

Response to Improving the effectiveness of the current Hate Crime Legislation in Northern Ireland

Department of Justice

March 2022



1. Introduction

Women's Platform welcomes this consultation as an important and timely initiative to develop effective, gender sensitive and meaningful solutions to hate crime in Northern Ireland. Women's Platform also welcomes the opportunity to contribute evidence, which builds on evidence shared in a previous submission by Northern Ireland Women's European Platform to Judge Marrinan's Hate Crime Review.

Women's Platform is the new identity for Northern Ireland Women's European Platform. The new identity is designed to emphasise our focus on ensuring our work is inclusive of and accessible to all women and girls in Northern Ireland, but does not change our work or ethos. Women's Platform is a membership organisation working to promote the implementation of international human rights standards in Northern Ireland, and in particular the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), in line with commitments the UK has made to international human rights treaties. Established in 1988 as the Northern Ireland link to the European Women's Lobby, Women's Platform also represents women and girls in Northern Ireland at the European and international level, including at the UN. Women's Platform is in special consultative status with the Economic and Social Council of the UN.

The work of Women's Platform locally focuses on building the capacity of members and the wider women's sector to utilise international human rights standards and mechanisms for women's rights in their own practice and work to promote gender equality in Northern Ireland. Women's Platform also shares evidence and good practice from international networks locally, and works with members to amplify the voice of women and girls in Northern Ireland internationally. In addition, Women's Platform contributes evidence to consultation processes and engages with policy and decision makers to highlight human rights commitments and evidence of good practice on realising gender equality.

Women's Platform respects and celebrates the right of everyone to define their own identity and applies this to all our work. The comments below are made in light of this.

1.1 Endorsement

Women's Platform endorses the responses of the Committee on the Administration of Justice, Victim Support NI and Women's Policy Group to this consultation.

1.2 Concepts of gender equality and gender based violence

This section provides the context for this submission, and in particular comments on the misogyny/trans misogyny issues should be viewed in light of this. It is also in line with the standpoint taken by the Working Group on Misogyny and Criminal Justice in Scotland, which has significantly informed this submission. As a core point, the Working Group has recommended a number of new stand alone offences on misogyny in Scotland, in order to begin addressing the societal and cultural beliefs that lead to misogynistic offending and create an unsafe and unpleasant society for women.¹

The Scottish working group adopts a perspective that it is fundamental to understand hate crime as a function of power based gender relationships, which are deeply embedded in our culture and view the male perspective as primary and dominant, rendering women ‘the other’, inferior and powerless, expected to be submissive². As a result of this dynamic, any action that goes against this norm becomes interpreted societally as a threat and a transgression that must be addressed to control women and retain the status quo; violence against women and girls is the mechanism for achieving this^{3,4}. Including these fundamental dynamics is vital to enable addressing gendered hate crime as a form of gender based violence and gender inequality at the systemic and societal levels, at the root causes of violence⁵.

It should be noted that the concept of patriarchy also incorporates stratification of power and privilege among men and boys; wealthier, older, and white men hold more status and more power than low income, younger and non white men. Therefore, understanding inequality through the lens of power also allows a new analysis of other forms of hate crime, including hate crime and violence that boys and men experience: this violence is rarely due to their gender *per se*, but may be and often is linked to other forms of power relations. Therefore, the Perry definition of hate crime referenced in Judge Marrinan’s hate crime review remains relevant as a framework for understanding and addressing all types of hate crime.

Women’s Platform employs the term gender based violence in this response, as a concept covering all forms of violence rooted in gender inequality, misogynistic and patriarchal norms and unequal power relations arising from these norms. This implicitly holds that violence is overwhelmingly perpetrated by males against females, which is an important element that cannot any longer be obscured by passive language, but incorporates violence perpetrated by women in same sex relationships and also structural violence experienced by women and girls as a result of inequality and systems engendering misogyny⁶ (for example, the current judicial processes in Northern Ireland for dealing with sexual violence cases as well as the lack of implementation of the Abortion (Northern Ireland) Regulations 2020). This is

¹ Working Group on Misogyny and Criminal Justice (March 2022) [Misogyny – a human rights issue](#)

² See eg Bourdieu, Pierre (1986) *Distinction*

³ See eg. [Patriarchal Society According to Feminism: Feminist Theories of Patriarchy](#), published on Thoughtco.com, last accessed 18 March 2022.

