. The value of the extending the existing hate crime legislation to cover additional grounds will be substantially enhanced if further measures are taken to improve the overall effectiveness of hate crime legislation.

16.5 Specifically, actions should include the following:

- **Guidance and Training:** We recommend the production of guidance and training for criminal justice agencies, including the PSNI, PPS and judiciary.
- **Holistic approach:** We recommend the adoption of a holistic approach to tackling hate crime.
- **Outcome rates:** We recommend action to improve outcome rates for hate crime.
- **Increases in Hate crime:** We recommend that measures are in place to tackle any increase in levels of hate crime due, for example, to Brexit and the COVID-19 pandemic.
- **Prejudicial attitudes:** We recommend the implementation of measures to eliminate discrimination, hate crime and tackle prejudicial attitudes and negative stereotypes against equality groups.
- **Equality Law:** We recommend measures to strengthen equality law, including against harassment and multiple discrimination.

- **Sharing in Education:** We recommend a move to a system of education which routinely teaches all pupils together via a shared curriculum in shared classes, in support of better advancing a shared society.
- **Bullying:** We recommend action to address bullying in schools including on prejudice- based grounds, including through the curriculum in an age appropriate way, and via leadership and commitment from Principals and Boards of Governors.
- **Shared and safe housing:** We recommend actions designed to incentivise and advance safe, shared housing and communities based on equality, dignity and respect.
- **Harassment when accessing health services:** We recommend that measures are taken to ensure that women, including women with multiple identities, are able to access all health services, including sexual and reproductive health services, free from discrimination or harassment. Measures should be compliant with human rights legislation.
- **Equality/Good relations Strategies:** We recommend prompt implementation of equality and good relations strategies, to include actions to address prejudicial attitudes, stereotypes and hate crime.

16.6 We have set out in **Annex B** further details on these recommendations together with the underpinning supporting rationales.

17 Conclusion

17.1 We have set out above a number range of recommendations aimed at improving the hate crime legislative framework.

- 17.2 These include recommendations in response to specific consultation questions, including on a working definition of hate crime, the coverage of hate crime legislation as regards protected groups, the Public Order incitement to hatred offences, and sectarianism and the hate crime legislation.
- 17.3 We have also set out wider recommendations aimed at further improving the effectiveness of the hate crime legislation, including in areas such as equality law reform, tackling prejudicial attitudes and stereotypes, and prejudice based bullying in schools.
- 17.4 We consider that these recommendations, if adopted and implemented, will significantly strengthen, harmonise and simplify the hate crime legislative framework, and ensure a more robust, co-ordinated and effective policy response to tackling the persistent and growing problem of hate crime against a range of equality groups in Northern Ireland.

Equality Commission
30 April 2020

18 Annex A: Role and Remit of The Equality Commission for Northern Ireland

- 18.1 The Equality Commission for Northern Ireland (“the Commission”) is an independent public body established under the Northern Ireland Act 1998. The Commission is responsible for implementing the legislation on fair employment, sex discrimination and equal pay, race relations, sexual orientation and disability. The Commission’s remit also includes overseeing the statutory duties on public authorities to promote equality of opportunity and good relations under Section 75 of the Northern Ireland Act 1998¹⁴⁴.
- 18.2 The Equality Commission and the Northern Ireland Human Rights Commission are jointly designated as the 'independent mechanism' to promote, protect and monitor implementation of United Nations Convention on the Rights of People with Disabilities (UNCRPD).

¹⁴⁴ The Commission’s general duties include:

- working towards the elimination of discrimination;
- promoting equality of opportunity and encouraging good practice;
- promoting positive / affirmative action;
- promoting good relations between people of different racial groups;
- overseeing the implementation and effectiveness of the statutory duty on relevant public authorities; and
- keeping the legislation under review.

19 **Annex B: Recommendations to improve the effectiveness of the hate crime legislation**

19.1 Outlined below are our recommendations aimed at further improving the effectiveness of the hate crime legislation.

Guidance and Training: We recommend the production of guidance and training for criminal justice agencies.

