

Equality Commission

FOR NORTHERN IRELAND

EQUALITY COMMISSION FOR NORTHERN IRELAND

Hate Crime in Northern Ireland

Policy Recommendations and Supporting
Rationales

Full Report



November 2020

Table of Contents

1	EXECUTIVE SUMMARY	1
	OUR RECOMMENDATIONS.....	1
2	OVERVIEW	1
	OUR RECOMMENDATIONS.....	1
3	PREVENT AND TACKLE HATE CRIMES	3
A:	COMBAT PREJUDICIAL ATTITUDES AND PROMOTE EQUALITY AND DIVERSITY	3
	<i>Prejudicial Attitudes: Prevent hate crime, including by tackling prejudicial attitudes and negative stereotypes against equality groups.....</i>	3
	<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>Mutual Respect and Sharing of Public Spaces: Ensure the greater regulation of the display of flags and emblems.</i>	6
	<i>Shared and Safe Housing: Adopt actions designed to incentivise and advance safe, shared housing and communities based on equality, dignity and respect.</i>	9
	<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>	10
	<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>	12
B:	TACKLE HARASSMENT, HATE SPEECH AND HATE CRIME	14
	<i>Under-reporting: Address the under-reporting of hate crime.....</i>	14
	<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>	19
	<i>Online Hate Speech: Tackle online hate speech and abuse targeted at different equality groups.....</i>	20
	<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>	22
C:	SUPPORT VICTIMS.....	23
	<i>Victim Support: Ensure support for victims of hate crime.....</i>	23
	<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>	25
D:	IMPROVE CRIMINAL JUSTICE RESPONSE TO HATE CRIME.....	28
	<i>Outcome Rates: Improve outcome rates for hate crime.....</i>	28
	<i>Sentencing Guidelines: Introduce sentencing guidelines for hate crimes in Northern Ireland.....</i>	29
	<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>	30
	<i>Guidance and Training: Ensure an effective focus on equality issues within guidance and training for criminal justice agencies.</i>	31
E:	CROSS-CUTTING THEMES	33
	<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>	33
	37
	<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>	37
	<i>Compliance with Equality Duties: Use the equality duties to inform decision-making.</i>	43
	<i>Human Rights Obligations: Address key shortfalls in Northern Ireland so as to ensure compliance with international human rights obligations on hate crime.....</i>	45
	<i>Hate Crime Data: Ensure the collection of comprehensive data to better identify trends in, and inform effective responses to, hate crime.</i>	46
4	STRENGTHENING LEGAL PROTECTIONS - REFORM OF THE HATE CRIME LEGISLATION	51
A:	DEFINITIONS	51
	<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>	51

	<i>Statutory Definition of ‘Hostility’: Introduce a statutory definition of ‘hostility’ that includes a reference to ‘prejudice and hatred’.</i>	53
B:	APPROACH TO ENHANCED SENTENCING	53
	<i>Statutory Aggravation Model: Adopt a statutory aggravation model similar to that adopted in hate crime legislation in Great Britain.</i>	53
C:	PROTECTED GROUPS:	57
	<i>Protected groups: Extend the hate crime legislation to cover the additional grounds of age, gender, gender identity and intersex.</i>	57
	<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>	70
D:	ADDITIONAL THRESHOLDS	71
	<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>	71
	<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>	75
E:	INCITEMENT TO HATRED OFFENCES	77
	<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>	77
	<i>Coverage: Extend the Public Order incitement to hatred provisions to cover the additional grounds of age, gender, gender identity and intersex.</i>	78
	<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>	79
	<i>Incitement to Discriminate: Ensure the ‘incitement to hatred’ legislation prohibits ‘incitement to discriminate’ on the protected grounds.</i>	87
F:	SECTARIANISM	88
	<i>Specific Reference: Include a specific reference to the term ‘sectarian’ within the hate crime legislation.</i>	88
	<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>	89
G:	CONSOLIDATION AND REVIEW OF LEGISLATION	93
	<i>Consolidation of Hate Crime Legislation: Consolidate the hate crime legislation into a single piece of legislation.</i>	93
	<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>	94
5	STRENGTHENING LEGAL PROTECTIONS - REFORM OF EQUALITY LAW	96
	<i>Equality Law: Strengthen equality law, including as regards harassment and multiple discrimination.</i>	96
6	CONCLUSION	98
	FURTHER INFORMATION	98
7	ANNEX A: ROLE AND REMIT OF THE EQUALITY COMMISSION FOR NORTHERN IRELAND	99

1. Executive Summary

- 1.1 The Equality Commission for Northern Ireland ('the Commission') has set out below its **recommendations** relating to tackling hate crime in Northern Ireland.
- 1.2 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. However, it is clear that much more needs to be done. Our recommendations have been informed by, and have taken into account, the views of a range of stakeholders.
- 1.3 We call for prompt action by the NI Executive, the Department for Justice (DoJ), criminal justice agencies, and others to implement our recommendations.

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 be 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. Overview

- 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; including to address the under-reporting of hate crime, raise awareness of hate crime, and to support victims of hate crime.
- 2.3 However, it is clear that much more needs to be done both to 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.
- 2.4 This includes the need to update, harmonise, consolidate, and strengthen the hate crime legislation, including by addressing the significant gaps in the legislation.
- 2.5 We call for prompt action by the NI Executive, the Department for Justice (DoJ), criminal justice agencies, and others to implement our recommendations.
- 2.6 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 the Independent Review (2019-2020) of *Hate Crime Legislation in Northern Ireland*, of which the Commission was a member.
- 2.7 Further information on the role and remit of the Commission is set out in Annex A.

Our Recommendations

- 2.8 Our recommendations span both wider policy recommendations aimed at preventing and tackling hate crime as well as recommendations for reform of hate crime and equality legislation.

2.9 We set out recommendations across three key areas as follows:

Prevent and Tackle Hate Crimes

- Combat Prejudicial Attitudes and Promote Equality and Diversity
- Tackle Harassment, Hate Speech and Hate Crime
- Support Victims
- Improve Criminal Justice Response to Hate Crime
- Cross-cutting themes

Strengthen Legal Protections – Reform of Hate Crime Legislation

- Definitions
- Approach to Enhanced Sentencing
- Protected Groups
- Additional Thresholds
- Incitement to Hatred Offences
- Sectarianism
- Consolidation and Review of Legislation

Strengthen Legal Protections – Reform of Equality Law

- Strengthen Equality Law

2.10 Our recommendations regarding hate crime legislation build on our response¹ (2020) to the consultation on *Hate Crime Legislation in Northern Ireland, An Independent Review* ('hate crime legislation review')² by the Hate Crime Review Team, led by Judge Marrinan in 2020. We await the outcome of that review, and consider it essential that, following consideration of the hate crime legislation review team's recommendations, the DoJ takes forward revised and strengthened legislation as a matter of urgency.

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.

3. 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 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, Lesbian, Gay, Bisexual (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*

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)

seekers' and takes relevant action to ensure appropriate media reporting in Northern Ireland⁵.

Supporting Rationale

- 3.5 Prejudicial attitudes against equality groups can lead to discrimination, harassment, and hate crime.
- 3.6 While welcoming our 2016 Equality Awareness Survey's⁶ 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 groups⁷, and the sixth and seventh most negatively viewed groups were Trans and lesbian, gay and bisexual people.
- 3.7 More recently, it will be noted that 30% of respondents to the Northern Ireland Life and Times (NILT) survey in 2019 felt that there was generally more racial prejudice in Northern Ireland now than there was 5 years ago⁸, and 29% considered that they were prejudiced against people of minority ethnic communities⁹.
- 3.8 In our *Statement on Key Inequalities in Employment (2018)*, we highlighted that prejudicial attitudes within the workplace affect people with disabilities, women, Tran's people, lesbian, gay and bisexual people, people from minority ethnic groups, migrant workers and those of different religious beliefs¹⁰.
- 3.9 The draft PFG indicator 42 included a commitment by the NI Executive to develop public awareness-raising initiatives designed to counter negative attitudes about disabled people, co-designed with disabled people. There has been no obvious progress on this commitment to date.
- 3.10 As regards disabled people, action by public bodies is consistent with the disability duties on designated public bodies under the disability legislation. Gender stereotypes and

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

⁶ ECNI (2018) [Equality Awareness Survey 2016](#)

⁷ Travellers (19%), Roma (19%), asylum seekers / refugees (15%), migrant workers (11%) and minority ethnic groups (10%).

⁸ ARK (2019), [NILT Survey 2019](#). This represented a reduction from 49% of respondents in 2018.

⁹ ARK (2019), [NILT Survey 2019](#). 29% considered they were either 'very prejudiced' (4%) or 'a little prejudiced' (25%).

¹⁰ ECNI (2018), [Statement on Key Inequalities in Employment](#).

prejudicial societal attitudes also need to be challenged in order to tackle gender based violence.

- 3.11 The Northern Ireland Policing Board (PBNI) (2017) thematic review into race hate crime recognised the vital importance of raising awareness of race hate crime and the rights and redress available to victims¹¹ and found that levels of understanding was very mixed, with many victims unaware of their rights and others, including some police officers, having significant gaps in their understanding.
- 3.12 The Criminal Justice Inspection NI (CJINI) (2017) set out its assessment that ‘the groundswell of underlying prejudicial and discriminatory activity went relatively unchallenged by the justice system and by society in general’¹². Further, the CJINI noted that there ‘was no specific approach, nor were there specific interventions aimed at rehabilitating perpetrators other than existing generalist ones...’¹³.
- 3.13 Taking action to address prejudicial attitudes and negative stereotypes is also consistent with the recommendations of international human rights monitoring bodies. For example, the UN Convention on the Rights of Persons with Disabilities (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. Further, the European Commission on Racism and Intolerance (ECRI) in 2016, considered that hate speech in some traditional media continued to be a serious problem, notably as concerns tabloid newspapers¹⁴.
- 3.14 Aligned to our recommendation that the NI Executive considers the findings of the Leveson report into press standards, we note that in Great Britain (GB), the UK Government has committed

¹¹ Northern Ireland Policing Board (2017), *Thematic Review of Policing Race Hate Crime*, at page 2. It stated: *Awareness-raising is vital to counter the myths that encourage racism and intolerance by substituting them with facts and informing the public generally and victims in particular about their rights and available redress*

¹² 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](#), para 126.

¹³ Ibid at para 2.30. The report did welcome the PBNI *Accepting Differences* programmes aimed at challenging attitudes of perpetrators in prisons.

¹⁴ ECRI (2016), [Concluding Observations on UK](#).

in its hate crime action plan (2018)¹⁵ to challenge prejudice in wider society, including the media.

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

- 3.15 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 Age¹⁶.

Supporting rationale

- 3.16 Such strategies provide important opportunities to adopt a co-ordinated, cross-departmental approach to address prejudicial attitudes, stereotypes and hate crime.
- 3.17 A number of equality strategies, including on Gender, Sexual Orientation and Disability, require to be updated/introduced.

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

- 3.18 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.
- 3.19 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.
- 3.20 The Commission has highlighted¹⁷ issues regarding flags and emblems, making a number of recommendations on good and harmonious spaces; and on regulating displays of flags and

¹⁵ UK Government (2018), [Action Against Hate: The UK Government's plan for tackling hate crime – 'two years on'](#).

¹⁶ ECNI (2016) [Recommendations: Programme for Government \(PfG\) and Budget](#)

¹⁷ See ECNI (2013), [Submission to the Panel of Parties](#)

emblems. For example, alongside calling for the removal of flag/emblems associated with illegal organisations, we have recommended a range of steps¹⁸ 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.

- 3.21 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 councils¹⁹. 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 to²⁰.

Supporting rationale

- 3.22 Issues surrounding displays of flags, emblems and memorabilia²¹ have always generated heated debate and controversy in Northern Ireland. We recognise that the display or non-display of the Union Flag and other flags and emblems are associated with issues of constitutionality, national identity, culture, commemoration and celebration within communities, as well as a perceived need to ‘mark out territory’. Such issues are inevitably complex and sensitive.
- 3.23 We endorse the commitments in the Together: Building a United Community Strategy around building a culture where everyone feels safe and creating a community where all areas are open and accessible to everyone.
- 3.24 We have also advised public authorities, and specifically local Councils, that fair employment legislation and Section 75 obligations apply equally to displays in public spaces, to the naming of public places, or to what is permitted on public property²².
- 3.25 We consider that the adoption of regulations could enable a shift of debates, which have the potential to be divisive, to an increased focus on the effective delivery of local services.

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Ibid.

