



POLICE SERVICE OF NORTHERN IRELAND

Hate Crime Consultation Response

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

As the Police Service we currently apply the MacPherson definition. Any crime, which is perceived by the victim or any other person, as being motivated by prejudice or hate.

QUESTION 2: Do you consider that the working definition of a hate crime discussed in this chapter adequately covers what should be regarded as hate crime by the law of Northern Ireland?

Yes, as the proposed working definition; “acts of violence, hostility and intimidation directed towards people because of their identity or perceived ‘difference’” is extensively inclusive to protect all such (potential) victims.

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

Yes, because the enhanced sentencing model that currently exists in NI appears to be problematic and does not appear to meet the needs of victims, nor is this likely to serve as a deterrent.

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

The maximum penalty should be more severe than non-hate crimes; however the preferred outcome should be as far as practicable, victim led (including restorative practice). Maximum penalties should send a societal message that hate crimes are abhorrent, and compel stronger denunciation and community support for victims over



time. Victim led outcomes will give vulnerable victims a voice, which will give them back control. Restorative practices will serve to educate the offender, so as to help reduce reoffending.

QUESTION 5: Do you think the enhanced sentencing model set out in the Criminal Justice (No. 2) (Northern Ireland) Order 2004 should continue to be the core method of prosecuting Hate crimes in Northern Ireland?

No. Research contained within this (related) consultation paper found the criminal justice system largely 'filters out' relevant evidential factors (at a number of stages) that might otherwise have secured enhanced sentencing of the offender.

QUESTION 6: If you think the enhanced sentencing model should continue to be the core method of prosecuting hate crimes in Northern Ireland, do you think it requires amendment?

N/A

QUESTION 7: Do you think the statutory aggravation model as used in England and Wales and Scotland should be introduced into Northern Ireland law?

Yes. It would allow the prejudicial context to be taken into account of any offence and compel the court to sentence accordingly.



QUESTION 8: If you think that the statutory aggravation model used in England and Wales and Scotland should be introduced into Northern Ireland law, should it be introduced as well as or instead of the enhanced sentencing model?

Whatever model is used it should ensure that the seriousness of any offence is carried through from time of commission to time of sentencing and not lost along the criminal justice process.

QUESTION 9: Irrespective of whichever model is used (aggravated offences or enhanced sentencing), should there be specific sentencing guidelines for hate crimes in Northern Ireland?

Yes to ensure some degree of consistency of approach and ensure sentencing is appropriate to the victim and wider community impact of the offence.

QUESTION 10: Irrespective of which model is used (aggravated offences or enhanced sentencing provisions), do you think that courts should be required to state in open court the extent to which the aggravation altered the length of sentence?

Yes. This would serve to educate and deter and acts as a reassurance to the victim and wider community. It shows wider society that hate crime will not be tolerated.

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

Including any additional protected characteristic needs to be done with a clear understanding of why it is required. Gender is captured as part of crime recording and analysis can and is done looking at demographics etc. It is difficult to assess what making a category as wide as gender, a protected characteristic, would achieve.



The National Police Chiefs Council, NPCC, have previously debated whether gender motivated crimes be recorded as hate crimes, and no consensus could be reached. There may be a sound rationale for gender identity to be included as this often does relate to minority and marginalised groups.

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

Yes, to acknowledge the existence of this identity and provide parity for victims. PSNI record hate crimes already against this characteristic and it seems reasonable that they would be a protected group as this is about gender identity.

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

Yes, for reasons stated above.

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

As with the response re gender, it is important to understand what difference including age as a protected characteristic will make. As a police service we deal with crimes against older persons under the wider category of vulnerability. There is a dedicated lead in PSNI for crime against older persons and this approach appears to meet the needs both of the victims and the police service. Older persons also have a dedicated commissioner whose main role is to safeguard and promote the interests of older people. The commissioner has a responsibility to advise and influence Government, focusing on the rights and interests of older people. Crime data shows that older persons are less likely to be victims of crime and indeed how vulnerable you may be at any age will vary depending on each set of individual circumstances. In turn that may impact on setting of an age threshold and could prove problematic. It could result in resources being put to cases and individuals who



may not be most in need. Some crimes may be captured under the disability characteristic that already exists. It is not clear there is a gap that merits age being included at this time.