Supporting rationale

- 19.2 Alongside any changes to the legislation, we consider that there is a clear need to implement wider policy measures required to underpin any legislative changes; for example, the production of guidance and training for criminal justice agencies, including the PSNI, PPS and judiciary.
- 19.3 This training and guidance should include awareness of the rights of equality groups, as well as the need to address the particular needs of equality groups, including older people, LGB and trans people, and disabled people. It should also include tackling negative stereotypes and prejudice towards certain equality groups, as well as promoting positive attitudes towards these groups.
- 19.4 We endorse the recommendation of the NI Policing Board in its *Thematic Review of Policing Race Hate Crime* (2018) that called for training on equality and human rights for police officers¹⁴⁵. This training should include training relating to all equality grounds that may be covered in a revised hate crime framework.
- 19.5 It will be noted that the Policing Board (2018)¹⁴⁶ made clear that: “While hate crime currently comprises only a small proportion of the cases dealt with by a police officer (recognising however significant under-reporting), unless equipped to recognise those cases and respond appropriately,

¹⁴⁵ Northern Ireland Policing Board (2018) , [Thematic Review of Policing Race Hate Crime](#)

¹⁴⁶ Ibid.

it is likely that when such cases do arise, the aggravating feature will not be recognised. If hate crimes are not recognised or not properly addressed by the criminal justice system, both the victim and the wider community may lose confidence in the justice process”.

- 19.6 We draw attention to the UNCRPD Concluding Observations on the UK (2017) which recommended that the UK Government: ‘Develop and implement capacity building programmes among the judiciary and law enforcement personnel, including judges, prosecutors, police officers and prison staff, about the rights of persons with disabilities’

Holistic Approach: We recommend a holistic approach to tackling hate crime.

Supporting rationale

- 19.7 As highlighted by the Criminal Justice Inspection (NI) in its report on hate crime in 2017, there is a need for a ‘more holistic approach’ so as ‘to deliver the societal change necessary to combat the underlying causes’¹⁴⁷. We consider that there is a need for a co-ordinated response to tackling hate crime, including by local councils working in partnership with different sectors (including statutory, voluntary and private), trade unions, and faith based organisations¹⁴⁸.
- 19.8 We welcome the Criminal Justice Inspectorate’s 2017 recommendation¹⁴⁹ that to provide: “effective cross-departmental governance in tackling the underlying, enabling factors of hate crime the Department of Justice should, as soon as possible, directly link its Hate Crime Strategy contained in the Community Safety Strategy to Together: Building United Communities (T:BUC) or any future Northern Ireland Executive Cohesion, Sharing and Integration policy or its equivalent”.

¹⁴⁷ Criminal Justice Inspection NI (2017), [Hate Crime: An Inspection of the Criminal Justice System’s response to Hate Crime in Northern Ireland Belfast: Criminal Justice Inspection Northern Ireland](#), p. 22.

¹⁴⁸ It will be noted that a research report (2018) into hate crime in Belfast commended the work of Belfast City Councils Shared City Partnership Lucas, O., Wilson, R. and Jarman, N. (2018) *A Different Difference: Hate Crime and Discrimination towards Individuals of Muslim Background in Belfast*, Belfast: Institute for Conflict Research, p. 31, as cited in Hate crime review (2020) *Hate crime legislation, Independent Review, Consultation Paper*, at p.34.

¹⁴⁹ Criminal Justice Inspection NI, (2017) [Hate Crime an Inspection of the Criminal Justice System’s response to Hate Crime in N.I.](#), recommendation 3.

19.9 We note that, to date, this recommendation has not been progressed.

Outcome rates: We recommend action to improve outcome rates for hate crime.

Supporting Rationale

- 19.10 To date there have been very few prosecutions and convictions under the hate crime legislation in Northern Ireland, including relating to incitement to hatred¹⁵⁰.
- 19.11 Outcome rates for crimes with a hate motivation are consistently lower than those for other recorded crimes¹⁵¹.
- 19.12 The causes attributed to the lower outcome rate for hate motivated crimes include: difficulties in proving the hate element due to its subjective nature; and the hate element of crimes being dropped by the Public Prosecution Service prior to prosecution, and proceeding on the basis of, for example, a criminal damage or assault case.
- 19.13 We welcome the Northern Ireland Policing Board's thematic reviews in relation to transphobic and homophobic¹⁵², and racist hate crime¹⁵³, and there is a need to ensure that actions are taken by the PSNI to ensure the full implementation of outstanding recommendations. This includes detailed follow-up work to track the effectiveness of these actions, including to report on positive progress and/or identify key lessons.
- 19.14 In relation to detection, there is a need, as highlighted in the 2010 Criminal Justice Inspectorate (NI) report, for joined up data to track the progress of hate crimes through the criminal justice system. This would allow for better analysis of how such

¹⁵⁰ The Department of Justice has indicated that over the four year period 2012 to 2016 there were a total of 6 convictions under incitement to hatred in NI. As cited in R. McVeigh (2018), [Incitement to hatred in northern-ireland research report](#) p7.