⁴ Also see de Beauvoir, Simone (1949) *The Second Sex*

⁵ See eg Engender (2018) [Making women safer in Scotland](#) for an analysis of hate crime and the need for a stand alone misogyny offence from this perspective.

⁶ See definition eg. through [European Institute of Gender Equality](#) and the [Istanbul Convention](#).

intended to underline and enable alignment of hate crime legislation with the developing Domestic and Sexual Violence and Equally Safe strategies, which in turn is important to create an effective framework for addressing all forms of violence and hate crime in Northern Ireland.

1.2 Building on CEDAW

Women's Platform welcomes the open approach taken to developing hate crime legislation. This is a significant opportunity to make a step change in the Northern Ireland response to hate crime in all its forms. It is also an important opportunity to effectively implement the recommendation in the CEDAW Concluding Observations 2019⁷ to ensure protections for women in Northern Ireland are put on an equal footing with those elsewhere in the UK.

Women's Platform would also urge for CEDAW to be recognised as an international obligation of the UK⁸ that provides a legal mandate for hate crime legislation on misogyny. In short, CEDAW requires States Parties to implement a rights based agenda that ensures legislation, policies and programmes are non discriminatory and focus on progressive realisation of equal rights for all. The Concluding Observations provide a roadmap for progressing gender equality, and the most recent set of recommendations emphasises access to justice and support for victims and survivors, as well as increasing action on prevention and culture change. Importantly, this covers action on abuse and violence in same sex relationships, violence against trans and non binary people and action to support Black and minoritised women, including refugee, asylum seeking and undocumented women, who often face specific barriers associated with immigration status and no recourse to public funds (NDPF), in addition to cultural and language barriers as well as previous traumatic experiences creating mistrust in authorities.

Women's Platform believes that recognising CEDAW would also create effective links to the Gender Equality Strategy and indeed the suite of social inclusion strategies, which helpfully can act as a mechanism for creating cross Departmental links and enabling all Departments to contribute to delivering a Northern Ireland where women and girls are safe, feel safe, and where gender based violence is no longer socially acceptable. This, in turn, is vital, as the critical message of this response is that gender based violence is a result and expression of gender inequality and patriarchal norms, and cannot be sustainably addressed in isolation.

2. General comments

2.1 Building on international guidelines

The international law framework, including the Istanbul Convention as well as CEDAW, the Convention on the Rights of the Child (UNCRC), the Convention on the Elimination of All Forms of Racial Discrimination (CERD) and the Convention on the

⁷ CEDAW Committee (March 2019) [Concluding Observations on the 8th periodic report of the UK](#)

⁸ [Convention on the Elimination of All Forms of Discrimination against Women](#) (CEDAW, 1979), articles 1 and 2. The UK signed the Convention in 1981 and ratified in 1986.

Rights of People with Disabilities (CRPD), provides a clear mandate for these strategies to be put in place. It is particularly vital that legislation is in line with the Istanbul Convention, as shortfalls in Northern Ireland have in part prevented the UK from ratifying the Convention; this is a major concern for the women's sector UK wide, as it creates disparities between the UK and other European countries.

The Istanbul Convention holds that all state actors are obliged to conform to the requirements of the Convention. Key among these are requirements to implement effective legislation to protect women and girls from violence, ensure adequate resourcing for action, and implement gender sensitive policies. Importantly, the Convention emphasises data collection as the basis of action, and stresses the role on meaningful data in prevention. It also mandates work with men and boys to change cultures, attitudes and behaviours, and provides detailed guidance on development of judicial systems and responses⁹. The Council of Europe has also recently published guidance on education for prevention under the Istanbul Convention, which emphasises gender equality and non violent approaches, and provides examples of good practice from a number of countries as well as a checklist for developing national good practice¹⁰.

