

EQUALITY COMMISSION FOR NORTHERN IRELAND

Hate Crime in Northern Ireland

Summary of Policy Recommendations



November 2020

Table of Contents

1	EXECUTIVE SUMMARY	1
	OUR RECOMMENDATIONS.....	1
2	INTRODUCTION	5
3	RECOMMENDATIONS TO PREVENT AND TACKLE HATE CRIMES	5
	A: COMBAT PREJUDICIAL ATTITUDES AND PROMOTE EQUALITY AND DIVERSITY	5
	<i>Prejudicial Attitudes: Prevent hate crime, including by tackling prejudicial attitudes and negative stereotypes against equality groups.</i>	5
	<i>Equality and Good relations Strategies: Promptly implement equality and good relations strategies, to include actions to address prejudicial attitudes, stereotypes and hate crime.</i>	6
	<i>Promote Mutual Respect and Encourage Sharing of Public Spaces: Ensure the greater regulation of the display of flags and emblems.</i>	7
	<i>Shared and Safe Housing: Adopt actions designed to incentivise and advance safe, shared housing and communities based on equality, dignity and respect.</i>	7
	<i>Sharing in Education: Ensure 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.</i>	8
	<i>Anti-bullying: Promote an anti-bullying culture within education; combat negative attitudes and behaviours towards equality groups, and embed equality in the curriculum.</i>	8
	B: TACKLE HARASSMENT, HATE SPEECH AND HATE CRIME	9
	<i>Under-reporting: Address the under-reporting of hate crime.</i>	9
	<i>Emergent Hate Crime: Be alert for, and promptly tackle, emergent hate crime including, for example, any linked to BREXIT or the COVID-19 pandemic.</i>	10
	<i>Online Hate Speech: Tackle online hate speech and abuse targeted at different equality groups.</i>	10
	<i>Harassment when Accessing Health Services: 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.</i>	11
	C: SUPPORT VICTIMS	11
	<i>Victim Support: Ensure support for victims of hate crime.</i>	11
	<i>Anonymity for Victims: Remove barriers to victims accessing justice by ensuring that, in certain circumstances, press reporting on the identity of a complainant or witness in a hate crime is not permitted.</i>	11
	D: IMPROVE CRIMINAL JUSTICE RESPONSE TO HATE CRIME.....	12
	<i>Outcome Rates: Improve outcome rates for hate crime.</i>	12
	<i>Sentencing Guidelines: Introduce sentencing guidelines for hate crimes in Northern Ireland.</i>	13
	<i>Restorative Justice: Lessons learnt from youth restorative justice approaches to hate motivated offending that have resulted in positive outcomes should be used to inform the development of services for adult offenders.</i>	13
	<i>Guidance and Training: Ensure an effective focus on equality issues within guidance and training for criminal justice agencies.</i>	13
	E: CROSS-CUTTING THEMES	14
	<i>Targeted Approach: Adopt a targeted approach that tackles the nature and scale of hate crime, and that takes account of issues associated with specific multiple identities / equality categories.</i>	14
	<i>Holistic, Co-ordinated Approach: Adopt a holistic, co-ordinated, and collaborative approach to tackling hate crime, with clear leadership by public bodies, public representatives and others, ensuring effective engagement with equality groups.</i>	15
	<i>Compliance with Equality Duties: Use the equality duties to inform decision-making.</i>	16
	<i>Human Rights Obligations: Address key shortfalls in Northern Ireland so as to ensure compliance with international human rights obligations on hate crime.</i>	16
	<i>Hate Crime Data: Ensure the collection of comprehensive data to better identify trends in, and inform effective responses to, hate crime.</i>	16
4	STRENGTHENING LEGAL PROTECTIONS - REFORM OF THE HATE CRIME LEGISLATION	17
	A: DEFINITIONS	17
	<i>Definition of Hate Crime: Adopt a working definition of hate crime that includes a reference to acts of ‘hostility’ (which in turn should include a reference to prejudice and hatred).</i>	17