¹⁵¹ 2015/16 recorded crime outcome rate was 27.5%(PSNI [Police recorded crime statistics](#) (15.12.16)); However for those crimes with a hate motivation during 2015/16, the detection rates were: racist 18.4%, homophobic 22.7%, sectarian 15.2%, disability 7%, religious 8.7%, transphobic 30%. (statistics from [Incidents and crimes with a hate motivation recorded by the policy in NI: quarterly update to September 2016](#) (24.11.16)

¹⁵² NIPB (2012) [Thematic Review Policing with and for LGB and Trans people](#)

¹⁵³ NIPB (2018) , [Thematic Review of Policing Race Hate Crime](#)

cases are dealt with and identify areas where remedial action is required.

Increasing Hate crime: We recommend that measures are in place to tackle any increase in levels of hate crime due, for example, to Brexit and the COVID-19 pandemic.

Supporting rationale

- 19.15 As previously recommended by the Commission¹⁵⁴, policy responses to tackling hate crime should also take into account the potential for an increase in hate crime, particularly racist crime, post Brexit.
- 19.16 Further, there is evidence of increasing levels of race hate crime in Great Britain, particularly towards people from Asian communities due to the COVID-19 pandemic¹⁵⁵.
- 19.17 There is also some initial evidence, including in Northern Ireland, of increasing racism and prejudicial racial attitudes due to COVID-19, particularly targeted at people of Asian origin. For example, the NASUWT teachers' union in Northern Ireland has stated that reports by its members of abuse, prejudice, xenophobia and racism in schools have increased since the outbreak reached the UK¹⁵⁶.
- 19.18 Further, an IPSOS Mori poll (2020) on opinions on COVID-19, reported that 21% of respondents said they would avoid purchasing food products made in China and 17% said they would avoid purchasing products made in China. 14% said they would avoid contact with people of Chinese origin or appearance and 10% would avoid eating in Asian restaurants¹⁵⁷.

Prejudicial attitudes: We recommend the implementation of measures to eliminate

¹⁵⁴ ECNI (2016), [Recommendations for Government on the UK exiting the EU](#).

¹⁵⁵ See for example, Institute of Race Relations (2020), [Article](#) on *Race hate crimes – collateral damage of Covid-19*, dated 20 April 2020 [accessed 30 April 2020].

¹⁵⁶ NASUWT Northern Ireland (2020), [Letter to Peter Weir, Education Minister](#), 3 March 2020.

¹⁵⁷ IPSOS Mori (Feb 2020) [Coronavirus: Opinion and Reaction – Results from a multi-country poll UK](#)

discrimination, hate crime, and tackle prejudicial attitudes and negative stereotypes against equality groups.

- 19.19 We recommend stronger actions designed to challenge prejudicial attitudes, behaviour and hate crime so as to ensure that workplaces, services, public spaces and communities are free from harassment and/or discrimination across the equality grounds¹⁵⁸.
- 19.20 This includes action to address negative attitudes and stereotypes experienced throughout the life course, in education, training, work and in the family and wider society, including the media. It also includes tackling the objectification and degradation of women and girls¹⁵⁹, and gender stereotypes.
- 19.21 Action is needed to address sectarianism and racism, including within the workplace; to tackle the significant attitudinal barriers to employment for people with disabilities; and to challenge the negative attitudes towards Irish Travellers, Eastern European Migrant Workers and other minority ethnic individuals, as well as Lesbian, Gay and Bisexual (LGB) people and trans individuals.

Supporting Rationale

- 19.22 Prejudicial attitudes against equality groups can lead to discrimination, harassment, and hate crime. Any legislative changes to help tackle hate crime needs to be underpinned, and complemented, by wider action to tackle prejudicial attitudes and negative stereotypes in relation to equality groups.
- 19.23 Gender stereotypes and prejudicial societal attitudes need to be challenged in order to tackle gender based violence. Policy responses to tackling gender based hate crime should also take account of the status of Northern Ireland as a post conflict society¹⁶⁰.