²¹ Reference to flags, emblems and memorabilia include murals and memorials.

²² Ibid.

Regulation would also provide for political input on the issue to be addressed at the level of the legislature in Northern Ireland and would afford a real opportunity for demonstrating leadership at this level.

- 3.26 We have also stressed the importance of leadership, especially at Councillor and senior levels, to ensuring the promotion of good relations, and have recommended that policies and practices relevant to good relations should be considered strategically for consistency with the Council's commitment to promoting good relations²³. We continue to call for increased leadership and compliance by public bodies with their existing duties under Section 75 duties.
- 3.27 For example, we note that Councils have powers to remove graffiti, placards and posters including those which are offensive; for example, where they are racially or sexually offensive, sectarian or homophobic or hostile to a religious group. In exercising those powers, councils should ensure that their policies and practices in this area are considered strategically for consistency with the Council's commitment to promoting good relations.
- 3.28 More broadly, we also note that concerns have been raised by Committee for the Administration of Justice (CAJ) (2020) about a lack of an overarching strategic policy on dealing with hate expression in public space; and at the local government level regarding a lack of council policies regarding the removal of hate expression in public space, and an apparent variance in the exercise of relevant powers by councils in this area²⁴.
- 3.29 We also 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. 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 identity²⁵; and the need to encourage and promote reconciliation, tolerance and

²³ ECNI (2015), *Equality Commission advice on Good Relations in Local Councils*

²⁴ See for example, CAJ [Submission to the Independent Review of Hate Crime Legislation in NI](#), at para 6.18.

²⁵ 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*.

meaningful dialogue between those of different national and cultural identities.

- 3.30 We will give appropriate consideration to these proposed duties in due course, including the degree to which they are relevant to tackling hate expression in public space.

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

- 3.31 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.
- 3.32 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.

Supporting rationale

- 3.33 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.
- 3.34 In our policy recommendations on *Equality in Housing and Communities* (2019)²⁶, we highlighted that statistics show that the homes of minority ethnic people and migrant groups may be vulnerable to racial attacks²⁷. We indicated that PSNI²⁸ statistics²⁹ showed that in the year 2017/18 there were 304

²⁶ ECNI (2019), [Equality in Housing and Communities, Policy Recommendations](#).

²⁷ PSNI (2018) [Hate motivation Annual Trends 2004/05 to 2017/18 \(published 31 October 2018\)](#)

²⁸ Police Service for Northern Ireland

²⁹ PSNI (2018) [Hate Motivation Statistics Bulletin](#)

racist motivated crimes of theft and or criminal damage. We also stated that 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.

- 3.35 Available evidence also suggests that LGB people can feel harassed and unsafe in their own homes and neighbourhoods. For example, O ‘Doherty³⁰ (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 2018³¹.
- 3.36 There is also evidence that transgender people are at high risk of being the victim of hate crimes, including crimes against the person and property related crimes^{32 33}.

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.

- 3.37 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.
- 3.38 We consider that a widespread, positive experience of sharing in education is key to promoting good relations and requires long-term resourcing.
- 3.39 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,

³⁰ O’Doherty, J. (2009) [Through Our Eyes](#).

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

³² McBride, ICR (2013), [Grasping the Nettle: The Experiences of Gender Variant Children and Transgender Youth Living in Northern Ireland](#).

³³ PSNI (2018) [Hate motivation Annual Trends 2004/05 to 2017/18 \(published 31 October 2018\)](#)

shared housing and shared spaces have the potential to enhance and be enhanced by sharing and integration within the education system.

Supporting rationale

- 3.40 The Commission's 2015 policy paper on sharing in education³⁴ 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.
- 3.41 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.
- 3.42 2012 research³⁴ found that pupils being given an opportunity to engage with each other on a sustained basis was 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.
- 3.43 We note the findings of a recent (2020) attitudinal survey on shared education. It reports³⁵ that 49% and 43% respectively of primary and post primary respondents had made at least one close friend from a different religion as a result of taking part in shared education. Furthermore, around two thirds of respondents either strongly agreed or agreed that they were better able to respect the views of other people since taking part in shared education.

³⁴ ECNI (2015) [Sharing in Education – summary policy position](#)

³⁵ Katrina Lloyd ARK (QUB) (June 2020), [Attitudes to Shared Education: Findings from the 2018 Young Life and Times and Kids Life and Times Surveys](#).

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

- 3.44 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.
- 3.45 We have emphasised the importance of using early intervention in education to combat negative attitudes, reduce racism and promote good relations³⁶. High-level leadership, including from Principals, 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 grounds³⁷.
- 3.46 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.
- 3.47 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.

Supporting rationale

Address bullying and combat negative attitudes

- 3.48 The Commission's *Statement on Key Inequalities in Education*³⁸ highlighted prejudice-based bullying as a persistent problem for certain equality groups, including: Trans pupils; minority ethnic students including Irish Travellers; students with

³⁶ ECNI (2014), [Racial Equality Priorities and Recommendations](#).

³⁷ ECNI (2018), [Equality in Education, Policy Recommendations](#)

³⁸ ECNI (2017), [Statement on Key Inequalities in Education in Northern Ireland](#)

special educational needs (SEN) or a disability; and students with same sex attraction.

- 3.49 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.
- 3.50 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 the UN Convention on the Rights of the Child (UNCRC) Committee, the Convention on the Elimination of Discrimination Against Women (CEDAW) Committee, the Convention on the Elimination of Racial Discrimination (CERD) Committee, and the Advisory Committee on the Framework Convention on National Minorities (FCNM). For example, the UNCRPD's Committee Concluding Observations on the UK (2017) recommended strengthening measures to prevent bullying, hate speech and hate crime against children with disabilities³⁹.
- 3.51 We note that in England and Wales, the UK Government has committed, under its hate crime action plan (2018)⁴⁰ to support the education sector in educating and protecting young people from hate. The action plan includes measures to support work to tackle sexual harassment and hate crime on campus and online in higher education and to commitments to provide further funding for anti-bullying interventions.

Embed equality in curriculum

- 3.52 We note that in England, Relationship and Sex Education (RSE) is to become compulsory from September 2020 in secondary education, and that the Department for Education has issued statutory guidance (2019)⁴¹ for schools and others, which sets out how schools must comply with this new duty.
- 3.53 The guidance on RSE in England makes clear that post primary schools should cover a number of issues relating to the promotion of equality. These include, for example, knowledge of the legal rights and responsibilities regarding equality; and how

³⁹ UNCRPD (2017), Concluding Observations on the UK.

⁴⁰ UK Government (2018) [Action Against Hate: The UK Government's plan for tackling hate crime – 'two years on'](#).

⁴¹ Department for Education (2019) [Relationships education, RSE and Health Education. Statutory guidance for governing bodies, proprietors, head teachers, principals, senior leadership teams, teachers.](#)

stereotypes impact on different equality groups. It also states that pupils should be made aware of the relevant legal provisions when relevant topics are being taught, including, for example, hate crime.

B: Tackle harassment, hate speech and hate crime

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

3.54 Whilst recognising and welcoming steps already implemented by a range of organisations/bodies to address under-reporting⁴², there is a need for additional steps to be taken. 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 justice agencies are representative of the communities they serve; and improved engagement with 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.

⁴² 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.

3.55 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.

Supporting rationale

3.56 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 Communities Policy Recommendations (2019)*⁴³, 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.

3.57 We note that a range of criminal justice agencies, including the CJINI⁴⁴, the Northern Ireland Policing Board (NI Policing Board)⁴⁵, 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.

3.58 In relation to homophobic hate crime, the 2013 *Grasping the Nettle report*⁴⁶ identified under-reporting of transphobic hate crime as an issue.

Raise awareness of hate crime

3.59 Raising awareness of hate crime, the methods to report hate crime, the rights of individuals under the hate crime legislation, as well as measures available to support victims, amongst equality groups, as well as the general public, will encourage reporting.

⁴³ ECNI (2019), [Equality in Housing and Communities Policy Recommendations](#)

⁴⁴ 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.](#)

⁴⁵ NIPB (2017), [Thematic Review of Policing Race Hate Crime](#)

⁴⁶ McBride, ICR (2013), [Grasping the Nettle: The Experiences of Gender Variant Children and Transgender Youth Living in Northern Ireland.](#)

- 3.60 Actions, including raising awareness of hate crime, 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.
- 3.61 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)⁴⁷, *‘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’*.
- Build trust and confidence in criminal justice system/agencies*
- 3.62 A lack of trust and confidence in the criminal justice system amongst victims of hate crime that their complaints will be taken seriously or dealt with effectively can discourage reporting.
- 3.63 It will be noted that the Advisory Committee to the Framework Convention on National Minorities (2017) raised concerns about the impact of lack of trust in the police and the judicial system on underreporting of hate incidents in Northern Ireland by minority ethnic groups⁴⁸.
- 3.64 A targeted and collaborative approach by relevant public bodies working in partnership with equality groups, representative organisations and others, assists in understanding the particular barriers to reporting hate crime and with working in partnership to develop solutions. We welcome initiatives, including by the PSNI, already taken to address the under-reporting of hate crime by working in partnership with certain equality groups.

⁴⁷ Women and Equalities Committee (2018), [Inquiry into Sexual harassment of women and girls in public places](#).

⁴⁸ Advisory Committee to the Framework Convention on National Minorities (2017), Fourth Opinion on the United Kingdom’, at para 80.

- 3.65 Taking measures to secure prosecutions and improve outcome rates for hate crimes will also encourage reporting of hate crime. This was recognised by the NI Policing Board (2017) which stated that ‘one thing that will undoubtedly encourage victims to report is where it is seen that perpetrators are being brought to justice’.
- 3.66 Ensuring appropriate training for police officers will also assist with encouraging reporting. A 2015 NI Policing Board review relating to transgender individuals⁴⁹ noted that a number of steps had been taken by the police to encourage the reporting of hate crime, including training of police officers and the ability to report incidents online. The review⁵⁰ further noted that the ‘...PSNI must ensure that in practice all personnel are aware of their roles and that they are discharging their responsibilities effectively’.
- 3.67 Further, as noted by the NI Policing Board (2017)⁵¹:
- “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, 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”.*
- 3.68 In addition, measures by the PSNI and other criminal justice agencies to continue to strive for a truly diverse workforce that is representative of the communities they serve, will also help build trust and confidence with communities.
- 3.69 Improved engagement with victims will also help build trust and confidence of victims with criminal justice agencies which in turn can assist with under-reporting of hate crime; ensure that victims are better informed of the progress of their case; and

⁴⁹ NIPB (2015) [Human Rights Thematic Review – Policing with and for Trans Individuals. Update on PSNI implementation of recommendations](#)

⁵⁰ NIPB (2015) [Human Rights Thematic Review – Policing with and for Trans Individuals. Update on PSNI implementation of recommendations](#)

⁵¹ Northern Ireland Policing Board (2017) [Thematic Review of Policing Race Hate Crime](#)

help improve levels of victim satisfaction with services provided. The need for the PSNI to improve engagement with victims of hate crime was highlighted by the NI Policing Board (2017)⁵².

Remove barriers to reporting hate crime

- 3.70 Removing barriers to particular equality groups reporting hate crime will also increase reporting. We highlighted in our *Racial Equality Priorities and Recommendations* (2014) that there was a need to improve the accessibility of reporting for those victims who have English as an additional language⁵³.
- 3.71 In its 2017 report, the CJINI highlighted that: ‘No specific work had been undertaken with interpreter services to enhance skills specific to translating for hate crime, which added to the already high number of substantial barriers facing victims’⁵⁴.
- 3.72 It is important to ensure 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.
- 3.73 Further, tacking action to address under-reporting will assist with meeting the UK’s Government’s international human rights obligations. For example, the UNCERD Committee (2016) recommendations on the UK has called for action to increase reporting of racist hate crime⁵⁵.

⁵² Northern Ireland Policing Board (2017) [Thematic Review of Policing Race Hate Crime](#).

In particular, it recommended additional actions by police officers to ensure that hate crime victims were regularly informed of progress on their cases and to explore with partners how to better engage with victims and potential victims of hate crime so that they are better informed of the services they are entitled to receive from the police and other agencies.

⁵³ See ECNI (2014), [Racial Equality Priorities and Recommendations](#)

⁵⁴ The CJINI made clear that: ‘Interpreter services were readily available and there was no suggestion that the standard of interpreters was an issue. However, investigation of hate crime required precise legal and technical language. See Criminal Justice Inspection Northern Ireland (2017), [Hate Crime an Inspection of the Criminal Justice System's response to Hate Crime in N.I.](#), page 8.