	<i>Statutory Definition of ‘Hostility’: Introduce a statutory definition of ‘hostility’ that includes a reference to ‘prejudice and hatred’.</i>	17
B:	APPROACH TO ENHANCED SENTENCING	18
	<i>Statutory Aggravation Model: Adopt a statutory aggravation model similar to that adopted in hate crime legislation in Great Britain.</i>	18
C:	PROTECTED GROUPS:	18
	<i>Protected groups: Extend the hate crime legislation to cover the additional grounds of age, gender, gender identity and intersex.</i>	18
	<i>Presumption and Association: Ensure protections for individuals who are presumed to have a characteristic, or who have an association with an individual with that particular identity, are be extended to the grounds of age, gender, gender identity, and intersex.</i>	18
D:	ADDITIONAL THRESHOLDS	19
	<i>‘By reason of’ Threshold: Include 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 apply this protection to equality groups covered by the hate crime legislation.</i>	19
	<i>Alternative Provisions: 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, give consideration to how to best ensure those offences are protected out with the hate crime legislation.</i>	19
E:	INCITEMENT TO HATRED OFFENCES	20
	<i>Legislative Gaps: Address legislative gaps in protection against hate crime under the Public Order legislation; ensuring that the legislative vehicle chosen is the most appropriate and effective means to combat hate crime across the equality grounds.</i>	20
	<i>Coverage: Extend the Public Order incitement to hatred provisions to cover the additional grounds of age, gender, gender identity and intersex.</i>	20
	<i>Defences: 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, Government should ensure that such defences are narrowly defined and objectively justifiable, and are in compliance with equality and human rights law.</i>	20
	<i>Incitement to Discriminate: Ensure the ‘incitement to hatred’ legislation prohibits ‘incitement to discriminate’ on the protected grounds.</i>	21
F:	SECTARIANISM	21
	<i>Specific Reference: Include a specific reference to the term ‘sectarian’ within the hate crime legislation.</i>	21
	<i>Indicators of Sectarianism: Expand the indicators of sectarianism to include: religious belief, national identity, nationality and citizenship; address legislative gaps in protection relating to sectarian hate crime; and ensure recognition that victims of sectarian hate crime can be targeted due to their multiple identities.</i>	21
G:	CONSOLIDATION AND REVIEW OF LEGISLATION	22
	<i>Consolidation of Hate Crime Legislation: Consolidate the hate crime legislation into a single piece of legislation.</i>	22
	<i>Review of Hate Crime Legislation: Ensure that legislative changes to the hate crime legislation are 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.</i>	22
5	STRENGTHENING LEGAL PROTECTIONS - REFORM OF EQUALITY LAW	23
	<i>Equality Law: Strengthen equality law, including as regards harassment and multiple discrimination.</i>	23
6	CONCLUSION	23
	FURTHER INFORMATION	23

1 Executive Summary

- 1.1 Whilst we recognise and welcome the steps already taken by a range of stakeholders to tackle hate crime in Northern Ireland, it is clear that stronger measures, including reform of the hate crime legislation, are needed to tackle the persistent and growing problem of hate crime against a range of equality groups in Northern Ireland.
- 1.2 We call for prompt action by the NI Executive, the Department for Justice (DoJ), criminal justice agencies, and others, to address our recommendations so as ensure a more robust, co-ordinated and effective policy response.

Our Recommendations

Prevent and Tackle Hate Crimes

A: Combat Prejudicial Attitudes and Promote Equality and Diversity

- Prejudicial Attitudes: Prevent hate crime, including by tackling prejudicial attitudes and negative stereotypes against equality groups.
- Equality and Good relations Strategies: Promptly implement equality and good relations strategies, to include actions to address prejudicial attitudes, stereotypes and hate crime.
- Mutual Respect and Sharing of Public Spaces: Ensure the greater regulation of the display of flags and emblems.
- Shared and Safe Housing: Adopt actions designed to incentivise and advance safe, shared housing and communities based on equality, dignity and respect.
- Sharing in Education: Ensure 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.
- Anti-bullying: Promote an anti-bullying culture within education; combat negative attitudes and behaviours towards equality groups, and embed equality in the curriculum.

B: Tackle harassment, hate speech and hate crime

- Under-reporting: Address the under-reporting of hate crime.
- Emergent Hate Crime: Be alert for, and promptly tackle, emergent hate crime including, for example, any linked to BREXIT or the COVID-19 pandemic.
- Online Hate Speech: Tackle online hate speech and abuse targeted at different equality groups.
- Harassment when Accessing Health Services: 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.

C: Support Victims

- Victim Support: Ensure support for victims of hate crime.
- Anonymity for Victims: Remove barriers to victims accessing justice by ensuring that, in certain circumstances, press reporting on the identity of a complainant or witness in a hate crime is not permitted.