¹⁵⁸ ECNI (2016) [Programme for Government](#)

¹⁵⁹ ECNI (2016), [Gender equality policy priorities and recommendations](#).

¹⁶⁰ For example, ‘research clearly shows that the conflict/post-conflict environment in Northern Ireland shapes domestic violence (e.g. perpetrators of domestic violence deriving power from paramilitary affiliations)’. As cited in [Transforming responses to domestic violence in a politically contested environment: The case of Northern Ireland](#), Jessica Doyle, and Monica McWilliams (2019), *feminists@law*, Vol 9, No 1 (2019)

- 19.24 While welcoming our 2016 Equality Awareness Survey's¹⁶¹ overall findings that attitudes towards different equality groups were more positive than in previous surveys, we note that the five most negatively viewed groups were all racial groups¹⁶², and the sixth and seventh most negatively viewed groups were trans and lesbian, gay and bisexual people.
- 19.25 Taking action to address prejudicial attitudes and negative stereotypes is also consistent with the recommendations of international human rights monitoring bodies. For example, the UNCRPD Committee in its Concluding Observations on the UK (2017) recommended that the UK Government, in close collaboration with organisations of persons with disabilities, strengthen its awareness-raising campaigns aimed at eliminating negative stereotypes and prejudice towards persons with disabilities.

Equality Law: We recommend measures to strengthen equality law, including against harassment and multiple discrimination.

Supporting rationale

- 19.26 It is clear that people in Northern Ireland have less protection under equality law in Northern Ireland, including as regards protection against harassment and discrimination, than in other parts of the UK¹⁶³. For example, unlike in GB, there is *no* protection against age discrimination and harassment in the provision of goods, facilities and services.
- 19.27 We have consistently called for the introduction of single equality legislation in Northern Ireland, in order to address significant gaps in legislative protection, including in relation to provisions on harassment and multiple discrimination, as well as to harmonise and simplify the legislation.
- 19.28 The hate crime review consultation paper¹⁶⁴, recognises the barriers that individuals who experience multiple or intersectional discrimination face in bringing discrimination

¹⁶¹ ECNI (2018) [Equality Awareness Survey 2016](#)

¹⁶² Travellers (19%), Roma (19%), asylum seekers / refugees (15%), migrant workers (11%) and minority ethnic groups (10%).

¹⁶³ For further information see ECNI (2014), [Gaps in equality law between GB and NI](#).

¹⁶⁴ Hate crime review (2020) *Hate crime legislation, Independent Review, Consultation Paper*, see para 8.90.

cases, due to the lack of single equality legislation in Northern Ireland.

- 19.29 There is a need to tackle prejudices that lead to both hate crime and discrimination, and having effective and robust equality laws can help to combat prejudices and stereotypes against protected groups.
- 19.30 Further, the need to strengthen equality law in Northern Ireland, including through the introduction of protection against multiple discrimination, is consistent with the recommendations of international human rights monitoring bodies, such as the UN CEDAW Committee¹⁶⁵ (2019).

Education: We recommend a move to a system of education which routinely teaches all pupils together via a shared curriculum in shared classes, in support of better advancing a shared society.

- 19.31 The Commission is of the view that sharing in education provision has a key role to play in advancing cohesion, sharing and integration across all equality grounds¹⁶⁶. We consider that *‘education has a role in shaping an individual’s views, their conduct, their relationships with others, and it has the potential to counter negative images and views that they can be exposed to outside of a school’*¹⁶⁷.
- 19.32 We consider that sharing across the education system could better provide learners with shared awareness, understanding and experience of the value and range of diverse cultures, identities and backgrounds in Northern Ireland; while also enabling learners from different cultures/communities to experience a shared society.
- 19.33 We consider that any system must: ensure that sharing impacts meaningfully and substantively on every learner; ensure that a shared experience is central to the education system as a whole; encompass all stages of educational provision (pre-

¹⁶⁵ The [UN CEDAW Committee’s Concluding Observations](#) (COs) (2019) in relation to the UK called for the introduction of legislative measures under equality law to protect against combined discrimination.

¹⁶⁶ ECNI (2015) [Sharing in Education – summary policy position](#)

¹⁶⁷ ECNI (2008) [Every Child an Equal Child](#) at p. 5.

school; early-years; primary; post-primary; special needs; and tertiary levels); and routinely teach learners together via a shared curriculum in shared classes.