⁵⁵ UNCERD Committee (2016), [Concluding Observations on the UK](#).

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

3.74 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.

Supporting rationale

3.75 As previously highlighted by the Commission⁵⁶, there is the potential for an increase in hate crime, particularly racist crime, post BREXIT. Although there was no documented spike in racist hate crime in Northern Ireland in the immediate aftermath of the EU referendum in 2016, the high levels of racist hate crimes/incidents in Northern Ireland are of concern; including the fact that reported racist hate incidents in Northern Ireland have outnumbered sectarian hate incidents for the past four years.

3.76 Further, research highlights that statistics from the NILT Survey (2018) 'demonstrate some polarisation and a small number displaying extreme anti-immigrant sentiment, even in the context of improving attitudes across the decade'⁵⁷. It will also be noted that 25% of respondents to the NILT survey in 2019 felt that migrant workers take jobs away from people who were born in Northern Ireland⁵⁸.

3.77 More recently, there is evidence of increasing levels of race hate crime in Great Britain, particularly towards people from Asian communities due to the COVID-19 pandemic⁵⁹.

3.78 In addition, an IPSOS Mori poll (2020) on opinions across the UK 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

⁵⁶ ECNI (2016), [Recommendations for Government on the UK exiting the EU](#).

⁵⁷ L. Mitchell, (2020) [Attitudes to migrant workers in Northern Ireland: an improving landscape?](#) ARK Research update No.131.

⁵⁸ ARK (2019), [NILT Survey 2019](#). 25% either agreed or strongly agreed

⁵⁹ See for example, Institute of Race Relations (2020), [Article](#) on *Race hate crimes – collateral damage of Covid-19*, dated 20 April 2020.

origin or appearance and 10% would avoid eating in Asian restaurants⁶⁰.

- 3.79 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 UK⁶¹.

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

- 3.80 We consider that there 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.

Supporting rationale

Awareness, Understanding and Protections

- 3.81 Increasing awareness and understanding of the scale, nature and impact of online hate speech and abuse will increase reporting of hate crime, help prevent online hate crime, and increase understanding of nature and specific impact of online

⁶⁰ IPSOS Mori (Feb 2020) [Coronavirus: Opinion and Reaction – Results from a multi-country poll UK](#)

⁶¹ NASUWT Northern Ireland (2020), [Letter to Peter Weir, Education Minister](#), 3 March 2020.

hate crime on equality groups, including amongst, criminal justice agencies, and the general public.

- 3.82 Stronger action is required to tackle online hate speech and abuse targeted at equality groups. 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’. 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’.
- 3.83 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. As highlighted in the hate crime legislation review consultation paper (2020), these distinct features include the public element of online hate speech, 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 caught.
- 3.84 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.

Responsibility of Social Media Companies

- 3.85 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 are safe and protected online from hate speech or other forms of abuse.
- 3.86 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’. 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’.

3.87 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 mixed. In light of this, we consider there are cogent reasons in support of stronger regulation of SMCs so as to ensure offending material is removed within a reasonable timeframe.

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.

3.88 There is a need for measures to ensure that women, including women who may be subject to multiple and intersectional forms of discrimination⁶² ('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 legislation⁶³.

3.89 Following the decision by the UK Government that the introduction of new powers as regards exclusion zones are not required⁶⁴, it will be essential for the NI Executive to ensure that there is effective protection for women against harassment when accessing abortion services.

Supporting rationale

3.90 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'⁶⁵.

⁶² For example, the Council of Europe has made clear that 'certain groups of women, due to the combination of their sex with other factors, such as their race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status, are in an especially vulnerable position. In addition to discrimination on the grounds of sex, these women are often subjected simultaneously to one or several other types of discrimination'. See [Council of Europe Committee of Ministers Recommendation CM/Rec \(2007\)17 on gender equality standards and mechanisms](#), para 59.

⁶³ ECNI (2019), [Response to Government consultation on a new Legal Framework for Abortion](#).

⁶⁴ UK Government (2020), [A new legal framework for abortion services in Northern Ireland](#)

⁶⁵ CEDAW Committee (2018) [Inquiry report on UK under Art 8 of Optional Protocol CEDAW into abortion in Northern Ireland](#)

- 3.91 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 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’⁶⁶.

C: Support Victims

Victim Support: Ensure support for victims of hate crime.

- 3.92 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.

Supporting rationale

Support vulnerable victims

- 3.93 Aligned to the requirements set out in the Victims Charter⁶⁷, there is a need to ensure effective support to meet the needs of vulnerable hate crime victims; for example, children and young people, and disabled people with particular forms of disability.
- 3.94 The need for tailored support by the PSNI for all victims of hate crime that meets their specific needs was highlighted by the NI Policing Board in its thematic review of race hate crime (2017)⁶⁸.
- 3.95 In our UNCRPD parallel jurisdictional report (2017), the Commission, along with NI Human Rights Commission

⁶⁶ 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](#).

⁶⁷ [Victims Charter](#) (2015),

⁶⁸ Northern Ireland Policing Board (2017) [Thematic Review of Policing Race Hate Crime](#),

The report recommended that ‘in considering the recommendations of HMIC the PSNI should address specifically the vulnerability of victims of hate crime’. See page 88.

(NIHRC), highlighted that the Northern Ireland Court of Appeal identified a need to develop awareness of the Equal Treatment Bench Book which, inter alia, sets out adjustments to court or trial procedures that may be required to accommodate the needs of disabled people⁶⁹.

- 3.96 Measures to support vulnerable victims of hate crime is consistent with the recommendation of the UNCRPD Committee; which in its Concluding Observations on the UK (2017), recommended 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 exploitation⁷⁰.
- 3.97 In the event that the hate crime legislation is extended to cover additional equality grounds, as we recommend below, it is essential that there are robust support services in place to meet the needs of victims protected under those equality grounds, particularly vulnerable victims.
- Ensure long term funding for hate crime advocacy support services*
- 3.98 Hate crime advocacy support services have the potential to provide valuable specialist support and information to victims of hate crime; including through the work of hate crime advocates across organisations that provide support to individuals from across a range of equality categories.
- 3.99 The CJINI in its report on hate crime (2017), whilst recognising the valuable support provided to victims by the Hate Crime Advocacy Support Service (HCAS), recommended that consideration should be given to the source of funding for advocates, and highlighted that there was ‘a risk that in the climate of diminishing budgets competing police priorities may result in loss or reduction of the advocacy service’⁷¹.
- 3.100 The hate crime legislation review consultation paper (2020) also highlighted the ‘precarious’ nature of the HCAS and

⁶⁹ IMNI (2017), [UNCRPD Parallel Jurisdictional Report , Working Paper](#)

⁷⁰ UNCRPD (2017), Concluding Observations on the UK.

⁷¹ See Criminal Justice Inspection Northern Ireland (2017), [Hate Crime an Inspection of the Criminal Justice System's response to Hate Crime in N.I.](#), at p.39.

indicated that there seemed to be ‘no obvious reason why the funding model should not be fixed on a permanent basis’⁷².

Improve measurement of victim satisfaction levels

- 3.101 We have called for the monitoring of satisfaction levels of victims of hate crime with regards to the effectiveness of the measures in place⁷³. Capturing the views of victims on levels of satisfaction with services on a regular basis, enables their views to be taken into account, enables trends to be monitored, and identifies areas of improvement.
- 3.102 The need to improve the measurement of the views of victims of hate crime and their satisfaction levels with services was highlighted by the NI Policing Board in 2017 in its thematic review of race hate crime⁷⁴.

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.

- 3.103 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 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.
- 3.104 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.

⁷² Hate crime review (2020), *Hate crime legislation, Independent Review, Consultation Paper*, at para 16.16.

⁷³ ECNI (2017), *Policy Briefing, CJINI report, An inspection of the criminal justice system’s response to hate crime in Northern Ireland*

⁷⁴ Northern Ireland Policing Board (2017) *Thematic Review of Policing Race Hate Crime*, The Policing Board pointed to gaps on recording victims of hate crime views under the Northern Ireland Crime Survey compared to the Crime Survey for England and Wales. Ibid, at page 29.

3.105 Whilst we recognise that courts already have a general power to withhold the identity of a complainant⁷⁵ 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.

Supporting rationale

3.106 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.

3.107 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.

3.108 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.

3.109 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.

3.110 In addition, consideration should be given to the fact that other complainants or witnesses due, for example, to their age or disability, or who experience multiple and intersectional prejudice, may be particularly targeted as regards victimisation or retaliation.

3.111 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

⁷⁵ Contempt of Court Act 1981 (section 11).

proceedings do not act as a barrier to LGBT people or other equality groups seeking, and being provided with, protection against hate crime.

- 3.112 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*⁷⁶ (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 privacy⁷⁷. 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.
- 3.113 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 anonymously⁷⁸.
- 3.114 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 the applicant would otherwise be deterred from proceeding with his or her case⁷⁹.

⁷⁶ J. Walsh, C Conlon, B Fitzpatrick and U Hansson, (2008), [*Enabling Lesbian, Gay and Bisexual Individuals to Access their Rights under Equality Law*](#).

⁷⁷ Ibid p139.

⁷⁸ 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.

⁷⁹ ECNI (2014), [*Response to the Department for Employment and Learning's consultation on resolving workplace disputes*](#).

D: Improve Criminal Justice Response to Hate Crime

Outcome Rates: Improve outcome rates for hate crime.

- 3.115 Outcome rates for crimes with a hate motivation are also consistently lower than those for all crimes⁸⁰. To date there have been very few prosecutions and convictions under the hate crime legislation in Northern Ireland, including relating to incitement to hatred⁸¹.
- 3.116 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.
- 3.117 We welcome the NI Policing Board's thematic reviews in relation to transphobic and homophobic⁸², and racist hate crime⁸³. 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.

Supporting Rationale

- 3.118 Between 2015-2019 there were almost 3,500 race hate incidents reported to the PSNI, but only 363 court convictions^{84 85}.

⁸⁰ 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](#).

⁸¹ 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.

⁸² NIPB (2012) [Thematic Review Policing with and for LGB and Trans people](#)

⁸³ NIPB (2018) , [Thematic Review of Policing Race Hate Crime](#)

⁸⁴ As reported in [Article](#) in Irish News on 19 June 2020 [accessed 19 June 2020].

⁸⁵ Cases that resulted in conviction at court, where race was recorded as a motivational factor, 2015 – 2019. See [Response to NI Assembly question](#) raised by Dolores Kelly MLA, delivered on 17 June 2020.

- 3.119 In its 2017 report, the CJINI highlighted that ‘barriers to the progress of hate crime through the systems remained’, and that ‘these were apparent at every stage in the process, from reporting through to court outcomes’⁸⁶.
- 3.120 The NI Policing Board thematic review into race hate crime (2017), for example, highlighted the lower outcomes rates for racist theft and criminal damage offences compared to racist violence and stressed the importance of the police focusing on improving the outcome rate for racist hate crime and highlighted the impact of crimes involving theft and criminal damage on victims⁸⁷.
- 3.121 As set out above, taking measures to securing prosecutions and improve outcome rates for hate crimes will also encourage the reporting of hate crime.

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

- 3.122 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.

Supporting rationale

- 3.123 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.
- 3.124 It will also help ensure a consistent approach across the criminal justice system.

⁸⁶ 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. 32.

⁸⁷ Ibid.

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.

- 3.125 Action should also be taken to address the lack of a coordinated approach to the development for restorative justice approaches for adult offenders.
- 3.126 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.

Supporting rationale

- 3.127 Restorative justice can provide opportunities to engage with perpetrators of hate crime and to challenge their prejudicial attitudes and behaviour. It also has the potential to help victims of hate crime, reduce reoffending, and give victims a greater voice in the criminal justice system. For example, the NI Policing Board (2017) in its review of policing race hate crime highlighted that ‘some offending is suitable for the restorative approach’ and that ‘the restorative approach can in appropriate cases support the healing of victims and challenge perpetrators’ hate motivated behaviours thereby protecting victims from repeat victimisation⁸⁸.
- 3.128 Further, the All Party Parliamentary Group on Hate crime (2019) in its report indicated that use of restorative justice approaches as a tool against hate crime offences had been ‘shown to have support amongst victims’⁸⁹.
- 3.129 We note however that, although the hate crime legislation review consultation paper noted the success of youth restorative justice approaches in Northern Ireland, it highlighted the lack of a coordinated approach to the development for restorative justice approaches for adults⁹⁰.