D: Improve Criminal Justice Response to Hate Crime

- Outcome Rates: Improve outcome rates for hate crime.
- Sentencing Guidelines: Introduce sentencing guidelines for hate crimes in Northern Ireland.
- Restorative Justice: Lessons learnt from youth restorative justice approaches to hate motivated offending that have resulted in positive outcomes should be used to inform the development of services for adult offenders.
- Guidance and Training: Ensure an effective focus on equality issues within guidance and training for criminal justice agencies.

E: Cross-cutting themes

- Targeted Approach: Adopt a targeted approach that tackles the nature and scale of hate crime, and that takes account of issues associated with specific multiple identities / equality categories.
- Holistic, Co-ordinated Approach: Adopt a holistic, co-ordinated, and collaborative approach to tackling hate crime, with clear leadership by public bodies, public representatives and others, ensuring effective engagement with equality groups.
- Compliance with Equality Duties: Use the equality duties to inform decision-making.
- Human Rights Obligations: Address key shortfalls in Northern Ireland so as to ensure compliance with international human rights obligations on hate crime.

- Hate Crime Data: Ensure the collection of comprehensive data to better identify trends in, and inform effective responses to, hate crime.

Strengthening Legal Protections - Reform of the Hate Crime Legislation

A: Definitions

- Definition of Hate Crime: Adopt a working definition of hate crime that includes a reference to acts of 'hostility' (which in turn should include a reference to prejudice and hatred).
- Statutory Definition of 'Hostility': Introduce a statutory definition of 'hostility' that includes a reference to 'prejudice and hatred'.

B: Approach to Enhanced Sentencing

- Statutory Aggravation Model: Adopt a statutory aggravation model similar to that adopted in hate crime legislation in Great Britain.

C: Protected Groups

- Protected groups: Extend the hate crime legislation to cover the additional grounds of age, gender, gender identity and intersex.
- Presumption and Association: Ensure protections for individuals who are presumed to have a characteristic, or who have an association with an individual with that particular identity, are extended to the grounds of age, gender, gender identity, and intersex.

D: Additional Thresholds

- 'By reason of' Threshold: Include 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 apply this protection to equality groups covered by the hate crime legislation.
- Alternative Provisions: 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, give consideration to how to best ensure those offences are protected out with the hate crime legislation.

E: Incitement to Hatred Offences

- Legislative Gaps: Address legislative gaps in protection against hate crime under the Public Order legislation; ensuring that the

legislative vehicle chosen is the most appropriate and effective means to combat hate crime across the equality grounds.

- Coverage: Extend the Public Order incitement to hatred provisions to cover the additional grounds of age, gender, gender identity and intersex.
- Defences: 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, Government should ensure that such defences are narrowly defined and objectively justifiable, and are in compliance with equality and human rights law.
- Incitement to Discriminate: Ensure the 'incitement to hatred' legislation prohibits 'incitement to discriminate' on the protected grounds.

F: Sectarianism

- Specific Reference: Include a specific reference to the term 'sectarian' within the hate crime legislation.
- Indicators of Sectarianism: Expand the indicators of sectarianism to include: religious belief, national identity, nationality and citizenship; address legislative gaps in protection relating to sectarian hate crime; and ensure recognition that victims of sectarian hate crime can be targeted due to their multiple identities.

G: Consolidation and Review of Legislation

- Consolidation of Hate Crime Legislation: Consolidate the hate crime legislation into a single piece of legislation.
- Review of Hate Crime Legislation: Ensure that legislative changes to the hate crime legislation are 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.

Strengthening Legal Protections - Reform of Equality Law

- Equality Law: Strengthen equality law, including as regards harassment and multiple discrimination.

2 Introduction

- 2.1 The Equality Commission for Northern Ireland ('the Commission') has set out below its **recommendations** relating to tackling hate crime in Northern Ireland.
- 2.2 At the outset we both recognise and welcome the steps that have already been taken by a range of stakeholders to tackle hate crime in Northern Ireland.
- 2.3 However, stronger measures, including reform of the hate crime legislation, are needed to tackle the persistent and growing problem of hate crime against a range of equality groups in Northern Ireland.
- 2.4 Our recommendations on the hate crime legislation build on our response¹ (2020) 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 in 2020.
- 2.5 We call for prompt action by the NI Executive, the Department for Justice (DoJ), criminal justice agencies, and others, to address our recommendations so as ensure a more robust, co-ordinated and effective policy response.