As a State Party to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)¹¹, the UK including all the devolved administrations 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 both drives and utilises gender stereotyping, which often informs how perpetrators of hate crime choose their victims. In its Concluding Observations on the examination of the UK in 2019¹², 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 Inquiry into abortion legislation in Northern Ireland under the Optional Protocol to CEDAW underlines the need to protect women and pregnant people accessing abortion clinics and family planning services from harassment, and includes a recommendation to introduce protection zones around clinics¹³. This is currently being implemented through the Abortion Services (Safe Access Zones) Bill¹⁴.

⁹ Council of Europe (2011). [Convention on preventing and combating violence against women and domestic violence](#)

¹⁰ Council of Europe (March 2022) [Preventing violence against women through formal and informal education: Article 14 of the Istanbul Convention](#)

¹¹ [CEDAW](#) 1979

¹² CEDAW Committee (2019) [Concluding Observations on the 8th periodic report of the United Kingdom of Great Britain and Northern Ireland](#)

¹³ CEDAW Committee (2018) [Inquiry into abortion legislation in Northern Ireland under Article 8 of the Optional Protocol to CEDAW](#), see paragraph 86 (g) for recommendation.

¹⁴ [Abortion Services \(Safe Access Zones\) Bill](#) 2021

CEDAW General Recommendation 35¹⁵ specifically focuses on gender based violence, and provides guidance on interpretation and implementation of CEDAW in this regard. The CEDAW Committee holds that ‘Women’s right to a life free from gender-based violence is indivisible from and interdependent on other human rights, including the rights to life, health, liberty and security of the person, equality and equal protection within the family, freedom from torture, cruel, inhumane or degrading treatment, and freedom of expression, movement, participation, assembly and association’¹⁶. The Recommendation explicitly includes psychological, sexual, economic and physical harm as well as threats of such acts, harassment, coercion and arbitrary deprivation of liberty in its scope of gender based violence.

The Recommendation clarifies the CEDAW provisions and states that laws prohibiting gender based violence should include sanctions for perpetrators and reparations for victims.¹⁷ It further notes that ‘all legal procedures in cases involving allegations of gender-based violence against women are impartial, fair and unaffected by gender stereotypes or the discriminatory interpretation of legal provisions, including international law’, and that capacity building is required to ensure that women’s right to equality is not affected by the application of preconceived and stereotyped notions of what gender based violence is, how women do and should react and the standard of proof required in proceedings¹⁸.

The recommendation also clarifies the concept of gender based violence as a social phenomenon as opposed to an individual level issue, and provides further guidance on action required by State Parties to protect women and girls in line with this understanding. 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.

The General Recommendation requires States parties to CEDAW to ‘have an effective and accessible legal and legal services framework in place to address all forms of gender-based violence against women committed by State agents, whether on their territory or extraterritorially.’¹⁹ The Recommendation also requires State parties to ensure that state actors have appropriate training to effectively implement legislation and policy, including prosecuting offences. In addition, it places an onus on States parties to harmonise legislation with CEDAW, and ensure that all practices that can be considered gender based violence come within the scope of such legislation. A misogyny offence would, therefore, be in line with international human rights standards and would help ensure Northern Ireland legislation is fully compliant with CEDAW.

2.2 Implementing systemic change

¹⁵ CEDAW Committee (67th session, 2017) [General Recommendation 35 on gender based violence against women](#)

¹⁶ Ibidem, p. 6

¹⁷ Ibidem, p. 10.

¹⁸ Ibidem, p.11.

¹⁹ CEDAW General Recommendation 35, paragraph 22.

Women's Platform views development of hate crime legislation as a positive opportunity to progress existing initiatives, including implementation of the core recommendations in the Gillen review, as well as effective implementation of the provisions in the Justice Bill. As noted in the introduction, gender based violence is a result and expression of gender inequality and patriarchal culture which normalises violence – in all its forms - as a mechanism for controlling women, and specifically repressing women's exercise of power and agency. Therefore, hate crime legislation must contribute to systemic change in order to be meaningful to women and girls, and to effectively achieve their proposed aims. It would be very important to develop these strategies in conjunction with clear implementation plans for the Gillen Review in particular.

