



Submission by Northern Ireland Women's European Platform on the consultation on hate crime legislation in Northern Ireland Hate Crime Independent Review

April 2020

Introduction

Northern Ireland Women's European Platform (NIWEP) welcomes the opportunity to contribute to this consultation process. NIWEP is a membership organisation of women's NGOs in Northern Ireland. Established as the Northern Ireland link to the European Women's Lobby, the EU's expert body on women's rights and gender equality, NIWEP also has special consultative status with the UN. A key role for NIWEP is ensuring women and girls are engaged in policy and decision making, as well as promoting gender responsive policy and decision making at local, regional and national level taking account of the state's international obligations.

NIWEP's core objectives involve raising awareness and promoting implementation of key international human rights treaties and initiatives, including the Convention on the Elimination of All Discrimination against Women (CEDAW). NIWEP views implementing the recommendations of CEDAW as a clear roadmap and mechanism to ensuring women's human rights are fully met and upheld in Northern Ireland. The comments in this response are made within this context.

CHAPTER 1

HATE CRIME: DEFINITION AND JUSTIFICATION

PART 1: DEFINITION

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

NIWEP would endorse the definition of hate crime set out by Barbara Perry and quoted in the consultation paper (p. 16-17). NIWEP believes it is essential to incorporate power relations into the definition, as this is a crucial aspect of hate crime; hate crime is typically perpetrated by people belonging to socially dominant groups, who specifically target people belonging to a socially disadvantage or less powerful group, due to their membership of that group. This is particularly important to understand in relation to gender: in population terms, women are not a minority, but are disadvantaged and face significant inequalities in all areas of life from employment and social protection to personal control of life and representation in public life. The root cause of this is

misogyny, a power structure and belief system that views women as inferior to men, which manifests in many forms including crime and violence against women and girls.

NIWEP would strongly recommend a specific reference to misogyny within the hate crime legislation to be developed for Northern Ireland. This would clarify and underline the power aspect of hate crime, and would ensure that spurious claims on the basis of gender can be avoided. It would also support intersectionality and assist with understanding the complex links across protected characteristics; for example, a woman may experience hate crime linked to race, religious belief and sexual orientation as well as misogyny. A trans woman may experience hate crime linked to both her trans identity and misogyny; evidence indicates that trans women are more vulnerable than trans men, and significantly more vulnerable than any other group to experience harassment and hate crime.

NIWEP also believes that an emphasis on power relations would assist with clarifying issues around online hate crime. The rise in online hate speech and its impacts are well documented within the consultation paper, and NIWEP believes it is essential to clarify the purpose of hate crime legislation and recognition of online hate crime within the definition. While NIWEP appreciates the discussion that a hate crime cannot exist if no 'non hate' equivalent exists, this does not take into account the power relations that fundamentally shape hate crime or the impact it has on people targeted. As implied in Chapter 1 of the consultation paper, hate crime has a deep impact on victims as it is personal in nature; individuals are not targeted at random but chosen because of a specific characteristic. Given that victims almost always also belong to less powerful groups, this significantly increases the likelihood that impacts on victims are long term in nature.

In addition, online hate speech and hate crime shape societal debate and affect social norms; recognising this in legislation is important in order to address the increasingly normalised practice. NIWEP welcomes the extended discussion of these aspects in Chapter 1 of the consultation paper, which clearly sets out the importance of hate crime legislation in relation to social norms.

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

Yes

No

NIWEP would recommend that the working definition is expanded to explicitly recognise the power relations inherent in hate crime, as outlined above. This could be achieved by expanding the definition for example as follows: "acts of violence, hostility and intimidation directed towards people because of their identity or perceived 'difference', *typically affected by power relations where people are targeted due to their status by people seeking to assert their dominant status*".

NIWEP would also welcome explicit mention of misogyny within the legislation, potentially in a sub clause providing clarification of the protected characteristics.

PART 2: JUSTIFICATION FOR HATE CRIME LAW

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

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

- Yes
- No

NIWEP supports the discussion within Chapter 1 of the consultation paper. It is important to note that the personal nature of hate crime deepens the impact on victims, and therefore this should be taken into account within the judicial process. However, as will be explained in more detail below, NIWEP does not believe that enhanced sentencing is a sufficient model for dealing with hate crime.

CHAPTER 6

OPERATION OF THE CRIMINAL JUSTICE (NO. 2) (NORTHERN IRELAND) ORDER 2004

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

- Yes
- No

The enhanced sentencing model is insufficient for hate crimes, as it does not appropriately reflect the hate motivation and the dynamics of hate crime, which is perpetrated because of a belief or attitude against a specific group. Raising the hate aggravation at sentencing stage fails to understand the inherent role of negative beliefs and attitudes in hate crime, and as such, the model does not sufficiently fulfil either the symbolic or practical function of legislation, and urgently requires amendment. As outlined in the consultation paper, the model also does not appear to work effectively, as enhanced sentences are passed down only infrequently.

On a practical level, the model has a number of key disadvantages, which are outlined in the consultation paper. Firstly, the model relies on barristers raising the issue at sentencing stage, and therefore requires well trained barristers and judiciary, which to date has not always been the case. In addition, it requires thorough case preparation

work by both the PSNI and CPS, which in turn is challenging in the context of limited resources. Secondly, it does not support appropriate record keeping, which is essential for development of appropriate measures both within and beyond the judicial system.

Question 6 – omitted as per guidance.

CHAPTER 7

OPERATION OF THE CRIME AND DISORDER ACT 1998 AND THE CRIMINAL JUSTICE ACT 2003 IN ENGLAND AND WALES AND THE MODEL IN SCOTLAND

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

Yes

No

NIWEP is broadly supportive of the statutory aggravation model, particularly as implemented in Scotland to enable attaching an aggravation to all offences. This would ensure that the hate motivation is integrated into the case from the beginning, strengthening focus on the power related dynamics of hate crime. It would also ensure that the hate motivation is recorded, enabling analysis at the population level as well as providing a record relevant for any repeat offences at the individual level.

However, NIWEP also believes that stand alone offences should be considered as a longer term option to effectively address the dynamics of hate crime, both in terms of a practical and symbolic response.

NIWEP would like to highlight the response made by our sister organisation Engender, and partner organisations, with regard to the Scottish hate crime review. These organisations are in favour of a stand alone offence of misogyny rather than a statutory aggravation model, on the basis that the aggravation model has proven ineffective where gender has been included, and that the model also fails to understand how misogyny fundamentally affects crime against women¹. NIWEP appreciates that development of such an offence, as well as potential other standalone offences, requires time and care to ensure it functions effectively and does not dilute a comprehensive hate crime legislation. However, NIWEP would welcome consideration of a stand alone offence as a means of providing a judicial measure for tackling the most serious instances of misogyny.