3 Recommendations to Prevent and Tackle Hate Crimes

A: Combat Prejudicial Attitudes and Promote Equality and Diversity

Prejudicial Attitudes: Prevent hate crime, including by tackling prejudicial attitudes and negative stereotypes against equality groups.

- 3.1 Additional action is required to tackle prejudicial attitudes and negative, so as to ensure that workplaces, services, public spaces

¹ ECNI (2020), [Response to Consultation, Hate Crime Legislation in Northern Ireland, Independent Review](#).

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

and communities are free from harassment and/or discrimination across the equality grounds³.

- 3.2 Measures should include addressing negative attitudes and stereotypes experienced by equality groups throughout the life course - in education, training, work and in the family and wider society, including the media; as well as challenging prejudicial attitudes and negative stereotypes held by perpetrators and offenders of hate crime.
- 3.3 Such actions should include tackling prejudicial attitudes towards a range of equality groups, including disabled people, LGB and Trans individuals, and minority ethnic groups, as well as tackling sectarianism, gender stereotypes and gender-based violence, as well as encouraging positive attitudes towards equality groups, including through increasing their representation in public life and ensure a more positive portrayal of equality groups in the media. Policy responses to tackling gender-based hate crime should also take account of the status of Northern Ireland as a post conflict society⁴.
- 3.4 We have also recommended that the NI Executive considers the findings of the Leveson report into press standards with regards to '*discriminatory, sensational or unbalanced reporting in relation to ethnic minorities, immigrants and/or asylum seekers*' and takes relevant action to ensure appropriate media reporting in Northern Ireland⁵.

Equality and Good relations Strategies: Promptly implement equality and good relations strategies, to include actions to address prejudicial attitudes, stereotypes and hate crime.

- 3.5 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, and which include actions to address prejudicial attitudes, stereotypes and hate crime. These include the strategies on Race, Sexual Orientation, Disability, Gender and Age⁶.

³ ECNI (2016) [Programme for Government](#)

⁴ 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)

⁵ See ECNI (2014), [Racial Equality Priorities and Recommendations](#)

⁶ ECNI (2016) [Recommendations: Programme for Government \(PfG\) and Budget](#)

Promote Mutual Respect and Encourage Sharing of Public Spaces: Ensure the greater regulation of the display of flags and emblems.

- 3.6 Regulation, and enforcement if appropriate, should aim to ensure that displays of flags and emblems promote mutual respect among the communities, while not allowing the display of emblems to be used to maintain, heighten or reignite sectarian tensions.
- 3.7 While such regulations would differ depending on the various scenarios in which flags are displayed, the principles for regulation should be consistent and based on a strong equality and human rights framework.
- 3.8 The Commission has highlighted⁷ issues regarding flags and emblems, making a number of recommendations on good and harmonious spaces; and on regulating displays of flags and emblems. For example, alongside calling for the removal of flag/emblems associated with illegal organisations, we have recommended a range of steps⁸ to facilitate expressions of identity in a sensitive and non-divisive manner, while also recommending consideration of the extent to which flags and emblems displayed on public and private property increase community tensions and discourage the two communities from sharing public spaces.
- 3.9 We have also recommended that the principles contained in the Flags (NI) Order and its associated regulations should form the basis of a regulatory framework for local councils⁹. A regulatory framework should clarify the types of flags and emblems that could be displayed, the duration of such displays, and sanctions if not adhered to¹⁰.

Shared and Safe Housing: Adopt actions designed to incentivise and advance safe, shared housing and communities based on equality, dignity and respect.

- 3.10 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

⁷ See ECNI (2013), [Submission to the Panel of Parties](#)

⁸ Ibid.

⁹ Ibid.

¹⁰ Ibid.

safe where they live, and consider that actions are needed to encourage and incentivise integration.

- 3.11 Actions are needed to tackle the under-reporting of hate incidents and crimes (against persons and dwellings), and to increase outcome rates, as well as to advance sharing in housing, while ensuring that objectively assessed housing need is met.

Sharing in Education: Ensure 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.

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

- 3.13 We consider that a widespread, positive experience of sharing in education is key to promoting good relations and requires long-term resourcing.

- 3.14 While a system of shared education has a central role to play in advancing a shared society, sharing in education also needs to be considered in a 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.