3. Comments on the consultation

New Statutory Aggravation Hate Crime Model

Question 1: Do you agree/disagree that the threshold for Hate Crime legislation should be of a sufficient high level when criminalising a person for their behaviours/attitudes leading to hate motivated offences and which results in an increased sentence from the basic offence?

- Agree**
- Disagree**

Comment: Women's Platform agrees that the threshold must be sufficiently high for prosecution and an increased sentence. This is similarly underlined by the Scottish Working Group on Misogyny in Criminal Justice, which emphasised that women typically do not want to see men and boys go to jail, but that there are instances where a sentence, even a prison sentence, is warranted²⁰. For this reason, the threshold should be high, but not so high as to render the legislation unworkable.

It is accepted that hate crime legislation alone will not solve the issues underlying hate crime, and it is important to be clear that prosecutions are likely to remain relatively low in number. However, legislation has a symbolic function²¹, and therefore hate crime legislation provides an important societal marker that hate crime is not acceptable in modern society. For this reason, the threshold must be set at a level where prosecutions can be brought for serious offending and the intention set in the legislation tangibly realised.

With a view to addressing lower level offending The Scottish Working Group on Misogyny in Criminal Justice raises the potential for alternatives to criminal proceedings. These include a Recorded Police Warning, which in the working group's view can be used for example for younger people, and serves as a clear message to the perpetrator, and wider society, without the full criminalisation of an

²⁰ Working Group on Misogyny and Criminal Justice (March 2022) [Misogyny – a human rights issue](#)

²¹ Working Group on Misogyny and Criminal Justice (March 2022) [Misogyny – a human rights issue](#)

individual or the resource implications of prosecution²². It would be helpful to explore such opportunities as part of this process in Northern Ireland, as this is a major opportunity to create both innovative and cutting edge legislation that can take a wider view of offending and responding to this than previously has been the case.

Question 2: Do you agree/disagree that the current threshold of hostility is maintained in legislation as that threshold?

- Agree**
- Disagree**

Comments: The threshold of hostility is not unproblematic, but does provide the basic relevant framework for hate crime. It is vital that the threshold enables prosecution of cases that lead to psychological and emotional harm, not only cases involving physical harm, and hostility offers an avenue for doing this. However, the question below is vital; Women's Platform believes that the hostility threshold as currently constituted is not sufficient to cover the common forms of hate crime.

Women's Platform (then responding as NIWEP) previously argued for a statutory definition of hate crime. However, Women's Platform accepts the case presented in the consultation document that a statutory definition could have unintended and perverse impacts, and is content that a statutory definition in law is not set at this time.

Nevertheless, Women's Platform continues to believe that a clear working definition, which is shared and commonly understood across all elements of the judicial system, is vital to improve handling of hate crime cases. The current situation is creating confusion, and is not supporting effective investigation and prosecution of hate crime. Similar challenges have been identified elsewhere, including in the Nottingham Constabulary, which has been recording misogyny hate crime for some time.²³

A clear and shared working definition and improved consistency across the judicial system is also vital to increase the confidence of the public, in particular groups with protected characteristics. The latter is vital, as trust in the system is low, which is both harming people and eroding trust in public services in Northern Ireland as a whole. New evidence collated by the Women's Policy Group to inform the new strategies on domestic and sexual violence and violence against women and girls indicates that women do not report incidents of violence to the police, because they do not believe that anything will be done. In this survey of over 1,000 respondents, women also expressed concern about police attitudes to violence against women²⁴. In addition, many people experiencing homophobic or transphobic incidents and crime also feel unsupported by the judicial system and are reluctant to engage with it²⁵. Recent evidence by the Rainbow Project shows that over 70 per cent of LGBTQI+ individuals experiencing domestic abuse do not report it to police, for

²² Ibidem, p.15

²³ Ibidem, 66-67.