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

¹ Engender (2019) [Making women safer in Scotland: the case for a standalone misogyny offence](#)

NIWEP believes that enhanced sentencing should be removed from hate crime legislation in Northern Ireland, if the statutory aggravation model is introduced. The statutory aggravation model provides a stronger approach to addressing the core issue of hate crime, which is the attitude or belief underpinning offending. It also provides a more systemic approach as it reduces the onus on individual barristers to take action.

However, both models rely on well trained professionals from PSNI through to CPS, prosecuting barristers and judiciary. While NIWEP appreciates this is outside the scope of the review, NIWEP believes it is important to stress that capacity building and professional development across the system is critical for the effective implementation of legislation. As outlined in the consultation paper, it is currently common for the hate element to be dropped, which undermines the legislation and reduces confidence of victims, as well as less powerful groups in society in general.

This highlights the issue of evidence and proof, which is addressed throughout the consultation paper. The current system frequently leads to 'he said, she said' situations that make it difficult in particular for juries to objectively assess the offence, leaving significant room for interpretation that will inevitably be affected by personal beliefs of jurors, and even officers and CPS case handlers at the preparation stage. NIWEP would welcome a revision of the wording in the legislation that removes the focus on verbal exchanges immediately preceding the event, in favour of a broader approach that emphasises power relations and beliefs shaping the defendant's actions at the time of the offence. This is again particularly important with regard to gender and also gender identity, as misogyny is normalised in society and therefore must be specifically uncovered and highlighted in the judicial process. For example, it is important to enable exploration of the motivation behind misogynistic – as well as racist, homophobic or transphobic - expression, to ensure the 'heat of the moment' defence cannot be used.

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

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

Yes

No

The NIWEP response to both questions is Yes.

Guidelines for sentencing are essential to ensure consistency in sentences, across protected characteristics. Guidelines also provide a vehicle for setting out the rationale for this, contributing to a shared understanding across the criminal justice system and therefore strengthening the capacity of the system to implement the legislation effectively.

NIWEP also supports a requirement to state in open court how the aggravation altered the sentence. This contributes to vital transparency, and provides a vehicle for recording and monitoring the implementation of the legislation. It can also contribute to confidence among less powerful groups regarding the legislation and reporting crime.

CHAPTER 8

PROTECTED GROUPS - SHOULD ADDITIONAL CHARACTERISTICS BE ADDED?

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

Yes

No

NIWEP supports the inclusion of gender in hate crime legislation in Northern Ireland. As outlined in relation to question 1, women in Northern Ireland (and beyond) are routinely subjected to crime and harassment, which is based on misogyny and thus rooted in power structures and specific beliefs about women's role in society. Examples are developed in the consultation paper, which demonstrates a clear understanding of the issues women face as part of everyday life. It is also important to note, as stated in the consultation paper, that this violence extends to the online sphere, with women more likely to be targeted by online hate. Women of colour are most likely to be targeted by online hate, further highlighting how intersectionality affects women.

Including gender in hate crime legislation would provide a critical means of addressing acts of hate that amount to crime, and would provide a significant legal signal that misogyny is not acceptable. At the practical level, this would also provide the mechanism and tools required to address gendered hate crime. Importantly, it should be noted that gender based violence, while also rooted in misogyny, is different from hate crime and inclusion of gender in hate crime legislation will therefore not dilute this legislation. For example, hate crime will more typically be perpetrated by someone not known to the victim, while domestic abuse by its very definition is perpetrated by someone well known to the victim and has different ramifications.

However, NIWEP is cognisant of concerns that inclusion of gender on its own could be used subversively, to make claims of hate crime by women against men. Therefore, NIWEP would urge that the wording in the legislation specifically includes misogyny, to clarify the intention of the legislation. In particular, NIWEP would welcome reference to power relations, as highlighted in relation to question 1, as this would go even further towards clarifying the intention of the legislation to protect groups facing hate crime and hate speech due to their lower power and social status. NIWEP would also urge for inclusion of intersectionality in the definition, to indicate a clear understanding that individuals may experience hate crime due to a number of (protected) characteristics

they possess, and that intersectionality increases vulnerability. For example, a woman of colour wearing a particular type of dress influenced by her culture or religion, who also is disabled and lesbian or transgender, is at significantly greater risk of hate crime precisely because these characteristics are perceived as indicative not only of difference, but of lower social status.

NIWEP **does not** support inclusion of gender identity as a protected characteristic. As developed under Q12, NIWEP believes this is not required if trans identity is included as a specific category, as this would cover the central issue more comprehensively. Meanwhile, inclusion of gender identity could be interpreted as creating a hierarchy of identity, where trans identity might be understood as a lower category. This would be unacceptable in light of current equality provisions, which specifically protect trans identity.

Obligations on the UK in international human rights law

NIWEP would like to highlight that as a State Party to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)², the UK has an obligation to protect women from all forms of discrimination, including gender based violence. This is clearly stated throughout the Convention, and highlighted in Articles 1-3, which emphasise the obligation on states to introduce legislation that prohibit all forms of discrimination of women and protect women from 'any act of discrimination' (Article 2). In addition, Article 5 introduces an obligation to act on gender stereotypes, which are relevant in the context of misogyny and hate crime in that misogyny is based around specific gender stereotyping, which often informs how perpetrators of hate crime choose their victims. In its Concluding Observations on the examination of the UK in 2019³, the CEDAW Committee expressed concern regarding the inadequacy of legislation and policies in Northern Ireland to protect women from gender based violence, and recommended that the State Party adopt legislative and comprehensive measures to address the situation. The Concluding Observations also include a recommendation relevant to all jurisdictions in the UK to take action on sexual harassment of women and girls in public places, workplaces and educational institutions.

The CEDAW General Recommendation 35⁴ on gender based violence provides further guidance on action required by State Parties to protect women and girls. This includes strengthening legal measures, including sanctions, as well as civil remedies. The General Recommendation also highlights that violence and harassment is increasingly perpetrated in the online sphere, and that action is required to protect women and girls.