Anti-bullying: Promote an anti-bullying culture within education; combat negative attitudes and behaviours towards equality groups, and embed equality in the curriculum.

- 3.15 There is a need for action to promote an anti-bullying culture within education, and to combat negative attitudes towards equality groups, including via high level leadership by Principals, senior management, and Boards of Governors; and to embed equality in the curriculum.

- 3.16 We have emphasised the importance of using early intervention in education to combat negative attitudes, reduce racism and promote good relations¹¹. High-level leadership, including from Principals,

¹¹ See ECNI (2014), [Racial Equality Priorities and Recommendations](#).

senior management and Boards of Governors, is essential to ensuring the consistent and robust implementation of policies and practices designed to address bullying, including bullying experienced by children and young people across the equality grounds¹².

- 3.17 The Commission has consistently called for comprehensive action to be taken by the Department of Education, schools and other education bodies to embed equality of opportunity and good relations within the content and delivery of the curriculum. Recommended actions include reviewing curriculum support materials and developing good practice guidance; setting strategic actions and outcomes; developing equality elements to the training programmes for student teachers, existing teachers, heads and governors; ensuring effective monitoring and evaluation of actions and outcomes linked to promoting equality.

B: Tackle harassment, hate speech and hate crime

Under-reporting: Address the under-reporting of hate crime.

- 3.18 Whilst recognising and welcoming steps already implemented by a range of organisations/bodies to address under-reporting¹³, there is a need for additional steps to be taken.
- 3.19 Action is required to address the under-reporting of hate crime by a range of equality groups, including by:
- raising awareness of hate crime, the methods to report hate crime, the rights of individuals under hate crime legislation, and measures available to support victims, including amongst equality groups and the general public;
 - building trust and confidence in the criminal justice system/agencies amongst victims of hate crime, including by working in partnership with equality groups; securing prosecutions and improving outcome rates for hate crimes; ensuring appropriate training for police; ensuring criminal

¹² ECNI (2018), [Equality in Education, Policy Recommendations](#)

¹³ We have welcomed work undertaken by the Northern Ireland Housing Executive to prevent hate crime and support those who have been subjected to it. This includes the Community Safety Strategy; publication of a Hate Harassment Toolkit which provides guidance and signposting; Supporting Tenancies for People from Ethnic Minorities (STEM) which supports those from ethnic minorities at risk of hate crime and aims to strengthen positive community actions; and the Hate Incident Practical Action scheme which provides support to victims of hate crime across all tenures.

justice agencies are representative of the communities they serve; and improved engagement will victims;

- removing barriers to particular equality groups reporting hate crime by, for example, ensuring reporting mechanisms are accessible; and addressing fears of victims due to lack of anonymity.

3.20 This is particularly important in the context of raising awareness of any changes to the legislation following the hate crime legislation 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, 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.

Emergent Hate Crime: Be alert for, and promptly tackle, emergent hate crime including, for example, any linked to BREXIT or the COVID-19 pandemic.

3.21 Policy responses to tackling hate crime should take into account the potential for an increase in hate crime, particularly racist crime, post BREXIT and due the COVID-19 pandemic.

Online Hate Speech: Tackle online hate speech and abuse targeted at different equality groups.

3.22 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, including by:

- increasing awareness and understanding of the scale, nature and specific 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.
- 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 are safe and protected online from hate speech or other forms of abuse.

Harassment when Accessing Health Services: 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.

3.23 There is a need for measures to ensure that women, including women with multiple identities, have effective protection against discrimination and harassment when accessing health services, including reproductive health services. Measures should be compliant with human rights legislation¹⁴.

3.24 Following the decision by the UK Government that the introduction of new powers as regards exclusion zones are not required¹⁵, it will be essential for the NI Executive to ensure that there is effective protection for women against harassment when accessing abortion services.

C: Support Victims

Victim Support: Ensure support for victims of hate crime.

3.25 Additional action is needed to support victims of hate crime, including by providing additional support to vulnerable victims; ensuring adequate resources for hate crime advocacy support services; and improving measurement of victim's satisfaction levels with services.

Anonymity for Victims: Remove barriers to victims accessing justice by ensuring that, in certain circumstances, press reporting on the identity of a complainant or witness in a hate crime is not permitted.