- 19.34 The Commission remains of the view that the overall system of education provision in Northern Ireland has an important role to play, not only in the development of the child, but in advancing cohesion, sharing and integration across all equality grounds. This is not to undermine the rights of parents to make choices regarding their child's attendance at specific schools, or for the provision of faith-based schools. However, such considerations cannot overshadow the importance of a system of education as a whole seeking to maximise equality of opportunity and good relations.

Supporting rationale

- 19.35 The Commission's 2015 policy paper on sharing in education¹⁶⁸ highlighted the educational, economic and societal benefits of sharing in education. Sharing can facilitate pupils to access the full curriculum and a wider range of educational, sporting and cultural experiences; offer opportunities to improve standards and outcomes for all learners (see discussion later in this paper); maximise sustainability and reduce costs; and foster good relations by providing an environment for longer term, sustained contact for both teachers and learners.
- 19.36 Sharing can also provide learners with shared awareness, understanding and experience of the value and range of diverse cultures, identities and backgrounds in Northern Ireland; while also enabling learners from different cultures/communities to experience a shared society.
- 19.37 The Commission also recognises the crucial role that schools have in contributing to the reconciliation of our society. This is not solely a job for schools, but schools do play a critical role³³. Sharing in education also needs to be considered in the context of wider sharing. Shared services, shared housing and shared spaces have the potential to enhance and be enhanced by sharing and integration within the education system.
- 19.38 We consider that a widespread, positive experience of sharing in education is key to promoting good relations and requires

¹⁶⁸ ECNI (2015) [Sharing in Education – summary policy position](#)

long-term resourcing. 2012 research³⁴ found that the mere fact that pupils are given an opportunity to engage with each other on a sustained basis is a key variable in the generation of more positive intergroup attitudes. This also reinforces the need for shared education to have a meaningful and substantial impact.

Education: We recommend action to tackle prejudice-based bullying and challenge stereotypes in education.

Supporting rationale

- 19.39 There is a need for action to address bullying in schools including on prejudice-based grounds, including through the curriculum in an age appropriate way, and via leadership and commitment from Principals and Boards of Governors
- 19.40 Prejudice-based bullying at school can blight the lives of young people, negatively affecting their attendance and attainment as well as having a long-term impact on their life chances.
- 19.41 The Commission's *Statement on Key Inequalities in Education*¹⁶⁹ highlighted prejudice-based bullying as a persistent problem for certain equality groups, including: trans pupils; minority ethnic students including Irish Travellers; students with SEN or a disability; and students with same sex attraction.
- 19.42 The need to tackle the high incidence of prejudice-based bullying, both within schools and the wider community is a key challenge for Government and has been recognised as such by international treaty bodies, such as UNCRC Committee, CEDAW Committee, CERD Committee, and the Advisory Committee on the Framework Convention on National Minorities (FCNM).
- 19.43 We have set out our further specific recommendations on tackling prejudice-based bullying and challenging stereotypes in education in our policy recommendations on *Equality in Education* (2018)¹⁷⁰.

¹⁶⁹ ECNI (2017), [Statement on Key Inequalities in Education in Northern Ireland](#)

¹⁷⁰ ECNI (2018), [Equality in Education, Policy Recommendations](#)

Shared and safe housing: We recommend actions designed to incentivise and advance safe, shared housing and communities based on equality, dignity and respect.

19.44 As set out in our policy recommendations on *Equality in Housing and Communities* (2019)¹⁷¹, there is a need to tackle the under-reporting of hate incidents and crimes (against persons and dwellings), and to increase outcome rates, as well as to take actions to advance sharing in housing, while ensuring that objectively assessed housing need is met.

19.45 The Commission restates its view on the value of shared housing and that segregated housing in Northern Ireland is not the way forward for our society. We also recognise that people need to feel safe where they live, and consider that actions are needed to encourage and incentivise integration.

Supporting rationale

19.46 Statistics show that the homes of minority ethnic people and migrant groups may be vulnerable to racial attacks¹⁷². For example, Police Service of Northern Ireland statistics¹⁷³ showed that in the year 2017/18 there were 304 racist motivated crimes of theft and or criminal damage. Although there has been fluctuation (with a trend of increase in racist hate crime incidents between 2010/11 and 2015/16, but broadly a decrease since then) rates are still higher than the 2012/13 level.