UN Security Council Resolution 1325⁵ on women, peace and security, for its part, recognises the gendered impacts of conflict and includes protection as one of its four pillars. The UK government has stated that it is committed to implementing the principles

² [CEDAW](#) 1979

³ CEDAW Committee (2019) [Concluding Observations on the 8th periodic report of the United Kingdom of Great Britain and Northern Ireland](#)

⁴ [CEDAW General recommendation No.35](#) on gender-based violence against women, updating general recommendation No.19, CEDAW/C/GC/35, July 2017

⁵ [UN Security Council Resolution 1325](#) 2000

of UNSCR 1325 in Northern Ireland, and therefore these principles are relevant. Among its provisions, this Resolution puts an onus on member states to ensure that women and girls are protected from violence. This may be particularly relevant in relation to issues of sectarianism.

The Istanbul Convention⁶ further creates an obligation for states to take action on violence against women and girls, including domestic, sexual and gender based violence. The Convention, which is designed to set comprehensive standards to protect women and girls from gender based violence, has a strong focus on prevention and protection, and puts an onus on states to put in place practical, concrete services as well as appropriate legislation. The Convention is yet to be ratified in the UK, although moves towards ratification have been taken at Westminster level. The CEDAW Concluding Observations 2019 also urge the State Party to ratify the Convention without delay.

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

Yes

No

NIWEP supports the TransgenderNI position and believes that transgender identity should be its own protected category under hate crime legislation in Northern Ireland. This would ensure that trans identity is unambiguously protected and avoid creating any suggestion of gender hierarchies, as outlined above. It would also enable a clear rationale for protection to be set out in legislation, and thus provide an important symbolic message. On a practical level, a specific transgender identity category would enable taking account of issues such as protecting the identity of victims where required, and provision of guidance for enforcement agencies that supports accessible and sensitive approaches to reports of transgender hate crime. At present, as outlined in the consultation paper, underreporting of hate crime towards trans people is high as victims are concerned about how a complaint may be handled, including potential media reporting of trials. A clear legislative approach could contribute to addressing this, while also strengthening confidence that complaints will be handled appropriately.

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

Yes

No

Intersex status is different from gender and transgender identity, as it concerns a biological characteristic of a person and typically is focused on an external observation, as opposed to an internal experience. However, individuals may experience significant

⁶ Council of Europe [Istanbul Convention](#) 2011

impacts as a result of their intersex status, notably psychological impacts relating to decisions being made about their bodies without their consent or contribution. NIWEP supports the Transgender NI position that intersex status should be included in hate crime legislation as its own specific category.

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

Yes

No

NIWEP does not take a specific position on whether age should be included as a protected characteristic. The evidence base regarding hate crime relating specifically to age as a characteristic is unclear, and it appears that the underlying issue relates to exploitation of perceived vulnerability rather than hate per se. However, it is clear that this in itself is a significant issue that does require legal attention. Elder abuse has been highlighted by agencies working with older people for a considerable time, and there is currently limited legal provisions for addressing this. A specific stand alone offence of elder abuse, linked to equality legislation rather than hate crime, may nevertheless be a more effective means of addressing this issue.

With regard to young people, the evidence base regarding a hate motivation is also unclear. There is no doubt that harassment, bullying and online abuse of young people are serious and common occurrences, but it is not clear that age itself is a motivation; rather, it appears that targeting often follows from other characteristics, such as gender, transgender identity, religion, disability or sexual orientation. Up to two thirds of girls and young women have experienced street harassment, and it is conceivable that age increases this vulnerability, but it may be more effective to deal with hate crime and harassment of this kind under the specific characteristic it relates to. Alternatively, further evidence on specifically age motivated hate crime would need to be gathered and reported incidents monitored for such a motivation.

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

Yes

No

NIWEP does not take a specific position on this issue. There is clear evidence that many individuals and groups face crime and harassment due primarily to disadvantage and low social status, who include homeless people as well as substance users and (some) older people. In NIWEP's perspective, it is this low social status that creates vulnerability for these individuals and groups, and therefore does recognise a rationale for including a statutory aggravation covering targeting people with low social status or low power ; this terminology would be preferable to vulnerability, in line with the call in Q1 for emphasising

the influence of power dynamics in the legal definition. However, NIWEP also recognises the risk of diluting the legislation, as outlined in the consultation document and appreciates that alternative measures such as standalone offences may be more effective.

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

Yes

No

See response to Q15.

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

Yes

No

This response should be read in conjunction with Q15 above. NIWEP believes that migrant status should be considered as an additional new characteristic. The core rationale for this is that the characteristics of religion and race do not cover all migrants; in particular migrants from European countries typically fall outside these categories. However, particularly in the context of the exit of the UK from the European Union there are increasing examples of how these migrants are increasingly perceived in a different light, and are at risk of being targets of hate crime due to overall xenophobia and/or mistrust of people not originally from Northern Ireland. A key example would be attacks that have occurred on people of Polish background or their homes, based on their perceived 'foreignness'. It might be possible to cover this as a sub characteristic of race, although it is important that protection of race in itself is not diluted.

A second characteristic that should be considered for protection is people involved in prostitution. This is a very low social status group, which is frequently targeted due to the perception of the activity as socially outcast or immoral; individuals within the group may have additional characteristics that further disadvantage them, including substance use. People involved in prostitution are also reluctant to report hate crime, as there is a perception that complaints will not be processed appropriately. NIWEP takes the position that prostitution constitutes violence against women; however, on this basis NIWEP also holds that people involved in prostitution require protection and support, particularly where an individual is seeking to exit prostitution.

It may be appropriate to term the characteristic more generally in order to both avoid stigmatising individuals and unintentionally excluding any groups; for example, the characteristic might be termed ' . Alternatively, this could be specified as a group covered under a victim vulnerability/exploitation of vulnerability/low social status characteristic, should this be considered.

Intersectionality

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

Yes

No

NIWEP strongly recommends that intersectionality is an important factor to be taken into account in any new hate crime legislation. As outlined above under Q1 and Q11, intersectionality is the day to day life experience of many people. Women are specifically affected due to the pervasive nature of misogyny, which means that intersectionality disadvantages women even further than men; a disabled woman of colour, for example, faces significantly more inequalities and is at greater risk of hate crime than a disabled man of colour. Trans women of colour are among the most vulnerable to hate crime due to the combination of characteristics; many trans women are in addition disabled, and may face additional risk in this way.

Intersectionality is, in short, an important factor in hate crime legislation, as it allows for a more comprehensive understanding of the dynamics of hate crime, and better scrutiny of the multiple prejudices and factors that together shape offending and targeting of individuals. Including intersectionality would, as outlined in the consultation paper, also allow for improved monitoring of hate crime and hate incidents, creating a better understanding of the dynamics of hate crime in Northern Ireland in general. It is clear that the judicial system is only part of the response to such prejudice and hate, but improved understanding and statistics would also enable a more comprehensive response from other actors and stakeholders, from the education sector to communities themselves.