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

If this is done there would need to be a shared and agreed definition/understanding of what vulnerability is to ensure a consistency of approach. Is it not the case that victim impact statements provide for this consideration already.

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

As with previous responses to gender and age, it is important to understand the current gap that suggests this is required. It is not evident that there is sufficient numbers of incidents happening to suggest this needs to be specifically legislated for.

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

No.

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

As detailed in this review, this would create complexities for legislators and the justice system. Intersectionality could however be captured in the main body of the



crime record so as to enable greater understanding around the nuances of hate crime.

QUESTION 19: If you consider intersectionality to be an important factor to be taken into consideration in any new hate crime legislation, what is the best way to achieve this?

See question 18 above.

QUESTION 20: If the enhanced sentencing model remains as the core provision for dealing with hate crime in Northern Ireland, should it be amended to provide for the recording of convictions on the criminal record viewer?

Yes, for transparency, accountability and safeguarding where necessary.

QUESTION 21: Do you believe there is a need to introduce a statutory aggravation model of hate crime law similar to that which exists in Scotland and in England and Wales under the Crime and Disorder Act 1998?

It would seem reasonable that the approach in NI would be in line with other UK jurisdictions.

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

Yes, to highlight the hate element of the offending behaviour and to provide reassurance to victims that this has been a key factor in the offence and in considerations by the justice system. This should build confidence and encourage reporting and cooperation with the justice system.



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

Yes, for transparency, accountability and safeguarding where necessary. It also acts as a deterrent to others and enables the wider community and societal condemnation of such incidents. It raises the profile of just how prevalent these incidents are and would assist to focus the need for wider prevention and cohesion efforts.

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

Yes for reasons outlined above.

QUESTION 25 (Part 1): In dealing with an aggravated offence, should the court state where the sentence in respect of the offence is different from that which the court would have imposed if the offence were not so aggravated, the extent of and the reasons for that difference?

OR

QUESTION 25 (Part 2): In dealing with an aggravated offence, should the court otherwise state the reasons for there being no such difference?

The court should state where the sentence in respect of the offence is different from that which the court would have imposed if the offence were not so aggravated, the extent of and the reasons for that difference. This is so as to underline the seriousness of the hate element of the offence.



QUESTION 26: Do you consider that aggravated offences should be recorded as such in criminal justice records so that statutory agencies and others are aware of the hostility element of an individual's criminal history?

Yes, for safeguarding where necessary

QUESTION 27: If any new hate crime law in Northern Ireland follows the statutory aggravation model as in Section 28(1) of the Crime and Disorder Act 1998, do you consider that the current thresholds of (a) demonstration of hostility, and (b) motivation are appropriate or should there be a third threshold: the "by reason of" threshold?

The current legislation appears to require a high evidential threshold to be met to achieve a successful prosecution. Whilst not necessarily wrong, the sense is that victims do not understand or recognise the difference between a perception threshold for classification purposes and an evidential threshold. This impacts on the confidence victims and minority communities have in the criminal justice system as a result. Any changes to the thresholds needs to ensure that they are well explained and clear for practical application by evidence gathers and prosecution decision makers.

QUESTION 28: If you consider that there should be a third threshold, do you consider that this should be in addition to the two thresholds of "demonstration of hostility" and "motivation", or should there be a third threshold to replace the motivation threshold?

N/A



QUESTION 29: Do you consider that there should be a statutory definition of the term “hostility”?

Yes, as this is a pertinent matter that requires proof in proceedings. It would also assist with clarity for those victims and police officers having to gather evidence to support a prosecutorial decision.

QUESTION 30: Whether or not you believe that the term “hostility” should be defined or not, do you consider that this term should be expanded to include other terms such as “bias, hostility, prejudice, bigotry or contempt”?

These are all motivating factors. They may require some definition to ensure clarity of understanding and also needs to factor in how this aligns to relevant ECHR articles.