²⁴ Women's Policy Group (March 2022) [Women's Policy Group Joint Written Response to Call for Views: New Strategies: Domestic and Sexual Abuse Strategy \(DOJ, DOH\) Violence Against Women and Girls Strategy \(TEO\)](#)

²⁵ See eg Victim Support NI (April 2020) [Hate crime review consultation response](#)

reasons including concerns about how this would be perceived and how they would be met.²⁶

Question 3: Do you agree/disagree that the attitudes of bias, prejudice, bigotry and contempt, as suggested by Judge Marrinan, could be included as indicators of hate in subsequent guidance in support of new legislative changes in a Hate Crime Bill?

- Agree**
- Disagree**

Comment: Women's Platform strongly agrees that the additional attitudes, or motivations for hate crime, should be included in both a working definition of hate crime and subsequent guidance, as suggested by Judge Marrinan.

While the term 'hate crime' is appropriate as a portmanteau for legislation and for overall communication with the public, for the purposes of investigation, prosecution and law enforcement it is important to ensure that a working definition and guidance take account of the phenomenon and its causes in as much detail as possible.

The Scottish Working Group on Misogyny in Criminal Justice also recommends inclusion of contempt in hate crime legislation, and provides a detailed discussion of the wide motivations for incidents that meet the criteria for hate crime. This discussion clearly illuminates that many hate crime incidents are not motivated by hate *per se*, but are based in deeply ingrained contempt and prejudice against a specific group. This is particularly the case for misogynistic hate crime, which is based in patriarchal norms and power based cultural and societal beliefs rendering women as a secondary and inferior population, as outlined in the introduction to this response. As the Scottish Working Group underlines, many men committing misogynistic hate crime do not hate women as such, and often care deeply about women close to them, but their offending is based in contempt against women as a group, which effectively rationalises particularly lower level offending, ie catcalling, name calling and a lot of more serious threats made online²⁷. Similar dynamics are relevant for homophobic, transphobic and racist hate crime as well, and may to some extent relate to sectarian offending in Northern Ireland.

Question 4: Do you agree/disagree that a third 'by reason of' threshold should not be added to the current thresholds in legislation, which are demonstration of hostility and motivated by hostility?

- Agree**
- Disagree**

Women's Platform accepts the argument in the consultation document, and is also aware that debate in particular in Scotland has agreed that a 'by reason of' threshold is too vague and can result in unhelpful situations.

²⁶ *Belfast Telegraph* 20 February 2022 '[Most same-sex domestic abuse victims in Northern Ireland refuse to report violence](#)'

²⁷ Working Group on Misogyny and Criminal Justice (March 2022) [Misogyny – a human rights issue](#), p.56

Question 5: In supporting the understanding of a statutory sectarian aggravator in hate crime law, do you agree/disagree that 'sectarian' should be defined in law?

- Agree**
- Disagree**

Comment: Women's Platform endorses the response of the Committee on the Administration of Justice to this question.

Women's Platform strongly support the creation of a sectarian aggravator, as an important mechanism to begin more effectively dealing with offending that has a sectarian element, whether that be physical assault or criminal damage. This has not been adequately achieved to date, as lack of a legal definition has made it difficult to record, investigate and prosecute offending. The practical impact of this is that sectarian offending, at all levels and in a wide range of forms, remains rife in Northern Ireland, and affects people's ability to move, access services and socialise freely. To continue post conflict reconstruction, more needs to be done to deal with this specific form of aggression and discrimination, and a sectarian aggravator in law forms part of the measures required.

Briefly, Women's Platform agrees that defining sectarianism in law is helpful to address this specific type of offending, due to its specific nature. It is also necessary to enable the judicial system to effectively discern between sectarian offending and behaviour protected by the European Convention on Human Rights provisions on freedom of speech. It should be noted that the Convention is clear that freedom of speech is not absolute, and jurisprudence by the European Court on Human Rights has made this clear by judgements against groups incorporating discriminatory and threatening comments against other population groups.