3.26 Action is needed to ensure that, in certain circumstances, press reporting on the identity of a complainant or witness in a hate crime is not permitted. Such circumstances should include a consideration of whether the disclosure of a person's identity will make the

¹⁴ ECNI (2019), [Response to Government consultation on a new Legal Framework for Abortion](#).

¹⁵ UK Government (2020), [A new legal framework for abortion services in Northern Ireland](#)

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.

3.27 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.

3.28 Whilst we recognise that courts already have a general power to withhold the identity of a complainant¹⁶ from the public, we consider it would be beneficial for there to be 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.

D: Improve Criminal Justice Response to Hate Crime

Outcome Rates: Improve outcome rates for hate crime.

3.29 Outcome rates for crimes with a hate motivation are consistently lower than those for other recorded crimes¹⁷. To date there have been very few prosecutions and convictions under the hate crime legislation in Northern Ireland, including relating to incitement to hatred¹⁸.

3.30 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.

¹⁶ Contempt of Court Act 1981 (section 11).

¹⁷ The 2018/19 recorded crime outcome rate for all crimes was 28%. For those crimes with a hate motivation during 2018/19, the outcomes rates were: racist 16.5%, homophobic 19.4%, sectarian 10.1%, disability 7.5%, religious 8.7%, transphobic 8.3%. Statistics from PSNI (2019) [Trends in Hate Motivated Crimes in Northern Ireland 2004/05 to 2018/19](#).

¹⁸ 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.

- 3.31 We welcome the Northern Ireland Policing Board's thematic reviews in relation to transphobic and homophobic¹⁹, and racist hate crime²⁰, 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.

Sentencing Guidelines: Introduce sentencing guidelines for hate crimes in Northern Ireland.

- 3.32 Sentencing guidelines for hate crimes in Northern Ireland should be introduced and include guidance for courts on how sentences should be increased to take into account statutory aggravations related to a protected ground.

Restorative Justice: Lessons learnt from youth restorative justice approaches to hate motivated offending that have resulted in positive outcomes should be used to inform the development of services for adult offenders.

- 3.33 Action should also be taken to address the lack of coordinated approach to the development for restorative justice approaches for adult offenders.

- 3.34 It is important, however, that the restorative justice approach is only adopted where it is appropriate to do so. The process must be a voluntary process for the victim and must not result in further harm to the victim. Appropriate safeguards and supports should be put in place to protect victims of hate crime.

Guidance and Training: Ensure an effective focus on equality issues within guidance and training for criminal justice agencies.

- 3.35 Measures should be taken to implement guidance and training for criminal justice agencies, including the PSNI, PPS and judiciary, which should include training on equality rights, awareness of the

¹⁹ NIPB (2012) *Thematic Review Policing with and for LGB and Trans people*

²⁰ NIPB (2018) , *Thematic Review of Policing Race Hate Crime*

particular needs of equality groups, and on tackling prejudicial attitudes.

- 3.36 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, minority ethnic 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. This will increase awareness and understanding of these issues and the barriers equality groups' experience.
- 3.37 We draw attention to the UNCRPD's Committee 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'.
- 3.38 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 officers²¹. This training should include training relating to all equality grounds that may be covered in a revised hate crime framework.

E: Cross-cutting themes

Targeted Approach: Adopt a targeted approach that tackles the nature and scale of hate crime, and that takes account of issues associated with specific multiple identities / equality categories.

- 3.39 Action is required to address the nature and scale of hate crime including the high overall level of hate crime and the increasing levels of particular types of hate crime, and to tackle hate crime experienced by people due to their multiple identities.
- 3.40 We share the concerns raised by Criminal Justice Inspection NI (CJINI) that, despite the progress that has been made by the criminal justice agencies, hate crime remains 'stubbornly high'²². Further, we have made a range of recommendations across this

²¹ Northern Ireland Policing Board (2018), [Thematic Review of Policing Race Hate Crime](#)

²² Ibid, page5.

paper to address a number of areas where hatred against particular equality groups is *not currently protected* under hate crime legislation.

- 3.41 The hate crime legislation and policy responses must 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.
- 3.42 Account should also be taken of the UK Government's obligations under international human rights conventions, including the United Nations Convention on the Rights of People with Disabilities (UNCPRD). For example, the UNCPRD 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.
- 3.43 We agree, as recognised in the hate crime legislation review 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.
- 3.44 We consider that the inclusion of additional protected grounds under the hate crime legislation, in particular, age, gender, gender identity, and intersex, will also assist in combatting hate crime experienced by people due to their multiple identities.
- 3.45 We also recommend, as set out later below, reform of equality law - including to introduce protection against multiple discrimination.