QUESTION 31: Do you consider there is merit in adding equivalent provisions to Sections 4, 4A and 5 of the Public Order Act 1986, to the Public Order (Northern Ireland) Order 1987?

This should be considered, however there is existing provision under Part III of the 1987 Order

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

Consideration should be given to removing this defence, as the conduct is the same, whether inside or outside the building.



QUESTION 33: Do you consider the requirement that the Director of Public Prosecutions gives consent to any prosecutions taken under Part III of the Public Order (Northern Ireland) Order 1987 to be necessary and appropriate?

Perhaps these are decisions the PPS can make.

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

Yes however what a victim, the police and the PPS regard as being evidence of 'others encouraged to hate a particular group' is not always the same and impacts on public confidence in the legislation. Hatred is an emotive word that helps in a way to define the significance and severity of the acts.

QUESTION 35: If gender, gender identity, age or other groups are included in the protected groups, should they also be included under the groups protected by the stirring up provisions in Part III of the Public Order (Northern Ireland) Order 1987?

Yes, for consistency.

QUESTION 36: Should the defences of freedom of expression present in the Public Order Act 1986 for religion and sexual orientation be specifically added as defences to Part III of the Public Order (Northern Ireland) Order 1987?

Consideration should be given to adding this defence as freedom of expression is a basic human right, within the law.



QUESTION 37: Should the express defence of freedom of expression for same-sex marriage in Article 8(2) of the Public Order (Northern Ireland) Order 1987 be retained in law or repealed?

Legislation should equally balance the human rights of all within society.

QUESTION 38: Under Article 9(1) of the Public Order (Northern Ireland) Order 1987, should the test remain referring to a person using “threatening, abusive or insulting words or behaviour or displaying any similar written material which is threatening, abusive or insulting” or should the words “abusive” or “insulting” be removed from the test for the commission of the offence?

The test should remain

QUESTION 39: If there are to be offences dealing with the stirring up of hatred against protected groups, do you consider that there needs to be any specific provision protecting freedom of expression?

Yes, as this is a basic human right, with the law.

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

Yes. This consultation paper highlights the significant and lasting harm caused by online abuse.

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

Consideration should be given to bringing all hate crime legislation into one piece of legislation to avoid gaps and oversights.



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

Consideration should be given to removing this defence, as the conduct is the same, whether inside or outside the building.

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

Yes, given the rise in cyber enabled crime.

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

Yes, within the law.

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

As with previous responses if protected characteristics are changed then the legislation should be amended to ensure there is consistency.

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

Yes, given the rise in cyber enabled crime.



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

The consultation paper highlights the inclusion of these words renders the legislation broad and subjective. Accordingly, consideration should be given to a clearer articulation of the specific offence, without reference to these three words.

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

Yes, for reasons stated above. In addition perhaps the review may wish to consider recommending that the offence(s) under the Communications Act is amended to a hybrid offence to allow applications for search warrants under Article 10 of PACE (NI) order 1989. At present it is summary only.

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

Yes, given the rise in cyber enabled crime.

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

Paragraph 12.78 of the consultation paper refers.



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

PSNI already captures data in relation to sectarian incidents and crimes. As has been previously raised any inclusion of sectarian needs to be done on the basis of understanding why this is deemed necessary. The issues that manifest themselves as sectarian incidents are often between the two majority communities and symptomatic of the legacy of the past. It could be argued that this is different to the issues experienced by minority communities hence why specific legislation and protection is required. However if the decision is to include sectarian, then the term should be clearly defined.

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

This should be considered as there appears to be inconsistencies in the current indicator of 'sectarianism'.

QUESTION 53: Should the law relating to the duties of public authorities to intervene to tackle hate expression in public space be strengthened or further clarified?

Further clarified and highlighted so that victims understand what avenues of redress and protection are available to them and to ensure clarity of ownerships and responsibility to support prompt action by the relevant authority and relevant accountability.