Question 6: In supporting a statutory sectarian definition, in relation to hate crime law, do you agree/disagree that the definition should include the following elements?

- **Membership (or presumed membership) of a Roman Catholic or Protestant denominational group;**
- **Social or cultural group with a perceived Roman Catholic or Protestant denominational affiliation; or**
- **Membership (or presumed membership) of a group based on their Irish or British nationality (including citizenship) or ethnic or national origins.**

- Agree**
- Disagree**

Comment: Women's Platform endorses the response of the Committee on the Administration of Justice to this question.

As outlined in the consultation document, it is important to be clear that Northern Ireland is a diverse society, including people from a diversity of religious backgrounds, and none. This should be considered within the legislation, which should include provisions enabling dealing with sectarian hate crime against people of non Christian faiths. However, to specifically begin dealing with sectarian

offending in Northern Ireland and enable effective and adequate prosecution of sectarian hate crime, it is important to specify the main target groups of such offending and also the relevant forms of offending. It is positive, and vital, that the proposal refers to elements of identity, as religious belief is clearly too narrow to cover all elements of sectarianism in Northern Ireland.

Question 7: The suggested definition of sectarianism does not include political opinion. Do you agree/disagree that political opinion should be excluded?

- Agree
- Disagree

Comment: Women's Platform endorses the response of the Committee on the Administration of Justice to this question.

Women's Platform agrees that political opinion should remain outside the scope of hate crime legislation. While this is not unproblematic, it is important and in line with ECHR to enable full political debate. Where offensive comments are made, action can be taken under other provisions of legislation.

Question 8: Are there any other elements that you believe would assist defining sectarianism in the context of Northern Ireland's history? If yes, please include details.

- Yes
- No

Comment: Women's Platform endorses the response of CAJ to this question.

Question 9: Whilst Judge Marrinan has suggested that a sectarian aggravator should be created and defined in a Northern Ireland and Christian context, do you consider any future changes to the hate crime legislation should include future proofing to include different denominations from non-Christian religions/faiths should evidence emerge to show this was required?

- Yes
- No

Comment: Women's Platform strongly support the creation of a sectarian aggravator, as an important mechanism to begin more effectively dealing with offending that has a sectarian element, whether that be physical assault or criminal damage. However, it is important to note that incidents targeting people of non-Christian faiths are already on the increase²⁸; faith/religion incidents recorded by the PSNI almost doubled and crimes more than doubled from 2020 to 2021. Offending of this nature cannot be captured effectively under the label of racist hate crime, and

²⁸ PSNI (February 2022) [Incidents and Crimes with a Hate Motivation Recorded by the Police in Northern Ireland: Update to 31 December 2021](#)

therefore provision must be made to ensure such offending can be meaningfully recorded, investigated and prosecuted.

Women's Platform would urge for future proofing to be undertaken now, and measures to be included in legislation that can be introduced by regulation, to avoid potentially long delays that effectively endorse religious discrimination.

Question 10: Given the prevalence of online communications that now exist within private dwellings, but have a reach outside those private dwellings, do you agree that the dwelling defence is no longer fit for purpose?

- Yes
- No

Comment: Women's Platform argued in the original submission to Judge Marrinan that the dwelling defence is not fit for purpose in an era of online communication, and continues to believe this defence should be removed.

The core reason why a dwelling defence is no longer fit for purpose is clearly set out by Judge Marrinan in his report and in the consultation: online communication can be undertaken from anywhere, including private dwellings, but is not private in nature. Meanwhile, the harm of online abuse and violence is well documented.