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

NIWEP believes it is critical that under any new legislation, it is possible to refer to more than one protected characteristic in any indictment or summons. NIWEP would support the 'multiple hostilities' option outlined in the consultation paper, as this would enable the courts to deal with intersectionality throughout the trial. This is important to enable the judge and jury to understand the dynamics of intersectionality, which is central to a comprehensive legal process. While NIWEP recognises the practical issues that may arise at sentencing stage, NIWEP believes that it should be possible to identify solutions, such as potentially identifying a leading motivation that can be proven, with the intersectional element recorded in the judgement for the purposes of record keeping and stronger understanding.

CHAPTER 9

TOWARDS A NEW HATE CRIME LAW FOR NORTHERN IRELAND

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

Yes

No

As outlined under Q3-4, NIWEP does not support the enhanced sentencing model as the core provision for dealing with hate crime, as it offers limited potential for understanding the dynamics of hate crime during the trial. However, should this be retained, NIWEP believes it is essential to amend the provision so that convictions are recorded on the criminal record viewer. This is important above all for monitoring of how the legislation is implemented, but also for strengthened understanding of the problem in Northern Ireland and developing policy responses to addressing prejudice and hate at a more general level.

At a practical level, it is important for identifying patterns in the case of reoffending, which is critical for dealing appropriately with repeat offenders. In addition, having access to such information is relevant to potential employers and volunteer hosts, where an individual is seeking employment or volunteering that requires vetting for work with vulnerable individuals.

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

Yes

No

As outlined in response to Q3-4, NIWEP strongly supports the introduction of a statutory aggravation model of hate crime. NIWEP supports the argument developed in the consultation paper, and believes that the aggravation model enables a much more comprehensive and system wide approach to hate crime. It is particularly important to introduce the hate element from the outset in order to enable the judge and jury to more fully understand the dynamics of hate crime, in that offending is typically motivated by a deep seated belief or attitude, rather than the hate element being an 'add on'.

NIWEP would particularly support the introduction of the statutory aggravation model as implemented in Scotland, where an aggravation can be introduced to any offence. This would enable a more comprehensive approach to dealing with hate crime, as it would

allow a hate element to be included with any offence and thus more fully reflect the full gambit of offending motivated by hate, which ranges from relatively low level crime to serious crime including grievous bodily harm and beyond.

NIWEP supports the proposed amendments to the 2004 Order, although as will be outlined more fully below, NIWEP would recommend a consolidated piece of legislation to enable a comprehensive but more streamlined and practical approach to implementing the legislation.

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

Yes

No

NIWEP believes that clearly stating on conviction that the offence was aggravated is essential for monitoring the implementation and operation of the legislation. In particular, recording this will enable scrutiny of how courts approach the issue, and will support the development of capacity building and policy responses, should they be required.

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

Yes

No

See question 22; the same arguments apply here.

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

Yes

No

This would be critical for the effective operation of the legislation, as the purpose of the aggravation is to influence the sentence. NIWEP believes that clear sentencing guidelines would be helpful to the courts assist in determining the appropriate sentence, as these would provide a basis for consistent sentencing. Sentencing guidelines could also set out clear principles for how to deal with the aggravation, which would create transparency and clarity for all stakeholders.

QUESTION 25 (Part 1):

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

Yes

No

This is important for the transparent and effective implementation of the statutory aggravation model, and the reasoning is important for scrutiny of how the legislation is operating and understood by the courts. There is also an important public function in that this demonstrates how hate crime is addressed by the courts, which can act to strengthen confidence in particular among groups with protected characteristics that the legislation is being taken seriously.

QUESTION 25 (Part 2):

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

Yes

No

The reasoning above under Q25 Part 1 applies also to this question. Clearly stating the reason for no difference is essential in the interests of transparency and openness, and for facilitating scrutiny of how the legislation operates.

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

Yes

No

See response to Q20 – the same arguments apply here.

CHAPTER 10

ADEQUACY OF THE CURRENT THRESHOLDS FOR PROVING THE AGGRAVATION OF PREJUDICE

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

Yes

No

NIWEP supports the introduction of the ‘by reason of’ threshold. NIWEP believes that this would strengthen the ability of the legislation to respond to the power dynamics of hate crime, and enable a stronger understanding of these dynamics within the judicial system. As outlined in previous questions, NIWEP understands hate crime as motivated by power structures and deep set beliefs and attitudes about a population group, and therefore perpetrators in many cases target victims ‘by reason of’ their membership of that group, rather than specifically targeting an individual. An example of this is misogynistic crime and harassment aimed at women in the street; women are targeted due to their gender, rather than any individual attribute. NIWEP also believes that the introduction of such a threshold would enable successful conviction in cases that previously have been dismissed, due to the specificity of thresholds (a) and (b). While it is important to ensure each case meets relevant thresholds, as outlined in the consultation paper both thresholds (a) and (b) are in practice difficult to prove, while especially threshold (a) enables a ‘heat of the moment’ defence, which does not take account of the power dynamics outlined above.

It would be helpful to include a clear reference to power structures and dynamics in the legislation, to ensure effective functioning of this threshold.

With regard to the concern noted that the ‘by reason of’ threshold might be too broad in relation to gender and potentially be seen as encompassing all cases of domestic violence, NIWEP would like to reiterate comments made under Q11. Specifically, domestic violence is perpetrated by an individual against another individual closely related or known to them. This, while also rooted in misogyny, introduces a different dynamic, which is particularly characterised by its ongoing and persistent nature. Hate crime is different in that it can be perpetrated by an individual unknown to the victim, and often is less persistent and pervasive in nature. The view of NIWEP is that domestic violence cases can be specifically identified as falling outside hate crime legislation, without risk for diluting either body of legislation. This could be achieved for example through specific wording in the legislation setting out the critical differences.

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

Yes

No

NIWEP believes there should be a third threshold, to take into account cases where a hate element is evident but where thresholds (a) and/or (b) are not met or not applicable. It may be relevant for sentencing guidelines to clarify whether sentencing should differ depending on which threshold has been met and in what manner. However, it should be noted that there is not necessarily a hierarchy in relation to harm caused by each threshold: threshold (a) ‘demonstration of hostility’ immediately before or during the act may conceivably be less harmful to the victim than being targeted simply ‘by reason of’ belonging to a certain group. In particular, the latter can contribute to the entire group feeling unsafe, with significant mental health impacts on many individuals and with social impacts on the group as a whole, as it highlights that anyone can be targeted simply by reason of being a woman, gay person, disabled, etc. For this reason, introduction of a third threshold also serves as a clear message at the symbolic level that all protected groups have a right to feel safe in society.