Holistic, Co-ordinated Approach: Adopt a holistic, co-ordinated, and collaborative approach to tackling hate crime, with clear leadership by public bodies, public representatives and others, ensuring effective engagement with equality groups.

- 3.46 Action is needed to ensure a holistic, co-ordinated, and collaborative approach to tackling hate crime, including by ensuring:
- that actions to challenge prejudicial attitudes, behaviour and hate crime are contained in the NI Executive's Programme for Government (PfG) and associated delivery plans and indicators;

- an effective strategy to tackle hate crime within the anticipated DoJ Community Safety framework, with underpinning action plans and time-bound reviews, that is linked with good relations/equality strategies, and that ensures coordinated actions across difference sectors, including at local council level;
- strong and visible leadership by public bodies and persons in positions of influence in tackling hate crime;
- effective engagement with stakeholders from across the range of equality categories in decision making and the delivery of outcomes;
- the development and sharing good practice initiatives to tackle hate crime across different sectors, including by the DoJ, local councils and criminal justice agencies.

Compliance with Equality Duties: Use the equality duties to inform decision-making.

- 3.47 Designated public authorities should ensure compliance with their public sector equality duties, including the good relations duty, when developing and implementing hate crime policies, and use the equality duties to inform decision making.

Human Rights Obligations: Address key shortfalls in Northern Ireland so as to ensure compliance with international human rights obligations on hate crime.

- 3.48 Measures are needed to address key shortfalls in Northern Ireland so as to ensure compliance with international human rights obligations and standards relating to hate crime, including under the United Nations Convention on the Rights of People with Disabilities (UNCRPD).

Hate Crime Data: Ensure the collection of comprehensive data to better identify trends in, and inform effective responses to, hate crime.

- 3.49 Action is required to ensure the collection of comprehensive, reliable, up to date, hate crime data. Aligned to the Commission's general position, hate crime data should not only be tracked in

aggregate but also tracked for the impact on individuals from across each of the equality grounds, and by multiple identities.

3.50 We recognise that there are some limitations to meaningful data disaggregation, however where robust to do so, disaggregation by equality category and multiple identity would provide greater information to inform the better targeting of policy interventions.

3.51 There is a need also to ensure joined up data and systems to track progress of hate crime cases.

4 Strengthening Legal Protections - Reform of the Hate Crime Legislation

A: Definitions

Definition of Hate Crime: Adopt a working definition of hate crime that includes a reference to acts of ‘hostility’ (which in turn should include a reference to prejudice and hatred).

4.1 We advocate this approach so as to ensure clarity and consistency of purpose, and to ensure a reference to three key concepts; ‘prejudice’, ‘hatred’ and ‘hostility’.

4.2 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.

Statutory Definition of ‘Hostility’: Introduce a statutory definition of ‘hostility’ that includes a reference to ‘prejudice and hatred’.

4.3 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.

- 4.4 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.

B: Approach to Enhanced Sentencing

Statutory Aggravation Model: Adopt a statutory aggravation model similar to that adopted in hate crime legislation in Great Britain.

- 4.5 We recommend the adoption of a statutory aggravation model similar to that in Great Britain so as address the operational and procedural difficulties with the implementation of the current legislative framework; though lessons should be learnt from the operation of the model in Great Britain.

C: Protected Groups:

Protected groups: Extend the hate crime legislation to cover the additional grounds of age, gender, gender identity and intersex.

- 4.6 We recommend the extension of the hate crime legislation to cover the additional grounds of age, gender, gender identity and intersex, in light of the evidence of hate crime on these grounds; so as to ensure that there is not a ‘hierarchy’ of equality grounds; and aligned to the approach adopted in some other jurisdictions.

Presumption and Association: Ensure protections for individuals who are presumed to have a characteristic, or who have an association with an individual with that particular identity, are be extended to the grounds of age, gender, gender identity, and intersex.

- 4.7 We recommend that protections due to association and perception on the grounds of age, gender, gender identity are introduced in line with current practice under the hate crime legislation.

- 4.8 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 be a Trans person, or where a friend or family member is targeted due to their association with the Trans person.