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

Yes, where appropriate. This allows for victims to become more involved in the process, either at pre-court or as part of any court sentence. Victims often reflect that



they just want the issue to stop, they do not necessarily want a judicial outcome so RJ is ideal as it is victim led and often more swift than the court process.

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

Any change in schemes should take into account that moving them to a statutory footing would affect the trust held in them by the very community members who avail of their services. There should always be though, a condition that restorative justice schemes work in tandem with the relevant statutory agencies and they should be accredited and subject to review.

QUESTION 56: Should there be a more formal justice system agency responsible for the delivery of adult restorative justice for hate crime?

Yes, the current system is fractured and only available to certain geographical areas of Northern Ireland. Referrals from criminal justice agencies require to be more formalised to enable oversight and accountability. A formal agency could assist in developing the restorative justice strategy for N.I. This applies not only to hate crime but to restorative justice in N.I. generally.

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

That they provide education to local communities, not just offenders on the impact that hate crime can cause for all persons whether it be victim, perpetrator or the wider community. This should be available to all persons in N.I. no matter where they live and not just be limited to certain geographical areas.



QUESTION 58: Do you consider diversion from prosecution is an appropriate method of dealing with low level hate crimes as per the practice in Scotland?

Yes, where the parties involved fully agree to take part in the process. Should the victim or perpetrator decide at any stage of the process that they do not wish to engage the matter should be referred back to the courts to deal with as necessary.

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

By making information about offences and support mechanisms widely available. If the CJ system is seen to be acting in the interests of the victim and seen to be swift and deliver an outcome then PSNI believe confidence will grow and reporting will increase. Previous data from engagement events held by PSNI and communities, shared with the review team, outline some of the barriers to reporting.

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

The advocacy scheme has been in place for a number of years however levels of reporting have not significantly increased over that time. The advocacy scheme as it is currently designed, is focused on supporting victims from the point of report to police to submission of a file to PPS. It has a defined remit and is funded on that basis. It is primarily a reactive support scheme aimed at keeping victims on board with the CJ process. The resources funded are aligned to the reporting levels and therefore any scope for proactive work is limited and not necessarily a key focus within the SLA of the scheme. PSNI is aware that the advocates work often goes beyond the clear focus defined in the SLA and deals with housing and health issues. The advocates undoubtedly provide a valuable service however it is necessary to review the role and ownership of the scheme to explore a wider cross departmental ownership and funding arrangements as it is evident through the lifetime of the scheme to date that needs of minority communities are beyond CJ issues.



QUESTION 61: Do you consider that the Hate Crime Advocacy Scheme is valuable in supporting victims of hate crime through the criminal justice process?

Support of victims is vital, it can be argued support is more essential for those from minority communities who lack confidence in the justice system. Consideration should be given to looking at how best this support can be provided. Victim support play a key role in supporting victims so rather than a standalone service via an advocacy scheme, is there an opportunity/necessity to require victim support and/or the victim and witness care scheme to develop their service delivery model to have some dedicated resource for victims of hate crimes. This leads to a consistency of approach and a more sustainable delivery method.

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

See above responses. Given the feedback from advocates and the needs of victims and communities the narrow CJ focus does not appear to meet existing needs.

QUESTION 63: Do you consider that the funding model for the Hate Crime Advocacy Service should be placed on a permanent basis as opposed to the present annual rolling contract model?

The current funding arrangements are not suitable and a more sustainable model needs to be developed.

QUESTION 64: Do you consider that, in certain circumstances, press reporting of the identity of the complainant in a hate crime should not be permitted?

Yes, this might give victims more confidence to report offences.



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

This should be decided on a case by case basis.

QUESTION 66: Do you believe that there is benefit in bringing all hate crime/hate speech legislation in Northern Ireland together in one consolidated piece of legislation?

Yes, this will address existing gaps, modernise the legislation and make it easier for victims and practitioners to navigate and raise awareness and understanding of hate crime generally.

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

Yes, to evaluate anticipated benefits and to allow learning and understanding as the legislation becomes implemented over time.

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

Between Government departments and justice partners, including representation from the Victims and Witness Unit and those who have been through the justice process as victims and offenders.