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

Yes

No

NIWEP believes that a statutory definition should be given to provide clarity for all stakeholders and certainty within the judicial process.

NIWEP believes that any definition of hostility should include a wide range of attitudes including bias, prejudice, bigotry and contempt. This is important particularly in order to provide a clear basis for utilising the proposed ‘by reason of’ threshold in practice.

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

Yes

No

NIWEP believes that an expanded definition is required to create clarity and underpin a strengthened understanding of the dynamics of hate crime and the power structures and belief systems that underlie offending.

CHAPTER 11

STIRRING UP OFFENCES

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

Yes

No

NIWEP believes that equivalent provisions should be added to any new legislation dealing with hate crime. This is important to provide a consistent approach across the jurisdictions within the UK, which is essential both from a practical perspective of implementing legislation and at the symbolic level of signalling that social norms do not differ across the jurisdictions. The provisions in Sections 4, 4A and 5A also provide improved protection for victims and potential victims, and therefore serve to strengthen hate crime legislation in Northern Ireland.

NIWEP would be particularly keen to see consideration of how these provisions could be used to strengthen action taken to address harassment of women and pregnant people accessing abortion clinics – see a further discussion under Q35 below.

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

Yes

No

NIWEP believes that this defence is unnecessary and also inappropriate in a modern world, where online communication is increasingly the norm. While the original motivation of the defence can be understood as a protection of freedom of expression, if used as a defence in relation to online communication this provision would result in perverse consequences in the modern context.

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

Yes

No

As above, NIWEP believes this provision to be outdated and redundant in a modern context. Such a requirement is likely to both act as a deterrent for taking cases and to

slow the process down, and there appears to be no justification for this in a modern and transparent judicial system. There is also a risk that retaining the provision leads to concerns or accusations about less than objective judgement, which is unhelpful for the effective functioning of the judicial system. Clear guidelines relating to prosecuting offences, with an appeal process that may well involve the Attorney General, would appear sufficient to meet the threshold of ensuring the case is in the public interest and has merit.

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

Yes

No

The term ‘hatred’ is a very high bar. The use of such a high bar also means that many cases do not meet the threshold, although the hallmarks of a stirring up offence have been met. Therefore, it would be appropriate, in the context of reviewing the legislation, to update the test to ensure it enables the effective implementation of the spirit of the law. This would have the important function of making the legislation fit for purpose, rather than setting such a high bar that prosecutions are rare and successful prosecutions even rarer, which at the symbolic level may be understood as a right or permission to stir up hatred. The purpose would not be to dilute the legislation, but to ensure that successful prosecutions can be brought for cases where the relevant criteria have been met.

Hostility is a preferable term that encompasses the relevant terms also proposed in relation to Q29-30 above. Using the same definition would also serve to create consistency and clarity, enabling the judicial process to function in a more streamlined and effective manner.

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

Yes

No

NIWEP believes that it logically follows that any new groups included in protected characteristics should be included under the groups protected by the stirring up provisions. This would ensure a consistent approach, and would serve as a clear message to those groups that they are protected from this type of crime as well as other types, while indicating to society that such protection is warranted and provided.

Specifically in relation to stirring up offences, NIWEP would recommend that consideration is given to specifically addressing harassment of women accessing

abortion services, which are legally provided for since March 2020. The issue of such harassment was addressed in the Inquiry taken under Article 8 of the Optional Protocol to CEDAW⁷, which included action on anti abortion groups that harass women accessing family planning and abortion clinic. Recommendations included establishing exclusion zones at clinics, or alternatively creating a harassment provision to deal with this.

Currently, women and pregnant people in Northern Ireland must rely on Protection from Harassment legislation in these circumstances. However, this provision is not adequate as it requires harassment to occur on at least two occasions, and it is therefore easy for groups and individuals harassing women at these clinics to regulate their behaviour in ways that ensure this threshold is not met. It appears that this situation could be addressed through updated legislation in relation to stirring up offences.

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

Yes

No

This defence is not necessary and it is not entirely clear why it has been introduced. The threshold for a criminal act will not be met by regular comedy or satire expressed in the media, and therefore the provision does not infringe on freedom of expression. However, including a freedom of expression defence could allow serious crime within society at large to go unchecked; for example in relation to encouraging homophobic or Islamophobic crime.

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

Yes

No – repealed

In light of legislative change on same sex marriage in January 2020, this provision should be repealed. IT should be noted that repeal would not prevent debate, as the vast majority of regular social debate does not meet the threshold of stirring up offences.

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

⁷ CEDAW (2018) [CEDAW Inquiry concerning the United Kingdom of Great Britain and Northern Ireland under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women](#), CEDAW/C/OP.8/GBR/1

threatening, abusive or insulting” or should the words “abusive” or “insulting” be removed from the test for the commission of the offence?

Yes

No

The test is appropriately high as at present. Removing references to ‘abusive’ or ‘insulting’ would raise the bar so high that many cases would fall short of the threshold, while nevertheless meeting the hallmarks for hate speech offences. This would increase the risk that serious hate speech goes unchecked, with potentially significant impacts on the groups targeted. Further guidance and clarification regarding how and when to prosecute may be useful to ensure that relevant freedom of expression is safeguarded as provided for in the EHCR. However, it is important that the legislation is not too stringent in that a freedom of expression defence can be mounted in cases that have the demonstrable impact of stirring up hate.

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

Yes

No

The existing provisions are sufficiently flexible to protect freedom of speech. In the context of growing hate speech, especially online, it is important to ensure an effective legislative approach to tackling this. Introducing additional freedom of speech provisions could unnecessarily complicate such an approach, while reducing the redress available for victims.

CHAPTER 12

ONLINE HATE SPEECH

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

Yes

No

NIWEP agrees with the argument developed in the consultation paper regarding the responsibilities and obligations of social media companies. This is important in order to set a clear standard regarding acceptable conduct online, which may be more effective

when issued by a private sector actor, rather than the state. In addition, a legal requirement to do this would strengthen companies' duty of care by towards customers and service users. However, NIWEP believes that a provision, if implemented, must be a clear regulatory regime with clear roles, responsibilities and sanctions, rather than a voluntary code of conduct. Evidence from current practice highlights the limitations of a voluntary code of conduct, which in addition often is open to interpretation. As an example, this approach has led to systematic trolling and abuse of women politicians going unchecked, while in other cases accounts have been closed down following a one off incident in a relatively low level setting.

A key caveat would be that clear guidance on implementing the duty, including a definition of 'offensive' would be required. This is important to enable an appropriate level of social debate and critique, while safeguarding protected groups.