19.47 Available evidence also suggests that LGB people can feel harassed and unsafe in their own homes and neighbourhoods. For example, O'Doherty¹⁷⁴ (2009) found that around a fifth of homophobic incidents occurred in the LGB person's home with nearly a quarter of these incidents involving a perpetrator who was a neighbour or lived locally. PSNI statistics show increases in hate-related 'theft and criminal damage' offences during the period 2007/08 to September 2018¹⁷⁵.

¹⁷¹ ECNI (2020), [Equality in Housing and Communities, Policy Recommendations](#).

¹⁷² PSNI (2018) [Hate motivation Annual Trends 2004/05 to 2017/18 \(published 31 October 2018\)](#)

¹⁷³ PSNI (2018) [Hate Motivation Statistics Bulletin](#)

¹⁷⁴ O'Doherty, J. (2009) [Through Our Eyes](#).

¹⁷⁵ PSNI (2018) [Hate motivation Annual Trends 2004/05 to 2017/18 \(published 31 October 2018\)](#)

- 19.48 It was also found that transgender people are at high risk of being the victim of hate crimes, including crimes against the person and property related crimes^{176,177}.
- 19.49 The Commission views socially, ethnically, politically and religiously integrated housing as a preferred option and long-term goal. We note work such as that which the Northern Ireland Housing Executive (NIHE), with support from housing associations, has undertaken to further shared housing, and reiterate the importance of considering how sharing in housing can be encouraged and incentivised, mindful of the range of factors impacting on residential preferences and decisions.

Harassment when accessing health services: We recommend that measures are taken to ensure that women, including women with multiple identities, are able to access all health services, including sexual and reproductive health services, free from discrimination or harassment.

Supporting rationale

- 19.50 In its response to the consultation on a new framework on abortion in 2019, the Commission made clear that it recommended that measures are taken to ensure that women, including women with multiple identities, are able to access all health services, including sexual and reproductive health services, free from discrimination or harassment. Measures should be compliant with human rights legislation¹⁷⁸.
- 19.51 The CEDAW Inquiry Report (2018) recommended that the UK Government ‘protect women from harassment by anti-abortion protesters by investigating complaints and prosecuting and punishing perpetrators’¹⁷⁹.
- 19.52 Our recommendation is consistent with the Joint Statement of the CEDAW Committee and the UNCRPD Committee (2018) on *Guaranteeing sexual and reproductive health and rights for*

¹⁷⁶ McBride (2013) [Grasping the Nettle: The Experiences of Gender Variant Children and Transgender Youth Living in Northern Ireland](#).

¹⁷⁷ PSNI (2018) [Hate motivation Annual Trends 2004/05 to 2017/18 \(published 31 October 2018\)](#)

¹⁷⁸ ECNI (2019), [Response to Government consultation on a new Legal Framework for Abortion](#).

¹⁷⁹ CEDAW Committee (2018) [Inquiry report on UK under Art 8 of Optional Protocol CEDAW into abortion in Northern Ireland](#)

all women, in particular women with disabilities, which states that ‘States parties should ensure non-interference, including by non-State actors, with the respect for autonomous decision-making by women, including women with disabilities, regarding their sexual and reproductive health well-being’¹⁸⁰.

- 19.53 In the current context that the UK Government has decided that the introduction of new powers as regards exclusion zones are not required¹⁸¹, it will be essential for the NI Executive to ensure that there is effective protection for women against harassment when accessing abortion services.

Equality/Good relations Strategies: We recommend prompt implementation of equality and good relations strategies, to include actions to address prejudicial attitudes, stereotypes and hate crime.

Supporting rationale

- 19.54 There is a need to ensure prompt implementation of a range of equality and good relations strategies through comprehensive, measurable, monitored and evaluated action plans. These include the strategies on Race, Sexual Orientation, Disability, Gender and Age¹⁸².
- 19.55 Such strategies provide important opportunities to adopt a co-ordinated, cross-departmental approach to address prejudicial attitudes, stereotypes and hate crime.

¹⁸⁰ CEDAW Committee and the UNCRPD Committee (2018), [*Joint Statement of the CEDAW Committee and the UNCRPD Committee on Guaranteeing sexual and reproductive health and rights for all women, in particular women with disabilities*](#).

¹⁸¹ UK Government (2020), [*A new legal framework for abortion services in Northern Ireland*](#)

¹⁸² ECNI (2016) [*Recommendations: Programme for Government \(PfG\) and Budget*](#)