⁸⁸ Northern Ireland Policing Board (2017) [Thematic Review of Policing Race Hate Crime](#)

⁸⁹ All Party Parliamentary Group on Hate Crime (2019) [How do we build community cohesion when Hate Crime is on the rise?](#)

⁹⁰ Hate Crime Review Team (2020), Hate crime legislation, Independent Review, Consultation Paper. See para 15.11.

- 3.130 We note that Lord Bracadale in the Scottish review (2018) indicated there was ‘strong potential for diversion and restorative justice techniques to be effective where used appropriately’, but indicated that ‘it was clear that they could have a negative effect (either through causing further harm to the victim or reducing confidence in the criminal justice system) if used without due care’.
- 3.131 Further, the NI Policing Board (2017) in its review of policing race hate crime indicated that ‘the committee accepts that restorative justice may be appropriate for some hate crimes but needs to be reassured that all steps necessary are taken to protect victims from the risks posed in bringing them together with perpetrators⁹¹.
- 3.132 We note that the DoJ has carried out a consultation (2020) on the development of an adult restorative justice strategy aimed at adopting a strategic approach to the use of restorative justice practices in the criminal justice system⁹². The outcome of this consultation is awaited.

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

- 3.133 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 particular needs of equality groups, and on tackling prejudicial attitudes.
- 3.134 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 Tran’s 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

⁹¹ Northern Ireland Policing Board (2017) [Thematic Review of Policing Race Hate Crime](#)

⁹² DOJ (2020), Consultation on [Restoring Relationships, Redressing Harm, Development of an adult restorative justice strategy for NI.](#)

awareness and understanding of these issues and the barriers equality groups' experience.

- 3.135 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'.
- 3.136 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 officers⁹³. This training should include training relating to all equality grounds that may be covered in a revised hate crime framework.

Supporting rationale

- 3.137 Increasing guidance and training for criminal justice agencies, including the PSNI, PPS and judiciary, including on equality issues, will improve awareness and understanding of the particular needs of, and the impact of hate crime on, different equality groups, and will better ensure an effective response to hate crime.
- 3.138 It will be noted that the NI Policing Board (2017)⁹⁴ 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, 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".
- 3.139 We note that the UK Government in its hate crime action plan (2018) has committed to improving training for police and the wider criminal justice system to recognise and respond to hate crime.

⁹³ Northern Ireland Policing Board (2017) , [Thematic Review of Policing Race Hate Crime](#)

⁹⁴ Ibid.

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.

- 3.140 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.
- 3.141 We share the concerns raised by CJINI (2017) that, despite the progress that has been made by the criminal justice agencies, hate crime remains ‘stubbornly high’⁹⁵. Further, we make a range of recommendations across this paper to address a number of areas where hatred against particular equality groups is *not currently protected* under hate crime legislation.
- 3.142 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.
- 3.143 Account should also be taken of the UK Government’s obligations under international human rights conventions, including the UNCRPD. For example, the UNCRPD 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.
- 3.144 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.

⁹⁵ Criminal Justice Inspection NI, (2017) [Hate Crime an Inspection of the Criminal Justice System's response to Hate Crime in N.I.](#), page 5.

- 3.145 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.
- 3.146 We also recommend, as set out later below, reform of equality law - including to introduce protection against multiple discrimination.

Supporting rationale

Tackle nature and scale of hate crime

- 3.147 There are high overall levels of hate crime in Northern Ireland that need tackled. For example, in 2019/20, there were 2,300 reported hate incidents and approximately 1,500 reported hate crimes⁹⁶.
- 3.148 In 2017, the CJINI highlighted that, when population is considered, the rate of hate crime in Northern Ireland was higher than the equivalent rate in England and Wales⁹⁷.
- 3.149 In terms of the nature and scale of different types of hate crime, as noted in the hate crime legislation review consultation paper (2020), 'a disturbing new trend has been observed' in that racist hate motivated incidents have overtaken sectarian motivated incidents⁹⁸.
- 3.150 In particular, it will be noted that reported racist hate *incidents* have outnumbered sectarian hate incidents for the past four years⁹⁹; with 936 racist incidents and 886 sectarian incidents reported in 2019/20¹⁰⁰. In terms of sectarian and racist hate *crimes*, in 2019/20, sectarian hate crimes accounted for the highest number of reported hate crimes compared to the different strands of hate motivated crime, and outnumbered

⁹⁶ PSNI (2020), [Incidents and Crimes with a Hate Motivation Recorded by the Police in Northern Ireland](#). (Update to 31 March 2020).

⁹⁷ Criminal Justice Inspection NI, (2017) [Hate Crime an Inspection of the Criminal Justice System's response to Hate Crime in N.I.](#), para 5.47.

⁹⁸ Hate Crime Review Team (2020), Hate crime legislation, Independent Review, Consultation Paper, at para 3.2.

⁹⁹ Figures relate to 2016-2020. As reported in [Article](#) in Irish News on 19 June 2020 [accessed 11 November 2020].

¹⁰⁰ PSNI (2020), [Incidents and Crimes with a Hate Motivation Recorded by the Police in Northern Ireland](#). (Update to 31 March 2020).

racist crimes; with 640 sectarian crimes and 626 racist crimes reported¹⁰¹.

- 3.151 Whilst there has been an overall decline in levels of sectarian hate crime over the last decade, the number of reported sectarian hate incidents and crime increased in 2019/20 compared to the previous year.
- 3.152 Further, whilst there was a reduction in reported race hate incidents, and disability hate crime and incidents in 2019/20, compared to the previous 12 months, the number of reported homophobic and transphobic hate crimes and incidents rose in 2019/20; with reported transphobic incidents and crimes experiencing the largest increases across all hate motivation strands in 2019/20¹⁰².
- 3.153 In addition, with the exception of sectarian incidents, hate motivated incidents have recorded their highest levels in more recent years; 2014/15 for racist and disability incidents, and 2015/16 for homophobic incidents¹⁰³. The highest level for transphobic incidents was in 2019/20¹⁰⁴.
- 3.154 Whilst there are lower levels of reported homophobic, disability, faith/religion and transphobic incidents and crimes compared to racist and sectarian hate incidents and crimes, as highlighted by the CJINI (2017), ‘the true figures for all of these categories are likely to be much higher due to several factors already outlined, in addition to reduced visibility, especially with less obvious categories of disability involving people across the spectrum of learning difficulty’.
- 3.155 In addition, the need for robust action to tackling hate crime, is evident in light of the significant harm hate crime causes to victims, their families, and wider society. For example, hate crime can cause physical, mental and/or emotional harm. It can also negatively impact on a victim’s behaviour; for example, as noted below, online hate speech can deter equality groups from

¹⁰¹ Ibid.

¹⁰² Ibid

¹⁰³ PSNI (2019), *Trends in Hate Motivated Incidents and Crimes Recorded by the Police in Northern Ireland, 2004/05 to 2018/19* (published 8 November 2019).

¹⁰⁴In terms of the scale of other reported incidents and crimes, it will be noted that during 2019/20, there were 272 homophobic related hate crime incidents and 201 homophobic hate crimes; 99 disability related hate crime incidents and 72 disability related hate crimes; 41 faith/ religious (non –sectarian) related hate crime incidents and 15 faith/ religious hate crimes. PSNI (2020), *Incidents and Crimes with a Hate Motivation Recorded by the Police in Northern Ireland. (Update to 31 March 2020)*.

using social media, including disabled people and older people, which can in turn lead to their greater isolation¹⁰⁵. It can also lead to people relocating or moving jobs or avoiding public spaces.

3.156 Hate crime can also have wider societal impacts. For example, a CJINI report (2017) found that the use of disparaging terms as regards members of minority groups can harm self-esteem, embolden others to take a similar stance towards minority groups and lead to disenfranchisement with society in general and with public authorities in particular¹⁰⁶.

3.157 Further, as noted in the hate crime legislation review consultation paper (2020), data from the Crime Survey for England and Wales (2015) shows that victims of hate crime were more likely than victims of crime overall to say they were emotionally affected by the incident¹⁰⁷.

Tackle hate crime experienced by people due to their multiple identities

3.158 An individual may be the target of hate crime due to their having 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’¹⁰⁸.

3.159 Whilst hate crimes can be recorded under more than one ground, there is a need, in terms of judicial considerations, and policy responses, including support for the victim, to effectively address situations where a hate crime is committed due to an individual having multiple identities.

3.160 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

¹⁰⁵ See section above on online hate crime.

¹⁰⁶ Criminal Justice Inspection NI (2017), [Hate Crime, An inspection of the Criminal Justice System’s response to hate crime in Northern Ireland](#), at para 1.12.

¹⁰⁷ See Hate Crime Review Team (2020), *Hate crime legislation, Independent Review, Consultation Paper*, at para 1.11, which cites data from *Hate Crime, England and Wales, 2014/15: Statistical Bulletin 05/15*.

¹⁰⁸ Mark A. Walters and R. Brown with S. Wiedlitzka, University of Sussex, commissioned by EHRC, (2016), [Causes and Motivations of Hate Crime](#), page 8.

Europe, in its Recommendation on gender equality standards and mechanisms (2007).

- 3.161 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 identities¹⁰⁹. 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 disability¹¹⁰.
- 3.162 As highlighted in the hate crime legislation review consultation paper (2020), 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 having multiple identities.

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.

- 3.163 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

¹⁰⁹ Council of Europe [Recommendation](#) 17 (2007)

¹¹⁰ 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](#).

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.

Supporting rationale

Include actions to tackle hate crime in PFG

- 3.164 Tackling hate crime requires high level commitment and leadership, and a holistic and co-ordinated Government led response.
- 3.165 This commitment can be made clear, and a more holistic and co-ordinated approach can be achieved by ensuring that the forthcoming NI Executive's PFG and associated delivery plans and indicators contain actions to challenge prejudicial attitudes, behaviour and hate crime.
- 3.166 As highlighted by the CJI (2017) in its report on hate crime: 'This issue demands a Whole of Government approach and should be a priority for any future Executive if this scourge is to be eliminated from our society'¹¹¹.
- 3.167 In 2016, we had recommended that actions to challenge prejudicial attitudes, behaviour and hate crime should be contained in the Executive's PFG (2016), so as to ensure that workplaces, services, public spaces and communities are free from harassment and/or discrimination across the equality grounds¹¹². This includes action aimed at tackling hate crime experienced by Section 75 groups, including sectarian, racist, homophobic, transphobic, and disability hate crime.

¹¹¹ Criminal Justice Inspection NI, (2017) [Hate Crime an Inspection of the Criminal Justice System's response to Hate Crime in N.I.](#), page 5..

¹¹² ECNI (2016), [Equality Commission recommendations for the 2016-19 Programme for Government \(PfG\) and Budget.](#)

3.168 We had welcomed the recognition in the draft delivery PFG plan on Indicator 1¹¹³ (2016) of the need to address the under-reporting of crime, including hate crime; as well as the need to support victims of crime, and to address causative factors, including through early intervention, prevention and detection of crime¹¹⁴. We had also welcomed that proposed actions in the draft delivery plan for the ‘respect’ indicator included the development of cross-Executive action plans on hate crime and other community safety issues.

3.169 More recently, we welcome the recognition by the parties to the *New Decade, New Approach* framework¹¹⁵ (2020) (NDNA) of the need to tackle sectarianism, prejudice and hate in seeking to eliminate discrimination. We also welcome that it makes clear that the Executive’s focus will be on building a united community in a way that has equality and mutual respect to the fore.

Ensure effective strategy to tackle hate crime within a Community Safety framework that is linked to good relations/equality strategies

3.170 As highlighted by the CJINI (2017), there is a need for a ‘more holistic approach’ so as ‘to deliver the societal change necessary to combat the underlying causes’¹¹⁶.

3.171 We welcome the CJINI’s (2017) recommendation¹¹⁷ 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 Strategy¹¹⁸ 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”. The CJINI was of the view having this link ‘would provide leadership at the highest level of government’¹¹⁹. It also recommended that outcome based

¹¹³ Indicator 1: Prevalence rate (% of the population who were victims of any NI Crime Survey crime).

¹¹⁴ ECNI (2017) Equality Commission: [Response to draft Delivery plan for Indicator 1: Prevalence rate \(% of the population who were victims of any NI Crime Survey crime\)](#)

¹¹⁵ UK Government, Irish Government, (2020), *New Decade, New Approach*.

¹¹⁶ 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.

¹¹⁷ Criminal Justice Inspection NI, (2017) *Hate Crime an Inspection of the Criminal Justice System’s response to Hate Crime in N.I.*, recommendation 3.