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

Yes

No

It is clear that the existing Protection from Harassment legislation in Northern Ireland is insufficient, particularly in an increasingly online world, and requires updating. This legislation makes provision for harassment in what now amounts to a relatively limited set of circumstances, and also does not refer to hate. NIWEP believes that the experience from England and Wales highlights a potential way forward for legislation in Northern Ireland, in particular in relation to providing a clear framework and a 'ladder' of offences that could be integrated in legislation. However, NIWEP agrees with the argument in the consultation paper that further updating and amendment of legislation is required to ensure there is sufficient understanding of and reference to the online environment, as opposed to a focus on the public order element that is now to a significant extent outdated.

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

Yes

No

NIWEP would reiterate the position set out in relation to Q32. NIWEP believes that the dwelling defence is redundant and outdated, and should therefore be removed. In the context of online communication, in particular, such a defence risks creating perverse consequences, as content created within a private dwelling can easily be shared and accessed anywhere in the world. As outlined in response to Q44, genuinely private conversations will not be shared, and will therefore not meet the threshold for online hate speech. In addition, in the modern context private online conversations can take place

outside a dwelling – for example in an entirely public place such as a café - and therefore the dwelling defence would not apply, unless stretched significantly beyond its original purpose.

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

Yes

No

Including a provision for ‘posting or uploading material online’ is essential to ensure legislation is fit for purpose in the modern context and online hate speech can be dealt with effectively within the legislation.

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

Yes – with very clear criteria

No

NIWEP takes the issue of privacy seriously, and is cognisant that in some cases privacy protection is essential for the safety and security of individuals, such as in relation to domestic violence victims or for individuals or groups facing oppression. It follows, then, that legislation should not go as far as criminalising all conversations, if they are genuinely private. However, clear criteria need to be set out for what constitutes a private conversation; NIWEP believes that this should be limited to conversations between two or at most a very small group of individuals that are not shared beyond the group and are explicitly intended for the group only. In particular, it is essential to ensure that so called ‘private’ groups on social media are not included, as they can involve large groups of people and thus cannot be categorised as ‘private’ in the strictest meaning of the word. Such groups are, in addition, commonplace fora for people with extreme views of many types, and therefore act as fruitful breeding grounds for spreading hate.

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

Yes

No

NIWEP would like to reiterate the response to Q35 and state that inclusion of any new protected characteristics under the Order 1987 would be entirely logical and ensure consistent application of any new legislation.

NIWEP would also like to emphasise that women and trans people are more likely to face online hate, with significant and serious consequences to the mental and physical wellbeing and safety of affected individuals and an overall sense that women are an acceptable target for online hate simply by reason of being women. NIWEP is pleased to see recognition of this serious inequality in the consultation paper. Therefore, it is essential that protection for these characteristics is extended to online hate.

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

- Yes
- No

As noted in relation to previous questions under this section, most legislation with harassment and threatening behaviour including the Malicious Communications (Northern Ireland) Order 1988 was passed before the advent of the Internet and online communication, and is therefore not equipped to deal with offending in an online context. Adapting the Order to deal with online behaviour is essential to ensure online hate can be addressed effectively. The Order also provides a means for dealing with threatening behaviour not addressed in other legislation, such as revenge porn.

However, NIWEP is concerned that the existing legislation is a complex patchwork of primary and secondary legislation, and would support consolidation of relevant legislation into a single piece of legislation that would create transparency, clarity and certainty within the process.

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

- Yes
- No

NIWEP agrees with the discussion developed in the consultation paper regarding the outdated nature of the MCA 1988 and CA 2003. There is no doubt that the legislation requires updating, particularly as the MCA currently focuses on physical messages and threats, which is not helpful in a context of online hate. NIWEP also recognises the difficulty with the terms used, and the tendency to interpret these narrowly; the difficulty is clearly compounded by the provision of ECHR that permits offensive communication as such. However, particularly in the context of online hate targeted at women it is important that the wording is sufficiently broad to cover the multiple forms of abuse women experience, from name calling to attempts at tarnishing their person or career. Therefore, NIWEP would support a review of the legislation and a review of the terminology, but not a narrowing of their interpretation to focus solely on threatening

behaviour, as the majority of hate speech online will then fall outside the scope of the legislation.

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

Yes

No

It is noted above that the MCA provides a kind of ‘catch-all’ legislation, which can be used where other legislation does not apply. This has value in ensuring offensive and malicious communication such as revenge porn can be addressed, and NIWEP welcomes the increasing number of prosecutions under this legislation. However, NIWEP recognises the argument made in the consultation paper regarding too broad and vague offences. NIWEP would support modification of the offences to ensure the provisions are clear and offences can be successfully prosecuted.

A review of the legislation is also required to ensure enforcement agencies and in particular the PSNI can effectively address offending, including online offending.

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

Yes

No

As indicated in response to questions within this chapter, NIWEP believes it is essential that online harm should be part of a general law applying to hate crime. It is particularly important to focus on the concept of harm, as this is likely to support and inform effective implementation of the legislation throughout the process from reporting to a potential trial. Enforcement agencies, as well as CPS, judges and juries, need a clear understanding of the harm caused by online hate, to avoid the risk of falling back on the old and outdated adage of ‘sticks and stones can break my bones, but words can never hurt me’. As recognised in the consultation paper, the harm of online hate can be significant in particular in terms of the mental health and wellbeing of targeted individuals, but goes beyond this in creating a sense that the online world is unsafe for people from many groups (including women, trans people, disability activists, and so on, who are increasingly treated as ‘fair game’ on social media). Including online harm in hate crime legislation goes towards shaping a social norm indicating that online abuse and harm will not be tolerated, therefore providing an important symbolic social function as well as a concrete practical tool for dealing with offending.

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

Yes

No

The current law, as highlighted in the consultation paper, is outdated and sometimes contradictory, and this situation is compounded by the patchwork nature of applicable legislation. While NIWEP supports freedom of expression in principle, and appreciates the position of the ECHR, this also adds complexity in that it does not clearly delineate between acceptable and unacceptable offensive expression. NIWEP would strongly support clarification of the law, in a way that enables the PSNI as well as the CPS and the courts to effectively deal with offending. In particular, it would be helpful to include a clause in the legislation, or alternatively guidance to support interpretation on what is understood in Northern Ireland as offensive but acceptable expression, and what goes beyond this.