D: Additional Thresholds

'By reason of' Threshold: Include 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 apply this protection to equality groups covered by the hate crime legislation.

- 4.9 We recommend the introduction of an additional 'by reason of' threshold so that there is potential for the hate crime legislation to cover crimes against equality groups where there is no outward visible manifestation of hostility or evidence to show the person was motivated by hostility.

Alternative Provisions: 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, give consideration to how to best ensure those offences are protected out with the hate crime legislation.

- 4.10 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.
- 4.11 We also consider 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.
- 4.12 In the event that the hate crime legislation does not adopt these approaches, we recommend that consideration is given to how best that such protections are provided out with the hate crime legislation.

E: Incitement to Hatred Offences

Legislative Gaps: Address legislative gaps in protection against hate crime under the Public Order legislation; ensuring that the legislative vehicle chosen is the most appropriate and effective means to combat hate crime across the equality grounds.

- 4.13 We recommend gaps in protection under the Public Order legislation are addressed via the most appropriate and effective legislative vehicle.
- 4.14 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.
- 4.15 Government should also take account of lessons learnt from the operation of this legislation in GB, as well as reflect best practice and international equality and human rights standards.

Coverage: Extend the Public Order incitement to hatred provisions to cover the additional grounds of age, gender, gender identity and intersex.

- 4.16 We recommend the extension of the incitement to hatred provisions to the grounds of age, gender, gender identity and intersex so as to ensure a harmonised and consistent approach across the hate crime legislation.

Defences: 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, Government should ensure that such defences are narrowly defined and objectively justifiable, and are in compliance with equality and human rights law.

- 4.17 We recommend that, if introduced, any defences to the incitement to hatred offences relating to freedom of expression should be narrowly defined, objectively justifiable, comply with equality and

human rights law, and should not permit discrimination or harassment prohibited under the equality legislation.

Incitement to Discriminate: Ensure the ‘incitement to hatred’ legislation prohibits ‘incitement to discriminate’ on the protected grounds.

- 4.18 We recommend the ‘incitement to hatred’ legislation prohibits ‘incitement to discriminate’ on the protected grounds in line with international standards.

F: Sectarianism

Specific Reference: Include a specific reference to the term ‘sectarian’ within the hate crime legislation.

- 4.19 We recommend the hate crime legislation specifically refers to ‘sectarianism’, as this would have a symbolic value and reflect the level and impact of sectarian hate crime.

Indicators of Sectarianism: Expand the indicators of sectarianism to include: religious belief, national identity, nationality and citizenship; address legislative gaps in protection relating to sectarian hate crime; and ensure recognition that victims of sectarian hate crime can be targeted due to their multiple identities.

- 4.20 We recommend action to expand the indicators of sectarianism, address gaps in protection, and address sectarian hate crime targeted at people due to their multiple identities, so as to more effectively tackle sectarianism and strengthen protection against sectarian hate crime.

G: Consolidation and Review of Legislation

Consolidation of Hate Crime Legislation: Consolidate the hate crime legislation into a single piece of legislation.

- 4.21 We recommend the consolidation of the hate crime legislation into a single piece of legislation so as to it easier to understand, provide greater clarity and certainty, and to address gaps and anomalies, thereby ensuring it is fit for purpose.

Review of Hate Crime Legislation: Ensure that legislative changes to the hate crime legislation are 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.

- 4.22 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.

5 Strengthening Legal Protections - Reform of Equality Law

Equality Law: Strengthen equality law, including as regards harassment and multiple discrimination.

- 5.1 Action is needed to strengthen equality law, including as regards harassment and multiple discrimination, to address gaps in equality protections between Northern Ireland and Great Britain, and to introduce single equality legislation.
- 5.2 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.

6 Conclusion

- 6.1 Whilst we welcome the steps already taken to prevent and tackle hate crime, further action by the DoJ, criminal justice agencies, and other key stakeholders, working in collaboration with equality groups and local communities, is urgently required.
- 6.2 Our recommendations are aimed at further improving the effectiveness of the hate crime legislation, and reforming the hate crime legislation.
- 6.3 We await the outcome of the hate crime review, and consider it essential that, following consideration of the hate crime review team's recommendations, the DoJ takes forward revised and strengthened hate crime legislation as a matter of urgency.

Further Information

For further information, including our key point briefing and full version of this document, visit:

www.equalityni.org/HateCrimePolicyPolicy

November 2020