¹¹⁸ Department for Justice (2012), *A Community Safety Strategy for Northern Ireland 2012-2017*

¹¹⁹ Ibid, page 7.

accountability measures with which to monitor the effectiveness of these strategies should be developed, consulted on and agreed.

- 3.172 Whilst we recognise that the DoJ is working to progress a Community Safety framework that will include actions to tackle hate crime, we note that to date this CJINI recommendation has not been progressed, and there have been no further action plans published under the DoJ's Community Safety Strategy since 2015.
- 3.173 Whilst we recognise the impact of the absence of an NI Assembly on work across Government, following the restoration of the NI Assembly in January 2020, it is essential that work to progress the CJINI recommendations, and to ensure an effective Community Safety framework that includes a strategy to tackle hate crime and underpinning action plans, is progressed as a matter of urgency.
- 3.174 Further, it is important to ensure the linkage with equality strategies, as these strategies provide important opportunities to adopt a co-ordinated, cross-departmental approach to addressing prejudicial attitudes, stereotypes and hate crime experienced by a range of equality groups, and to secure shared outcomes¹²⁰. In addition, these strategies provide opportunities for equality groups to engage with, and input into, high level decision making relating to specific forms of hate crime. Such strategies also contain monitoring and accountability measures that hold Government to account.
- 3.175 Further, a coordinated approach across sectors, including at local council level, assists with tackling hate crime. Local council community plans, good relations action plans, and actions taken forward by policing and community safety partnerships, provide valuable opportunities to ensure that hate crime is addressed at a local level. They provide opportunities for councils to promote equality and good relations, working in partnership with local communities, and across the public, private and community/voluntary sectors.

¹²⁰ It will be noted that the DOJ in 2015 agreed an action to link its work on hate crime with the OFMDFM Disability Strategy. See DoJ (2015), [Community Safety Action Plan 2015-2017](#).

Ensure leadership by public bodies and persons in position of influence

- 3.176 Tackling hate crime requires high level commitment and leadership from public bodies, including the DoJ, local councils, and criminal justice agencies.
- 3.177 Leadership by public bodies is essential in the context of ensuring compliance with the public sector equality duties. For example, as regards the vital role that councils play in promoting good relations, we have highlighted that leadership, especially at Councillor and senior levels should be key to ensuring the promotion of good relations¹²¹.
- 3.178 Further, it is important that people in positions of influence avoid language/ behaviour that would increase the vulnerability of people under threat of attack, including due to religion or race.
- 3.179 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.
- 3.180 International human rights monitoring bodies have, for example, highlighted the importance of public representatives from refraining from intolerant discourse. For example, in 2016, the European Commission on Racism and Intolerance (ECRI) called upon all political parties to take a firm stand against intolerant discourse and instruct their representatives to refrain from making derogatory comments targeting a group of persons on grounds of their “race”, religion, citizenship, language, ethnic origin, sexual orientation or gender identity¹²².
- 3.181 Clear leadership by public representatives, such as Councillors and MLAs, acting in a way that promotes good relations is also consistent with the principles on equality and good relations set out in Councillors’ Code of Conduct and the MLA Code of Conduct¹²³.

¹²¹ ECNI (2015), [Equality Commission advice on Good Relations in Local Councils](#)

¹²² ECRI (2016), [Concluding Observations on UK](#).

¹²³ For example, the MLA Code of Conduct (2016) states that: ‘Members should act in a way that is conducive to promoting good relations’. See NI Assembly (2016), [MLA Code of Conduct](#), para. 3.2.

Effective engagement with stakeholders from across the range of equality categories

- 3.182 Harnessing relevant expertise and experience will better enable the identification of key issues and the delivery of more effective outcomes.
- 3.183 Developing policies and programmes, including hate crime action plans, aimed at tackling hate crime that involves stakeholders from across the range of equality categories in delivery will further inform and enable targeted local responses to specific barriers experienced by victims of hate crime.
- 3.184 Engagement should include, but not be limited to, formal consultation. Measures should include building capacity and ensuring adequate resources for organisations that represent equality groups.
- 3.185 Further, measures to effectively engage with stakeholders from across the range of equality categories is consistent with the Section 75 duties on public bodies and their equality scheme commitments.
- 3.186 A collaborative approach that works in partnership with equality groups and community-based organisations will assist in understanding the specific issues to be tackled and help build confidence within communities.
- 3.187 In addition, organisations, including in the voluntary/community sector, that provide advice and assistance to different equality groups can also assist with encouraging reporting of hate crime and with reaching ‘hard to reach’ groups.
- 3.188 Adopting this collaborative approach is consistent with the recommendations of international human rights monitoring bodies. For example, the UNCERD Committee (2016) recommendations on the UK include to ensure that measures to combat racist hate crimes are developed with the meaningful participation of affected groups¹²⁴.
- 3.189 In addition, UNCPRD Committee in its Concluding Observations on the UK (2017) has recommended the establishment of mechanisms supporting the full participation of

¹²⁴ UNCERD Committee (2016), [Concluding Observations on the UK](#).

organisations of persons with disabilities in the design and implementation of strategic policies¹²⁵.

- 3.190 Further, we welcome that the NDNA Framework confirms that the principles and practice of citizen and community engagement and co-design are to be a key part of the development and delivery of the PFG and its supporting strategies¹²⁶.

Develop and share good practice

- 3.191 The ongoing development and dissemination of the good practice initiatives on combating hate crime, including across different sectors, will also assist in tackling hate crime. Such an approach, that draws on lessons learnt, including in other jurisdictions, and takes into account the views of equality groups, builds understanding of different forms of hate crime and solutions needed at different levels and contexts to address hate crime.
- 3.192 We have encouraged public authorities to share information and good practice on promoting good relations; as co-ordination reduces the need for every organisation separately to research problems, identify opportunities and develop strategies, plans and training programmes, and to address common problems, thus achieving economies of scale¹²⁷.
- 3.193 We note that the UK Government's action plan on hate crime (2018)¹²⁸ has highlighted the importance of sharing experiences and expertise.

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

- 3.194 Designated public authorities should ensure compliance with their public sector equality duties, including the good relations

¹²⁵ See UNCRPD Committee (2017), [Concluding Observations on the UK](#).

¹²⁶ UK Government, Irish Government, (2020), [New Decade, New Approach](#).

¹²⁷ ECNI (2007), [Promoting Good Relations: Guide for Public Authorities](#)

¹²⁸ UK Government (2018), [Action Against Hate: The UK Government's plan for tackling hate crime – 'two years on'](#).

duty, when developing and implementing hate crime policies, and use the equality duties to inform decision making.

Supporting rationale

- 3.195 Designated public authorities are required to have due regard to the need to promote equality of opportunity in relation to the nine equality categories and to have regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group. They are also subject to the public sector disability duties¹²⁹. In addition, there are specific good relations duties on councils¹³⁰.
- 3.196 Public bodies should ensure that equality and good relations are mainstreamed across all policies, including any hate crime related policies, including by using the tools of equality budgeting¹³¹ and impact assessment¹³².
- 3.197 The framework associated with the Section 75 equality duties can assist Departments and public authorities to identify and mitigate equality impacts. They also enable policymakers to identify and seek out ways to promote equality and good relations, for the Section 75 groups.
- 3.198 The Commission has also advised that public funding programmes should be screened in accordance with Equality Scheme commitments; and that public authorities may wish to consider how they can equality proof these to ensure that they are not running the risk of inadvertently funding activities that are discriminatory against groups belonging to the equality categories, including activities which give rise to hate speech.

¹²⁹ The public sector disability duties require public bodies to have due regard to the need to promote positive attitudes towards disabled people, and to encourage the participation by disabled people in public life See ECNI (2015), [Short Guide: Section 75, Northern Ireland Act 1998 and Section 49A, Disability Discrimination Act 1995](#).

¹³⁰ Under the race relations legislation, there is also a duty on local councils, who are also subject to the public sector good relations duty, to have due regard to the need to promote good relations between different ‘racial groups’. Article 67 of the Race Relations NI Order 1997 places a specific duty on Councils “to make appropriate arrangements with a view to securing that its various functions are carried out with due regard to the need to eliminate racial discrimination and to promote equality of opportunity and good relations between persons of different racial groups.”

¹³¹ See Quinn S (2013) [Equality Responsive Budgeting](#), Expert paper, commissioned by ECNI.

¹³² Equality Commission (2017), [Effective Section 75 Equality Assessments: Screening and Equality Assessments](#).

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

3.199 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 UNCRPD.

Supporting rationale

3.200 There are a range of international human rights obligations on the UK Government relevant to combating hate crime.

3.201 These include: the UNCRPD, the International Covenant on Civil and Political Rights (ICCPR), CERD, CEDAW, the Framework Convention for the Protection of National Minorities (FCNM), and the European Convention on Human Rights (ECHR). In addition, obligations under EU Directives, such as the EU Victims Directive¹³³, as well as EU Decisions¹³⁴, are relevant to policing and hate crime.

3.202 A number of international human rights Committees have called for further action by the UK Government to address shortfalls, including in Northern Ireland, relevant to international standards and obligations, relating to tackling hate crime¹³⁵. These include by the UNCRPD Committee, the UNCERD Committee, and the Advisory Committee on the FCNM.

3.203 For example, the UNCRPD Committee (2017), in relation to Article 16 (Freedom from violence, exploitation and abuse), called on the UK Government to: ‘Establish 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’¹³⁶.

¹³³ EU Victims Directive, Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime.

¹³⁴ For example, Council Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law (28 November 2008).

¹³⁵ Relevant human rights obligations include under the European Convention on Human Rights, as incorporated by the Human Rights Act 1998, and the treaty obligations of the Council of Europe (CoE) and the United Nations (UN). Human rights bodies of the CoE and UN have also issued declarations and principles which are non-binding, but provide further guidance in certain areas, including General Comments and Recommendations.

¹³⁶ See UNCRPD Committee (2017), [Concluding Observations on the UK](#).

- 3.204 It will be noted that research (2014) commissioned by the Commission on the implementation of the UNCRPD in Northern Ireland, commented in relation to Article 16 that: ‘The absence of comment on Article 16 issues displayed in the stakeholder input is itself perhaps a sign of a lack of government emphasis on what are difficult issues which many voluntary sector organisations are reluctant to engage’¹³⁷.
- 3.205 Further, the UNCERD Committee (2016) has called for measures to be taken across the UK, including to systematically collect disaggregated data on hate crimes¹³⁸.
- 3.206 In addition, the Council of Europe, The European Commission against Racism and Intolerance (ECRI) in its [General Policy Recommendation No 15 on Combating Hate Speech](#) (2015)¹³⁹ has set out a range of recommendations for Governments, including the UK Government, on how to tackle hate speech. These recommendations include to ensure the collection and publication of hate crime disaggregated data; to support victims of hate speech; to raise public awareness of the dangers of hate speech; and to support the monitoring of hate speech by civil society, equality bodies, and national human rights institutions.
- 3.207 As outlined in more detail elsewhere in this paper, international human rights Committees have set out further specific recommendations, including addressing the under-reporting of hate crime amongst particular equality groups, and preventing hate crime.

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

- 3.208 Action is required to ensure the collection of comprehensive, reliable, up to date, hate crime data. Aligned to the

¹³⁷ Byrne, B., Harper, C., Shea Irvine, R., Russell, H. and Fitzpatrick, B. (2014): [UNCRPD: Shortfalls in public policy and programme delivery in Northern Ireland relative to the Articles of the UNCRPD](#), page 100 (Equality Commission for Northern Ireland)

¹³⁸ UNCERD Committee (2016), [Concluding Observations on the UK](#).

¹³⁹ ECRI (2015), [General Policy Recommendation No 15 on Combating Hate Speech](#), 8 December 2015, CRI (2016)15.

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.

- 3.209 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.
- 3.210 There is a need also to ensure joined up data and systems to track progress of hate crime cases.

Supporting rationale

Improve the collection of disaggregated data, including on hate crime experienced by people with multiple identities

- 3.211 The Commission has made clear that Departments and public authorities, including agencies, should in general ensure that where they are collecting data they do so across the full range of equality grounds, so that the design, delivery and review of any changes to law, policy or service provision is improved by access to comprehensive analysis. Hate crime data should thus be collected, analyzed and published by key equality groups across the hate crime categories.
- 3.212 The importance of collecting and analysing robust hate crime data was recognised by the NI Policing Board in its report on race hate crime in 2017¹⁴⁰. It stated that: 'without data collection and analysis it will be impossible to examine the true level of hate crime reporting and patterns of offending. Without that examination the PSNI and other criminal justice agencies will be less able to focus their resources appropriately'¹⁴¹.
- 3.213 In order to better understand, monitor, and identify trends in, and to inform effective responses to, hate crime, and 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.