CHAPTER 13

SECTARIANISM AND HATE CRIME LEGISLATION IN NORTHERN IRELAND

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

Yes

No

NIWEP believes that specifically naming sectarianism in any new hate crime legislation is essential as a means of addressing a still significant phenomenon in Northern Irish society. The issue goes, as outlined in the consultation paper, beyond religion and encompasses elements of nationality and political belief, and therefore a specific category to deal with the issue fully is required. This is important in order to deal with offending, and also to contribute to dealing with the legacy of the conflict and developing a future Northern Ireland.

Women are affected in specific gendered ways by sectarianism, and this is an important aspect of the intersectional experience of women living in Northern Ireland. Addressing sectarianism specifically would contribute to protecting women, and would also support

the development of new policy responses to the issue. In addition, it would be consistent with the principles of UN Security Council Resolution 1325 on women, peace and security.

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

Yes

No

As indicated above, NIWEP agrees with the argument in the consultation paper and the arguments made by McVeigh that sectarianism goes beyond religious belief and political opinion into nationality, descent and so on. Expanding the list of indicators would be wholly appropriate as a means to fully and effectively dealing with sectarian hate crime in any new hate crime legislation. It would also be consistent with current equality legislation in Northern Ireland.

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

Yes

No

NIWEP believes the law should be both strengthened and clarified. The legal position in this regard is currently unclear, and therefore tackling hate expression in public space is not resourced appropriately by public authorities, leading to unacceptable material being on public display for all, including vulnerable groups such as survivors and children. Strengthening the duties of public authorities would enable such authorities to more appropriately deal with the issue and ensure such expression is curtailed more effectively than at present. It would also provide a means for dealing with potential concerns regarding retribution or difficulties if material is removed.

**CHAPTER 15
RESTORATIVE JUSTICE**

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

Yes – with very clear criteria

No

NIWEP welcomes the discussion on restorative justice in the consultation paper. This approach does provide an alternative to prosecution, which may be appropriate in some

specific instances including low level crime and crime involving young or naïve perpetrators. In Northern Ireland, there has been some success with restorative justice, although further evaluation and potentially wider piloting is required to assess the full potential of the approach, particularly in the context of hate crime.

NIWEP would support the inclusion of restorative justice as part of the criminal justice process, but not as a separate system. Clear criteria should be established on when and where restorative justice may be considered, potentially with a hierarchy of steps to be taken and considered, including steps to be taken if an acceptable outcome is not reached in this manner. Above all, it is critical that restorative justice does not become an 'automatic' means to escape prosecution, or lead to a situation where it is viewed as 'the easy way out' for 'insignificant offences'. The approach must also be victim led, and ensure victims are able to make the decision whether restorative justice is appropriate in their case. This is essential to avoid victims being pressurised into accepting the approach by perpetrators or their representatives who are seeking to avoid prosecution in open court.

NIWEP would also welcome inclusion of a criterion that the perpetrator is capable of learning and benefitting from restorative justice, more profoundly than in terms of escaping prosecution and potentially conviction. This would ideally include a test of some kind, and monitoring over time to assess the effectiveness of the approach.

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

- Yes
- No

NIWEP believes placing restorative justice schemes on a statutory footing is important to ensure a streamlined, consistent and efficient system. It is also important to ensure restorative justice is viewed in the appropriate context, as an element of the criminal justice system. Setting schemes on a statutory footing would also enable the development of a clear system with clear criteria and guidelines, including setting out the central role of the victim and the focus on rehabilitation and long term learning.

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

- Yes
- No

NIWEP believes a placing responsibility for adult restorative justice with a formal justice system agency is essential to achieve the aims set out in Q54-55 above. In particular, statutory sector responsibility strengthens accountability for the operation of a scheme, and offers a basis for monitoring and evaluating outcomes on an ongoing basis. IT also

provides the strongest basis for a consistent and transparent system with clear protocols, including mechanisms for victims to provide feedback on their experience and highlight any concerns. Clear oversight and accountability mechanisms for the responsible agency itself are also required in order to ensure effective implementation, and ensuring victims and the wider public can have confidence in the system.

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

The community based organisations currently have the most relevant expertise and experience in the operation of restorative justice in Northern Ireland. Therefore, they will have an important role in shaping, informing and supporting the development of a statutory scheme, and they could conceivably also be part of implementing the system, potentially as delivery partners. However, as outlined above it is important to have a formal justice system agency as lead for public confidence and transparency reasons. NIWEP does not take a position on the most relevant agency for this, but will take the advice and guidance on organisations with more expertise in this field.

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

- Yes – with very clear criteria
- No

NIWEP would refer to the response to Q54, and reiterate that diversion from prosecution may be an option for dealing with low level hate crimes. However, it is critical that the approach is victim led, and that it does not lead to certain types of crime viewed as ‘acceptable’ by potential perpetrators. In particular, it would appear to be important to have clear criteria as to when a perpetrator is suited for a diversionary approach, and when prosecution is the best way forward. For example, in cases where it is evident or likely that the perpetrator has very entrenched beliefs and attitudes, diversion may not be appropriate even if the crime is relatively low level. In addition, the definition of ‘low level’ should always consider the victim’s perspective, as each victim will have their own experience and identifying their trauma as ‘low level’ may serve to further traumatise some victims.

CHAPTER 16

VICTIMS

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

Responses to social reasons for underreporting

Hate crime in Northern Ireland is underreported to an alarming degree, as clearly stated in the consultation paper. The reasons for this are complex, and are linked to the power

dynamics and structures that underpin hate crime. This means, above all, that victims are aware of their lower social status and fear the consequences of reporting, either direct or indirect. For example, a woman of colour experiencing racist hate crime in her neighbourhood is likely to feel powerless and worry that abuse might escalate if she reports it; she is likely to fear for family members as much as herself. The same is likely to apply to a gay, lesbian or bisexual person facing hate crime in their neighbourhood, who may also fear being cast out of their family and community. A disabled person may feel so traumatised by hate crime that they feel unable to report it, as it is an attack on their dignity and value as a human being (this also applies to other protected groups). Where hate crime occurs in the workplace, victims often fear losing their job as a result of 'complaining'.

NIWEP would strongly welcome a clear reference to the link between hate crime and dominant power structures in the legislation, as an initial step in addressing these issues. However, it is clear that resolving them requires action beyond the judicial system. Training and capacity building across the judicial system would be helpful to ensure all professionals are familiar with the nature and dynamics of hate crime, and are able to address it appropriately. This, in turn, could involve engagement with relevant organisations representing protected groups, which could contribute to strengthened mutual understanding and for its part contribute to building confidence to report.