¹⁴⁰ Northern Ireland Policing Board (2017), *Thematic Review of Policing Race Hate Crime*

¹⁴¹ Ibid at page 5.

- 3.214 In general, hate crime data is currently only published to indicate the category of hate crime and there is, in certain areas, limited publication of disaggregated equality data – for example, currently the PSNI does not publish data on the specific racial groupings, type of disability etc. of hate crimes. In contrast, as regards faith based hate crime, it will be noted that in April 2016, in GB, the Home Office began collecting information from the police on the perceived religion of victims of religious hate crime, which includes data on faiths such as the Muslim and Jewish faiths.
- 3.215 Consideration should be given to improving data collection and analysis so as to capture hate crime trends relating to people from across the equality categories, and with multiple identities. This could, for example, include recording and analysing hate crime against disabled people by different types of disability as there is evidence, for example, that persons with learning disabilities are particularly vulnerable to hate crime¹⁴².
- 3.216 We note also 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’¹⁴³.
- 3.217 With regards to multiple identity, this could include, for example, improving data collection and analysis relating to hate crimes against disabled women, as currently, the PSNI only publishes hate crime data relating to the gender of a victim as regards racist, homophobic and sectarian crimes. The collection, and analysis 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.
- 3.218 However, we stress that as regards the analysis and publication of any additional disaggregated equality data, 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.

¹⁴² See Mental Health Foundation et al (2018), [A life without fear? A call for collective action against learning disability hate crime](#).

¹⁴³ All Party Parliamentary Group on Hate Crime (2019) [How do we build community cohesion when Hate Crime is on the rise?](#)

Where it is not possible to publish data due, for example, to the small numbers involved, consideration should be given to undertaking qualitative research in order to better understand the nature and scale of hate crime experienced by particular equality groups.

- 3.219 As regards the need for improved data on online hate crime, 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 bullying¹⁴⁴.
- 3.220 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). 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 race¹⁴⁵. Further, the UNCERD Committee (2016) has called for measures to be taken across the UK, including to systematically collect disaggregated data on hate crimes¹⁴⁶.
- 3.221 In addition, the Council of Europe, The European Commission against Racism and Intolerance (ECRI) in its [*General Policy Recommendation No 15 on Combating Hate Speech*](#) (2015)¹⁴⁷ has set out a range of recommendations for Governments. These recommendations include to ensure the collection and publication of hate crime disaggregated data; and to support the monitoring of hate speech by civil society, equality bodies, and national human rights institutions.
- 3.222 In addition, the improved collection and analysis of equality data assists public bodies comply with their equality scheme commitments, including ensuring that screening and equality impact assessments are of good quality, and evidence based.

¹⁴⁴ The Children's Society and Young Minds (2018), [*Safety Net: Cyberbullying's impact on young people's mental health - Inquiry Report*](#).

¹⁴⁵ UNCRPD Committee (2017), [*Concluding Observations on the UK*](#).

¹⁴⁶ UNCERD Committee (2016), [*Concluding Observations on the UK*](#).

¹⁴⁷ ECRI (2015), [*General Policy Recommendation No 15 on Combating Hate Speech*](#), 8 December 2015, CRI (2016)15.

Consider data collection on equality grounds not protected under hate crime legislation

- 3.223 It is the Commission's general position that all key measures should not only be tracked in aggregate but also tracked for the impact on individuals from across each of the equality grounds.
- 3.224 If, following the outcome of the hate crime legislation review, the additional grounds of age, gender, and/or intersex are not protected under the hate crime legislation, consideration should be given to improving data collection on these grounds.
- 3.225 Such an approach will assist the PSNI and others to better understand, monitor, and identify trends in these areas, and identify solutions to tackling hate crime in these areas.
- 3.226 For example, even though hate crime against Trans people is not currently protected under the hate crime legislation, the PSNI collects data on transphobic hate crime. This has assisted with identifying trends in transphobic hate crime and has helped inform policy responses. Further, Nottinghamshire police adopted a policy of recording misogyny hate crime, even though 'gender' is not a protected characteristic under the hate crime legislation in GB¹⁴⁸.

Ensure joined up data to track progress of hate crime cases

- 3.227 We have welcomed calls by the CJINI for the public prosecution service (PPS) to publish more detailed analysis on the hate crimes reported to it by the police (including the reasons for no prosecution) and we continue to recommend the end-to-end tracking of hate crime cases¹⁴⁹.
- 3.228 In relation to detection, there is a need, as highlighted in the 2010 CJINI 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 cases are dealt with and identify areas where remedial action is required.

¹⁴⁸ A report by Amnesty (2019) has stated that: 'In comparison to Northern Ireland and Scotland, England and Wales has a greater degree of flexibility with respect to police recording practices because police forces are permitted to record other forms of targeted hostility as hate crime in addition to the five monitored strands. This has resulted in a number of police forces amending their policies to include other categories, such as 'alternative subcultures', 'misogyny' and 'sexworkers'. This policy has enabled police forces in England and Wales to tailor their approach to meet local needs and has led to an increased awareness of the targeting of groups who have not routinely been considered as hate crime victims'.

¹⁴⁹ See ECNI (2014), [Racial Equality Priorities and Recommendations](#).

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.

Supporting rationale

- 4.3 As made clear in the hate crime legislation review (2020) consultation paper¹⁵⁰, there is no single accepted definition of what constitutes hate crime. We consider it would provide clarity and consistency of purpose for a working definition of hate crime to be developed.
- 4.4 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.
- 4.5 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

¹⁵⁰ See Hate Crime Review Team (2020), *Hate crime legislation, Independent Review, Consultation Paper*, para 1.3.

absence of prejudice, hatred, hostility; and a fair level of participation in society.

- 4.6 We consider that the above points are relevant to the development of a definition of hate crime.
- 4.7 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’.
- 4.8 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 crime¹⁵¹. 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’¹⁵².
- 4.9 In addition, the hate crime legislation 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’¹⁵³.
- 4.10 Further, we note that in the *Independent Review of Hate Crime Legislation in Scotland*¹⁵⁴ (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 hostility¹⁵⁵. However, he

¹⁵¹ 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.

¹⁵² 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.

¹⁵³ Hate Crime Review Team (2020), *Hate crime legislation, Independent Review, Consultation Paper*, para 6.3.

¹⁵⁴ Lord Bracadale (2018), *Independent Review of Hate Crime Legislation in Scotland: Final Report* (2018), Scottish Government.

¹⁵⁵ 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.

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'¹⁵⁶.

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

4.11 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.

4.12 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.

Supporting rationale

4.13 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.

4.14 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.

B: Approach to Enhanced Sentencing

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

4.15 We recommend the adoption of a statutory aggravation model similar to that in Great Britain so as address the operational

¹⁵⁶ 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.

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.

Supporting rationale

- 4.16 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.
- 4.17 Research¹⁵⁷ (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 legislation 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'¹⁵⁸.
- 4.18 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'¹⁵⁹.; 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.
- 4.19 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 set out below, we stress that lessons should be learnt from the operation of this model in Great Britain.
- 4.20 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

¹⁵⁷ Jarman, N. (2012): [Challenge Hate Crime, Deal with it: Criminal Justice Responses to Hate Crime in Northern Ireland](#), Institute for Conflict Research.

¹⁵⁸ 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

¹⁵⁹ See ECNI, (2004), [Submission to the NI Affairs Committee Hate crime Inquiry](#), para 19.

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.

- 4.21 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.
- 4.22 We also consider, as made clear in the hate crime legislation review consultation paper (2020)¹⁶⁰, 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 programmes¹⁶¹.
- 4.23 Further, it is clear from the hate crime legislation 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'.
- 4.24 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 legislation review consultation paper, the research accepts that the Great Britain model is far from perfect, it concludes it is much less 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 crime¹⁶².

¹⁶⁰ Hate Crime Review Team (2020), *Hate crime legislation, Independent Review, Consultation Paper*.

¹⁶¹ *Ibid*, para 7.32.

¹⁶² McVeigh, R. (2017) "*Hate and the State: Northern Ireland, Sectarian Violence and Perpetrator less*

- 4.25 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’¹⁶³.
- 4.26 We note that the draft *Hate Crime and Public Order (Scotland) Bill 2020*¹⁶⁴, developed in response to the recommendations made in Lord Bracadale’s independent review, and which is currently progressing through the Scottish Parliament, proposes that the statutory aggravation model should continue; though it is important to note that as the Bill is currently progressing through the Scottish Parliament, its provisions are subject to change
- 4.27 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.
- 4.28 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.
- 4.29 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.

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.

¹⁶³ Lord Bracadale (2018), [Independent Review of Hate Crime Legislation in Scotland: Final Report](#) , Scottish Government, at para 3.4.

¹⁶⁴ [Hate Crime and Public Order \(Scotland\) Bill 2020](#)

- 4.30 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.

C: Protected Groups

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

- 4.31 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.

Supporting rationale - Overarching points

- 4.32 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.
- 4.33 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.
- 4.34 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.
- 4.35 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.

- 4.36 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 identity¹⁶⁵.
- 4.37 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 Croatia¹⁶⁶. In particular, it will be noted that thirteen EU Member States have included “gender identity” as a protected ground¹⁶⁷. Further, hate crime legislation in all other parts of the UK covers transphobic hate crime.
- 4.38 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. It will also assist in tackle negative stereotyping, prejudicial attitudes and stigmatisation on these additional grounds.
- 4.39 Further supporting arguments, specific to each ground are set out in more detail below.

Supporting rationale- age

- 4.40 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.
- 4.41 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 legislation¹⁶⁸. It also proposes a further

¹⁶⁵ ECRI (2015), [General Policy Recommendation No 15 on Combating Hate Speech](#), 8 December 2015, CRI (2016)15.

¹⁶⁶ FRA (2018), [Hate crime recording and data collection practice across the EU](#)

¹⁶⁷ Ibid.

¹⁶⁸ 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.

stage which assesses whether the group named requires the extra protection afforded by criminal law.

- 4.42 Clearly, ‘age’ is a protected ground under the anti-discrimination legislation in Northern Ireland¹⁶⁹, 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 1998¹⁷⁰. Further age is a protected ground in the Charter of Fundamental Rights¹⁷¹, under Art 14 of the European Convention on Human Rights (ECHR)¹⁷², and under the EU Victims Directive¹⁷³.
- 4.43 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 status¹⁷⁴.
- 4.44 In addition, a number of European countries, including Austria, Latvia, Lithuania and Belgium have introduced legislation prohibiting hate crime based on age.
- 4.45 We note that the OSCE analysis of hate crime provisions in its 57 Member States identified “gender, age, mental or physical disability, and sexual orientation” as characteristics that are “quite frequently protected”¹⁷⁵.
- 4.46 Outside Europe, countries such as Canada¹⁷⁶, New Zealand and some US States prohibit hate crimes based on age.

¹⁶⁹ In the area of employment and vocational training.

¹⁷⁰ S75 of the NI Act 1998

¹⁷¹ EU Charter of Fundamental Rights.

¹⁷² 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.

¹⁷³ [EU Victims Directive](#) 2012/29/EU,

¹⁷⁴ ECRI (2015), [General Policy Recommendation No 15 on Combating Hate Speech](#), 8 December 2015, CRI (2016)15.

¹⁷⁵ 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.

¹⁷⁶ 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].”

- 4.47 Further, we note that the Scottish Review (2018)¹⁷⁷ 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.
- 4.48 We note that the draft *Hate Crime and Public Order (Scotland) Bill 2020*¹⁷⁸, provides for ‘age’ to be included under the hate crime legislation in Scotland. Importantly, the draft Bill provides for people of all ages to be protected, including older people and children and young people.
- 4.49 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.
- 4.50 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.
- 4.51 We also highlight that as the PSNI does not currently record separate ‘age based hate crimes’, this limits the available evidence on the extent of such hate crimes¹⁷⁹. As stated above, including age as a ground under the hate crime legislation should assist with both capturing the nature and extent of age

¹⁷⁷ Lord Bracadale (2018), [Independent Review of Hate Crime Legislation in Scotland: Final Report](#), Scottish Government

¹⁷⁸ [Hate Crime and Public Order \(Scotland\) Bill 2020](#)

¹⁷⁹ 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, 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](#).

based hate crime, as well as ensuring an increased focus by the criminal justice agencies on age based hate crime.

4.52 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.

4.53 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'¹⁸⁰.

4.54 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 out with 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.

4.55 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.

Older people

4.56 An initial consideration suggests that there is some evidence that offences committed against older people are motivated by hostility.

4.57 We note that the Scottish Review ¹⁸¹(2018) considered there to be sufficient evidence of hostility based offences against older

¹⁸⁰ Mark A. Walters and R. Brown with S. Wiedlitzka, University of Sussex, commissioned by EHRC, (2016), [Causes and Motivations of Hate Crime](#), page 8.

¹⁸¹ Lord Bracadale (2018), [Independent Review of Hate Crime Legislation in Scotland: Final Report](#), Scottish Government

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 age¹⁸².

- 4.58 As set out above, we note that the *Hate Crime and Public Order (Scotland) Bill 2020*¹⁸³, developed in response to the recommendations made in Lord Bracadale’s independent review, provides for people of all ages to be protected, including older people.
- 4.59 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.
- 4.60 A recent GB research report (2020)¹⁸⁴ 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.
- 4.61 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.
- 4.62 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.
- 4.63 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 justice agencies to crimes against older people due to prejudice or bias.

¹⁸² Ibid, para 4.56.

¹⁸³ [Hate Crime and Public Order \(Scotland\) Bill 2020](#)

¹⁸⁴ Centre for Ageing Better (2020), [Dodderly but dear? Examining age-related stereotypes](#).

- 4.64 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*.
- 4.65 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

- 4.66 We note that the All Party Parliamentary Group (APPG) on Hate Crime (2019)¹⁸⁵ 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...'¹⁸⁶
- 4.67 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 crime¹⁸⁷.
- 4.68 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 they were treated with disrespect regularly or all the time because they were young¹⁸⁸.

¹⁸⁵ All Party Parliamentary Group on Hate Crime (2019) [How do we build community cohesion when Hate Crime is on the rise?](#)

¹⁸⁶ Ibid at page 55.

¹⁸⁷ Home Office (2018) : [Hate crime: a thematic review of the current evidence](#)

¹⁸⁸ Ark,(2010), [Young Life and Times Survey 2010](#),

- 4.69 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"¹⁸⁹.
- 4.70 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 adults¹⁹⁰.
- 4.71 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

- 4.72 The Commission has consistently highlighted the need for effective strategies that tackle the nature and specific impact of gender-based violence on women and men¹⁹¹. 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.
- 4.73 We note that the Scottish Review¹⁹²(2018) has recommended the creation of a new statutory aggravation based on gender hostility. We also note that a review (2018)¹⁹³ of sex discrimination law across the UK has also recommended that misogyny should be legally introduced as a hate crime. In addition, the draft *Hate Crime and Public Order (Scotland) Bill 2020*, provides for a power to make regulations adding the characteristic of sex to any of the lists of characteristics¹⁹⁴.

¹⁸⁹ 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](#).

¹⁹⁰ 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.

¹⁹¹ ECNI (2016) , [Gender equality policy priorities and recommendations](#)

¹⁹² Lord Bracadale (2018), [Independent Review of Hate Crime Legislation in Scotland: Final Report](#) , Scottish Government.

¹⁹³ See Fawcett Society (2018) [Sex Discrimination Law Review](#)

¹⁹⁴ [Hate Crime and Public Order \(Scotland\) Bill 2020](#)

- 4.74 Further the Law Commission in Great Britain (2020) has provisionally proposed that gender or sex should be a protected characteristic for the purposes of hate crime law¹⁹⁵.
- 4.75 The European Commission has highlighted that women and girls, of all ages and backgrounds, are most affected by gender-based violence¹⁹⁶. 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’¹⁹⁷.
- 4.76 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.
- 4.77 This gender specific approach should be adopted in policy areas, such as when adopting targeting interventions; providing support for victims; undertaking awareness raising measures, including amongst the public; providing guidance and training for criminal justice agencies; and in tackling the under-reporting by victims.
- 4.78 We consider that women are disproportionately targeted as regards gender based hate crime. We note that the hate crime legislation review consultation paper (2020) makes clear that ‘the vast majority of cases are likely to involve crimes committed against females’¹⁹⁸. Therefore, policy approaches to tackling hate crime, including in the policy areas set out above, should reflect the fact that women are disproportionately affected by gender based hate crime.
- 4.79 It will be noted that in GB, the Committee on Standards in Public Life’s (2017) review on *Intimidation in Public Life*¹⁹⁹ 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

¹⁹⁵ Law Commission (2020), [Hate Crime Laws, A consultation paper](#).

¹⁹⁶ See, for example, European Commission (2020), [Article](#) on Gender based violence [accessed 30 April 2020].

¹⁹⁷ British Council (2016) [Gender Equality and Empowerment of Women and Girls in the UK: Meeting the challenge of the SDGs](#)

¹⁹⁸ Hate crime review (2020), *Hate crime legislation, Independent Review, Consultation Paper*, at p96..

¹⁹⁹ Committee on Standards in Public Life’s (2017) , [Intimidation in Public Life](#)

LGBT were disproportionately targeted in terms of scale, intensity and vitriol.

- 4.80 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'^{200 201}.
- 4.81 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))²⁰².
- 4.82 It also includes the *UN Sustainable Development Goals* (2015)²⁰³ 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 1325²⁰⁴.
- 4.83 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^{205 206}.

²⁰⁰ Home Affairs Committee, (2017), [Hate crime: abuse, hate and extremism online](#), 1 May 2017, HC 609, paras 15-16.

²⁰¹ 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](#).

²⁰² 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...*".

²⁰³ See [UN Sustainable Development Goals](#) 2015

²⁰⁴ [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 and post conflict reconstruction. Other UN SCRs pertain including [UN SCR 2122](#) on involving women in decision making in post conflict reconstruction.

²⁰⁵ ECNI (2016), [Gender equality policy priorities and recommendations](#).

²⁰⁶ 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].

- 4.84 We recommend that the hate crime legislation should 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.
- 4.85 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 1976²⁰⁷, and subsequent amendments which makes it unlawful to discriminate on grounds of sex, and which protects both men and women against discrimination.
- 4.86 Whilst there is evidence to suggest that both men and women are subjected to hate speech^{208 209 210}, including online abuse, it is also the case that there is limited evidence that the targeting of men is based on hostility or prejudice due to their gender. As set out above, it is clear that women are disproportionately affected by gender based hate crime.
- 4.87 However, we note in the Scottish Review (2020)²¹¹, that Lord Bracadale, whilst agreeing that the essence of the conduct which it was sought to cover was usually against women, stated that: ‘it is not inconceivable that there could be hostility against a man (or non-binary person) based on their gender’ and had concerns that an approach which focused only on hostility towards women would risk stereotyping (all) men as perpetrators and (all) women as victims, which I do not consider to be an accurate or helpful message’. He also stated that ‘a human rights-based approach suggests that having a

²⁰⁷ [Sex Discrimination \(Northern Ireland\) Order 1976](#)

²⁰⁸ For example, an OFCOM (2020) survey on Internet users’ experience of online harms found that equal percentages of men and women reported ‘hateful speech’ online (11%) with more women (19%) than men (15%) reporting online Bullying/abusive behaviour/threats. See OFCOM (2020), [Internet users experiences of harm](#).

²⁰⁹ Evidence from a study by Sheffield University (2018) 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 male MPs were more likely to receive online abuse than female MPs, but that women candidates were more likely to receive gendered abusive words. See Sheffield University (2018), [News Article](#) of 23 August 2018.

²¹⁰ Research (2017) in GB indicates that young people, particularly men were more likely to be victims of personal hate crime Home Office (2018) : [Hate crime: A thematic review of the current evidence](#)

²¹¹ Lord Bracadale (2018), [Independent Review of Hate Crime Legislation in Scotland: Final Report](#) , Scottish Government.

consistent approach which is capable of applying in equivalent cases, regardless of the sex of the victim, is better²¹².

- 4.88 Further, we consider that gender may intersect with other protected characteristics, for example, race, age, and/or disability, to increase the risk of a woman or a man being the target of a hate crime. As highlighted above, perpetrators of hate crime are not always motivated by a single type of prejudice but can be influenced by a combination of different prejudices.
- 4.89 For example, in our *Promoting Sexual Orientation Equality - Priorities and Recommendations* (2013) we highlighted that gay men were particularly vulnerable to being subjected to homophobic hate crime²¹³.

Supporting Rationale - Gender Identity

- 4.90 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 identity²¹⁴.
- 4.91 Whilst recognising that the number of reported transphobic incidents and crimes appears relatively low (though increasing²¹⁵) 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. We have also highlighted the need to address the issue of under reporting of transphobic hate crime.
- 4.92 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

²¹² Ibid , para 4.43.

²¹³ ECNI (2013), [Promoting Sexual Orientation Equality - Priorities and Recommendations](#)

²¹⁴ ECNI (2016), [Gender equality policy priorities and recommendations.](#)

²¹⁵ PSNI Hate crime statistics (March 2020) indicate that transphobic incidents increased from 32 to 64 (2019/20) and crimes increased from 10 to 34 (2019/20). PSNI (2020), [Incidents and Crimes with a Hate Motivation Recorded by the Police in Northern Ireland.](#) (Update to 31 March 2020).

hate crimes, including crimes against the person and property related crimes²¹⁶.

- 4.93 Although not currently a protected ground under the hate crime legislation, we note that the PSNI monitors transphobic hate crime.
- 4.94 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 Commission²¹⁷.
- 4.95 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 status²¹⁸.
- 4.96 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’

- 4.97 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.
- 4.98 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’.
- 4.99 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.

²¹⁶ McBride (2013), [Grasping the Nettle: The Experiences of Gender Variant Children and Transgender Youth Living in Northern Ireland](#).

²¹⁷ See ECNI (2016), [Gender equality policy priorities and recommendations](#)

²¹⁸ ECRI (2015), [General Policy Recommendation No 15 on Combating Hate Speech](#), 8 December 2015, CRI (2016)15.

4.100 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 ²¹⁹(2018) has recommended that consideration should be given to removing outdated terms such as ‘transvestism’ and ‘transsexualism’ from any definition of transgender identity (without restricting the scope of the definition).

Supporting Rationale - Intersex people

4.101 There is also a need to ensure that intersex people are protected under the hate crime legislation.

4.102 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^{220 221}.

4.103 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”²²². However, it should be noted that changes are proposed to the definition of “transgender identity” under the draft *Hate Crime and Public Order (Scotland) Bill 2020*, as it was considered that intersex is separate to a person’s transgender identity²²³.

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.

²¹⁹Lord Bracadale (2018), [Independent Review of Hate Crime Legislation in Scotland: Final Report](#), Scottish Government.

²²⁰ Council of Europe, (2015), [Issue Paper: Human rights and intersex people](#).

²²¹ 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](#).

²²² 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.

²²³ [Hate Crime and Public Order \(Scotland\) Bill 2020](#), It is proposed that protection for intersex people will be provided under the protected category of “variations in sex characteristics”.

- 4.104 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.
- 4.105 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.

Supporting rationale

- 4.106 Our recommendation to extend these protections reflects current practice under the hate crime legislation whereby association and perception on a protected ground is covered.
- 4.107 We note that the Scottish Review ²²⁴(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’.
- 4.108 We further note that the draft *Hate Crime and Public Order (Scotland) Bill 2020* in Scotland provides for both association and perception on a protected ground to be covered, including in relation to the grounds of age, transgender identity, and variations in sex characteristics (which includes intersex people) ²²⁵.

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.

- 4.109 We recommend the introduction of an additional ‘by reason of’ threshold so that there is potential for the hate crime legislation

²²⁴ Lord Bracadale (2018), [Independent Review of Hate Crime Legislation in Scotland: Final Report](#), Scottish Government, at page iv.

²²⁵ [Hate Crime and Public Order \(Scotland\) Bill 2020](#)

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.

Supporting rationale

- 4.110 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.
- 4.111 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”²²⁶.
- 4.112 It recommended that consideration be given to the introduction, out with 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.
- 4.113 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 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.
- 4.114 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.

²²⁶ Lord Bracadale (2018), [Independent Review of Hate Crime Legislation in Scotland: Final Report](#), Scottish Government.

- 4.115 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.
- 4.116 Our recommendation is also consistent with the recommendations of the GB Parliamentary Inquiry into *Online abuse and the experience of disabled people*²²⁷. 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’.
- 4.117 We note the GB Parliamentary Inquiry into *Online abuse and the experience of disabled people*²²⁸ 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 hostility²²⁹’.
- 4.118 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 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.
- 4.119 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.

²²⁷ Parliamentary Inquiry (2019), [Online abuse and the experience of disabled people](#).

²²⁸ Ibid.