Wider society also has a role to play. The dynamics of hate crime, prejudice and hate are learnt behaviours that children pick up from their families and communities, and therefore schools have a role to play in challenging stereotyping and prejudice. Community organisations similarly have a role in promoting positive images of people of all backgrounds and funders could contribute more strongly to work in this area. In addition, media is an important stakeholder and should be required to develop stronger mechanisms and protocols to avoid stereotypical, prejudiced reporting and promote more positive and diverse imagery of the population as a whole. In this regard, social media companies have a similar responsibility with regard to monitoring online content and promoting positive content.

Responses to underreporting related to legislation and judicial process

There are also other reasons why people may choose not to report, which are more closely linked to the current legislation and judicial process. These are outlined in the consultation paper, and the review of the legislation in itself will go some way towards resolving these issues, including lack of clarity, length of process and issues within the process (eg. concerns about being 'outed' in any trial reporting). Developing a clear communication process and information campaign linked to any updated legislation would also help strengthen awareness and understanding within communities, particularly if aligned with strengthened support provided to relevant organisations that can work with communities on an ongoing basis.

It also appears clear that training and capacity building with enforcement agencies is required, to ensure that all professionals who come into contact with people seeking to report hate crime are familiar with the issues and are able to treat all complainants appropriately and sensitively. Relationship building between specific communities and

enforcement agencies may also be helpful; as an example, this might involve strengthening awareness of trans issues across the PSNI to ensure all officers are able to provide a consistent service.

Finally, evidence of impact of the legislation will also build public confidence. In this regard, media has a role in reporting on successful convictions in an appropriate way.

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

Yes

No

The Hate Crime Advocacy Scheme is a valuable service, which is playing an important role in supporting victims who are often traumatised and left feeling vulnerable. This is critical in itself, and enables . In addition, victims may feel more able to deal with a person from a community organisation, and in this way the service contributes to encouraging reporting of hate crime.

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

Yes

No

NIWEP believes that the scheme helps provide clarity regarding the system to victims, which is important to rebuild their personal confidence and also enable them to navigate the judicial process. As outlined above and in the consultation paper, the judicial process can be daunting for anyone, and dealing with it during a period of trauma can make it seem insurmountable for some victims. The support provided through the service is extremely valuable to support victims, and also to ensure that cases are brought through to trial, where relevant.

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

Yes

No

NIWEP would echo responses from other respondents, including the Women's Policy Group, in calling for a more permanent and sustainable funding system. Rolling contracts

create difficulties in many areas, from effective and innovative forward planning to efficient service delivery and staff retention. The latter, in addition, can have an impact on victims, as the lengthy process may mean that one individual deals with more than one advocate and therefore is forced to retell their story and rebuild trust multiple times through the process.

A sustainable funding model will be particularly important if new protected characteristics are introduced, as this will inevitably increase the number of victims who may be referred to the scheme. Consideration of how this kind of support will be organised will be essential in order to effectively implement any new protections, and consideration should be given to both extending the scheme to new organisations and engaging organisations with relevant expertise in supporting it. For example, if gender is included as a protected characteristic, there are a number of women's sector organisations already experienced in supporting women, who may be in a position to contribute to the scheme with relatively limited additional resourcing.

Evaluation of the scheme with service users would also be helpful to identify how the scheme could be strengthened to meet specific needs better.

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

Yes

No

NIWEP strongly recommends that the funding model is made permanent, and if at all possible strengthened. Considering the scale of underreporting of hate crime, the service is currently minimal, and a strengthened funding model would enable more victims to receive support. This, in turn, would also help strengthen public confidence in the judicial process and would contribute to effective implementation of the legislation.

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

Yes

No

The consultation paper clearly sets out the difficulties press reporting of hate crime may create for some complainants. NIWEP believes that in this light, it is entirely appropriate and consistent with victim protection to stop press reporting the identity of the victim in specific circumstances.

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

From the discussion in the consultation paper, it appears that two key harms may arise from press reporting of hate crime: firstly, revictimisation and secondly, concern about further victimisation, such as if a person is identified as LGBT and 'outed' to the general public. In addition, victims of some sectarian hate crime may need anonymity to address concerns about retribution. Restrictions should be placed on reporting the identity in such cases, and could be done either on request of the complainant or directly by decision of CPS.

The option of relevant community organisations and/or the Hate Crime Advocate Service in supporting the CPS and/or the courts in assessing any applications for anonymity should be considered. This could serve to streamline the process and, importantly, to reduce the stress and potential revictimisation of victims concerned about media reporting.

CHAPTER 17

LEGISLATION: CONSOLIDATION AND SCRUTINY

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

- Yes
- No

As implied throughout this response, NIWEP is cognisant of the patchwork nature of hate crime/hate speech legislation in Northern Ireland and is concerned that this reduces the efficient and effective implementation of legislation, which in turn leads to a range of difficulties outlined throughout the consultation paper. Creating a consolidated piece of legislation would go a significant way towards addressing those difficulties, and would support a more streamlined and effective process for the judicial system as well as a more accessible system from the public perspective. This, in turn, would serve to strengthen public confidence in the judicial system and would also contribute to addressing any tendencies to normalise hate. A consolidated piece of legislation would also provide an opportunity to create a modern and tailored solution for Northern Ireland, which takes account of the modern online context as well as learning from other jurisdictions.

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

- Yes
- No

NIWEP supports this proposal. Post legislative scrutiny is critical to ensure the legislation is operating as intended, and also to monitor how it is being implemented. Such scrutiny and monitoring is particularly helpful in identifying capacity building and guidance needs, and can contribute to an effective and efficient judicial process.

Post legislative scrutiny can also contribute to building public confidence in the legislation, which is important to encourage victims to come forward and hate to be addressed at the general level of society.

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

Post legislative scrutiny can take a number of forms and it would appear appropriate that a number of approaches are used, considering the specific nature of hate crime. The Assembly, as the legislative body in Northern Ireland, should be required to undertake a formal review a set number of years post legislation – potentially three to five years. In addition, however, a specific role in monitoring the legislation should be given to a relevant statutory agency, which ideally should be independent of the judicial process. As such, the Equality Commission for Northern Ireland or the Human Rights Commission for Northern Ireland might be relevant, particularly keeping in mind the link between hate crime legislation and wider equality legislation. An annual reporting system should be considered, highlighting the number of crimes reported, the number of prosecutions and outcomes of those, as well as the experience of victims and analysis of how the legislation is being interpreted in the courts.

The community and voluntary sector could also play a role in post legislative scrutiny. For example, working groups formed to support the review could be retained for the purpose of monitoring the legislation, as the relevant expertise will be available in such a forum. Other organisations, such as women’s organisations, should also be given the opportunity to contribute, for example through annual review meetings, or through independent review mechanisms.