²²⁹ Ibid

- 4.120 We note that other European countries, including France and Bulgaria, have used a version of the discriminatory selection model in legislation against hate crime²³⁰ 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. ...²³¹. We also note that the OSCE²³² 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 characteristic²³³.
- 4.121 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 categories²³⁴.
- 4.122 We consider such an approach will strengthen the hate crime legislation and make it more effective in tackling crimes due to identity based prejudice.
- 4.123 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 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’²³⁵.

²³⁰ As highlighted in Hate Crime Review Team (2020), *Hate crime legislation, Independent Review, Consultation Paper*, at p.149.

²³¹ Ibid

²³² Organisation for Security and Cooperation in Europe

²³³ As highlighted in Hate Crime Review Team (2020), *Hate crime legislation, Independent Review, Consultation Paper*, at p.149.

²³⁴ Walters and al. University of Sussex (2017), [Hate crime and the legal process-options for Law Reform-Final report.](#)

²³⁵ UNCRPD Committee (2017), [Concluding Observations on the UK.](#)

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.

- 4.124 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.
- 4.125 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.
- 4.126 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.

Supporting rationale

- 4.127 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.
- 4.128 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, 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.
- 4.129 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.

- 4.130 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.
- 4.131 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’.
- 4.132 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’²³⁶.
- 4.133 In addition, the GB Parliamentary Inquiry into *Online abuse and the experience of disabled people*²³⁷ 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’.
- 4.134 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’.
- 4.135 We therefore consider that the most appropriate legislative approach is to provide protection for equality groups under the

²³⁶ NI Commissioner for Older People (2019), [Crime and Justice: The Experience of Older People in Northern Ireland](#), p. 10.

²³⁷ Parliamentary Inquiry (2019), [Online abuse and the experience of disabled people](#).

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.

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.

- 4.136 We recommend gaps in protection under the Public Order legislation are addressed via the most appropriate and effective legislative vehicle.
- 4.137 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.
- 4.138 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.

Supporting rationale

- 4.139 There are clear gaps in protection under *The Public Order (Northern Ireland) Order 1987* compared to provisions which exist in GB.
- 4.140 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.

4.141 We note that this gap in protection is highlighted in the hate crime legislation 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 Ireland²³⁸.

4.142 It is also significant that, as made clear in the hate crime legislation 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 garden²³⁹. We 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.

4.143 The hate crime legislation 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 1997²⁴⁰) offences that exist in Northern Ireland²⁴¹.

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

4.144 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.

²³⁸ See Hate Crime Review Team (2020), *Hate crime legislation, Independent Review, Consultation Paper*, p213.

²³⁹ Ibid, at page 173.

²⁴⁰ Protection against Harassment Order 1997

²⁴¹ See Hate Crime Review Team (2020), *Hate crime legislation, Independent Review, Consultation Paper*, p217.

Supporting rationale

- 4.145 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.
- 4.146 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.

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.

- 4.147 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.

Supporting rationale - Need/Scope of defences

- 4.148 Whilst we recognise that there are arguments for²⁴² 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.
- 4.149 We note, for example, that subsequent to their introduction, the Law Commission in England and Wales in 2013, made clear,

²⁴² 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 .

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 interpretation²⁴³. 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 prosecuted²⁴⁴.

- 4.150 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 distinction between expressions that criticise homosexual practices, but which could be experienced as criticism of a homosexual person.
- 4.151 Further, we note that the consultation paper on the hate crime legislation 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’²⁴⁵.
- 4.152 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

²⁴³ Law Commission (2013), [*Hate Crime: The case for extending the existing offences \(2013\). Consultation Paper No 213.*](#)

²⁴⁴ 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’.

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 Tran's individuals.

- 4.153 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

- 4.154 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.
- 4.155 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 legislation 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.
- 4.156 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.
- 4.157 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 workplace²⁴⁶.

4.158 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 marriage²⁴⁷.

4.159 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'²⁴⁸.

4.160 In addition, as regards the defence of freedom of expression on sexual orientation that the legislation, for the avoidance of 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 hatred²⁴⁹²⁵⁰.

4.161 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.

4.162 We agree with the view of the hate crime legislation review team (2020), as regards this legislative change to the Public Order legislation introduced in January 2020, that it 'is

²⁴⁶ See ECNI (2016), [A Unified Guide to Promoting Equal Opportunities in Employment](#). See p.13

²⁴⁷ 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.

²⁴⁸ As set out in S29J of the POA 1986 Order.

²⁴⁹ Ibid.

²⁵⁰ 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](#).

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'²⁵¹.

- 4.163 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.
- 4.164 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
- 4.165 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 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 insulting²⁵².
- 4.166 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

- 4.167 As set out above, as regards the *defence of freedom of expression on religion* in England and Wales, we note that this

²⁵¹Hate Crime Review Team (2020), *Hate crime legislation, Independent Review, Consultation Paper*, para 11.21.

²⁵² 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).

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’.

4.168 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’²⁵³.

4.169 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.

4.170 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 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

4.171 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.

4.172 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

4.173 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

²⁵³ Law Commission (2013), [*Hate Crime: The case for extending the existing offences \(2013\), Consultation Paper No 213.*](#)

experienced, and intended as, criticism of a homosexual person'²⁵⁴.

Supporting Rationale - Content and Context

4.174 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.

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

Human rights obligations

4.176 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.

4.177 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'²⁵⁵.

²⁵⁴ Ibid.

²⁵⁵ Human Rights Council (2019) [Freedom of religion or belief. Report of the Special Rapporteur on freedom of religion or belief](#), A/HRC/40/58.

- 4.178 We also recognise that there is a need to balance rights of freedom of expression protected under human rights law with addressing hate speech.
- 4.179 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’²⁵⁶.*
- 4.180 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 circulation of homophobic leaflets in a school²⁵⁷; and the public display of a poster involving hostility against a religious group²⁵⁸.
- 4.181 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).
- 4.182 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

²⁵⁶ EHRC (2015), [Guidance: Legal Framework, Freedom of Expression](#), at page 3.

²⁵⁷ *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](#).

²⁵⁸ *Ibid*, *Norwood v the United Kingdom* (Application no 23131/03)

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 speech²⁵⁹.

- 4.183 In addition, guidance set out in the UN Rabat Plan of Action²⁶⁰, 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).
- 4.184 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 protection²⁶¹.

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

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

Supporting rationale

- 4.186 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*

²⁵⁹ UN CERD Committee (2013), CERD/C/GC/35, [General Recommendation 35 on combating racist hate speech](#).

²⁶⁰ 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](#).

²⁶¹ EHRC (2015), [Guidance: Legal Framework, Freedom of Expression](#), at page 6.

discrimination, hostility or violence shall be prohibited by law'²⁶².

- 4.187 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 race²⁶³.
- 4.188 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 offence²⁶⁴.

F: Sectarianism

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

- 4.189 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.

Supporting rationale

- 4.190 We consider that there is merit in including a specific reference to 'sectarianism' within the hate crime legislation.
- 4.191 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.
- 4.192 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

²⁶² International Covenant on Civil and Political Rights, Art 20.

²⁶³ UN Convention on the Elimination of Racial Discrimination (CERD) Article 4.

²⁶⁴ 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.

employment legislation, which outlaws sectarian harassment, though none of these provide a further definition of the term.

- 4.193 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.
- 4.194 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’²⁶⁵. A reference to sectarianism is in our view in keeping with the Executive’s clear focus on tackling sectarianism in the *New Decade New Approach* Framework.

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.

- 4.195 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.

Supporting rationale

- 4.196 We of the view that the following considerations are relevant to the question as to what are the indicators of sectarianism.
- 4.197 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’²⁶⁶).
- 4.198 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

²⁶⁵ UK Government, Irish Government, (2020), *New Decade New Approach*, at page 43.

²⁶⁶ 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’.

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.

- 4.199 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 prejudices, such as gender. For example, men are particularly vulnerable to sectarian hate crime²⁶⁷.
- 4.200 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.
- 4.201 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.
- 4.202 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 legislation²⁶⁸.
- 4.203 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

²⁶⁷ 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](#).

²⁶⁸ 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.

expression would risk capturing legitimate political speech, and conflict with human rights obligations on freedom of expression'²⁶⁹.

- 4.204 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 sectarian hate crime are compliant with the human rights legislation.
- 4.205 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.
- 4.206 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.
- 4.207 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'.
- 4.208 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.
- 4.209 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

²⁶⁹ See Hate crime review (2020) *Hate crime legislation, Independent Review, Consultation Paper*, at p. 239.

community background, should fall within the ambit of the hate crime legislation and should be considered as sectarian.

- 4.210 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.
- 4.211 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.
- 4.212 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.).
- 4.213 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 racism^{270 271}.
- 4.214 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 group²⁷². Clearly, political opinion is not a protected category within the hate crime legislation. We note,

²⁷⁰ 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.

²⁷¹ 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.

²⁷² 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.

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.

- 4.215 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 outside the workplace²⁷³. We recommend these gaps in protection are addressed out with the hate crime legislation.

G: Consolidation and Review of Legislation

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

- 4.216 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.

Supporting rationale

- 4.217 We consider that that there are clear benefits to the hate crime legislation being updated, harmonised and strengthened into a single piece of consolidated legislation.
- 4.218 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.
- 4.219 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

²⁷³ See ECNI (2014), [Race Equality law reform recommendations](#).

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.

4.220 We note Lord Bracadale in the Scottish review (2018) recommended the consolidation of the hate crime legislation in Scotland²⁷⁴. We further note that the draft *Hate Crime and Public Order (Scotland) Bill 2020* in Scotland proposes to consolidate the hate crime legislation in Scotland²⁷⁵.

4.221 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.

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.

4.222 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.

²⁷⁴ Lord Bracadale (2018), [Independent Review of Hate Crime Legislation in Scotland: Final Report](#), Scottish Government.

²⁷⁵ [Hate Crime and Public Order \(Scotland\) Bill 2020](#)

Supporting rationale

- 4.223 We consider that there cogent reasons in support of the Government undertaking a post-legislative review of legislative changes to the hate crime legislation.
- 4.224 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.
- 4.225 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.
- 4.226 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^{276 277}.

²⁷⁶ 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.

²⁷⁷ See [The Equality Act 2010 \(Gender Pay Gap Information\) Regulations 2017](#) , Section 16.

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.
- Supporting rationale**
- 5.3 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 UK²⁷⁸. For example, unlike in GB, there is *no* protection against age discrimination and harassment in the provision of goods, facilities and services.
- 5.4 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.
- 5.5 The Hate crime legislation review consultation paper²⁷⁹, recognises the barriers that individuals who experience multiple or intersectional discrimination face in bringing discrimination cases, due to the lack of single equality legislation in Northern Ireland.
- 5.6 There is a need to tackle prejudices that lead to both hate crime and discrimination, and having effective and robust equality

²⁷⁸ For further information see ECNI (2014), [Gaps in equality law between GB and NI](#).

²⁷⁹ Hate crime review (2020) *Hate crime legislation, Independent Review, Consultation Paper*, see para 8.90.

laws can help to combat prejudices and stereotypes against protected groups.

- 5.7 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 Committee²⁸⁰ (2019). In addition, the introduction of single equality legislation has been recommended by the European Commission on Racism and Intolerance (ECRI) (2019)²⁸¹. As regards its call to strengthen race equality legislation in Northern Ireland, ECRI, stated that whilst there was some progress in the right direction, it concluded that its recommendation has not been implemented.

²⁸⁰ 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.

²⁸¹ ECRI (2019), [Conclusions on the implementation of the recommendations in respect of the UK subject to interim follow up](#).

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, including in areas such as addressing under-reporting of hate crime, supporting victims of hate crime, improving outcomes, equality law reform, tackling prejudicial attitudes and stereotypes, and prejudice based bullying in schools.
- 6.3 There are also aimed at reforming the hate crime legislation, including in relation to the coverage of hate crime legislation as regards protected groups, the Public Order incitement to hatred offences, and sectarianism and the hate crime legislation.
- 6.4 We await the outcome of that review, and consider it essential that, following consideration of the hate crime legislation review team's recommendations, the Department of Justice (DoJ) takes forward revised and strengthened hate crime legislation as a matter of urgency.
- 6.5 We consider our 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.

Further Information

- 6.6 For further information, including our key point briefing and summary versions of this document, see <https://www.equalityni.org/HateCrimePolicy>

November 2020

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

- 7.1 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 anti-discrimination legislation on fair employment, age, sex discrimination and equal pay, race relations, sexual orientation and disability.
- 7.2 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 1998²⁸².
- 7.3 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).

²⁸² 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.