While formal data on online violence is lacking in Northern Ireland, evidence of online violence experienced by elected representatives, journalists and human rights activists has been highlighted by Amnesty International²⁹. The former First Minister Arlene Foster and deputy First Minister Michelle O'Neill have also publicly spoken of violence they have experienced while in office³⁰, while a Belfast Telegraph survey in 2021 found that three quarters of female MLAs have experienced sexist harassment online or in person and a quarter have experienced sexual harassment from male perpetrators.³¹

Women's Platform would emphasise that both CEDAW and the Istanbul Convention stress that violence against women and girls takes a multitude of forms, all of which are rooted in the same gender inequalities, patriarchal norms and misogynistic practices that are embedded in society. This is evidenced for example in the 2019 Concluding Observations, which call for action on sexual harassment of women and girls in public places, including workplaces and schools.³² Therefore, seeking to disentangle different forms is both difficult and unnecessary, as actions must address all forms of violence in a consistent manner in order to effectively begin addressing the root causes of gender based violence.

Everyday, 'low grade' discrimination and harassment creates significant mental and emotional harm, which permeates women's entire lives: current evidence shows 97 per cent of women in the UK have experienced gender based violence, including

²⁹ Amnesty International (2018) [Toxic Twitter](#)

³⁰ *The Irish News* 10 May 2021 '[Arlene Foster and Michelle O'Neill outline online abuse experienced as women in leadership](#)'

³¹ *Belfast Telegraph* 20 September 2020 '[NI female MLAs daily battle with sexism revealed with quarter victim of harassment](#)'

³² CEDAW Committee (March 2019) [Concluding Observations on the 8th periodic report of the UK](#)

sexual harassment in public spaces³³. Official statistics for Britain show that two thirds of women aged 16-24 experienced gender based violence in public spaces in Britain in June last year alone³⁴. Meanwhile, a global survey of over 14,000 girls by Plan International showed that 58 per cent of girls had experienced violence online, and this led to almost half of those affected to lose self confidence while a quarter were left feeling physically unsafe³⁵. A recent study by the Inter Parliamentary Union highlights that 85 per cent of female MPs in the study, which included the UK, have experienced psychological violence, while 58 per cent have experienced online violence and practically half (47%) have received death and rape threats. A quarter have experienced sexual violence³⁶.

Question 11: Do you agree that repealing the dwelling defence and replacing it with a specific defence for private conversations would balance the need to protect individuals or groups of persons from accusations of stirring up offences, along with the need to ensure freedom of expression and debate of matters which are not, of themselves, threatening, abusive or insulting?

- Yes
- No

Comment: Women's Platform finds the concept of private conversations problematic, in that private conversations can be conducted in a way that meets the criteria of stirring up offences. This includes, for example, making threats or slurs about a specific population group in a private conversation held in a public place, with individuals affected by remarks in direct earshot. Online, this can include conversations in a closed social media group that may have a substantial membership, or in a conversation with a specific individual, which nevertheless are publicly available to a wider audience (eg. Twitter threads). In addition, a hate crime offence, including stirring up offences, can be perpetrated in a private conversation with one or several individuals, if comments motivated by hostility and contempt are made towards those involved in the conversation. Cases relevant to this, focused on online communication in purportedly private fora, have recently been brought in England, for example against police officers found to have shared offensive images or comments in closed social media groups.^{37,38}

Without further detail on what a private conversations defence would look like, it is also difficult to assess whether the dwellings defence will effectively be invoked by subjectively identifying conversations as private. However, Women's Platform believes that it would be preferable to remove all defences, and instead focus on defining the circumstances in which communication is deemed public. This would remove the risk of insecure prosecutions, as well as safeguard freedom of speech

³³ All Party Parliamentary Group on UN Women (2021) [Prevalence and reporting of sexual harassment in UK public spaces](#)

³⁴ Office of National Statistics (2021) [Perceptions of personal safety and experiences of harassment, Great Britain](#), 2-27 June 2021

³⁵ Ibidem

³⁶ Inter Parliamentary Union and Council of Europe (2018) [Sexism, harassment and violence against women in parliaments in Europe](#)

³⁷ See eg. CNN 22 October 2021 [Five UK police officers shared violent sexual images in relation to Sarah Everard's murder, police watchdog says](#)

³⁸ *The Guardian* 24 November 2021 [Met officers guilty of misconduct after sharing photos of murdered sisters'](#)

provisions under ECHR, as individuals will have the opportunity to present evidence to demonstrate communication was not public, against clear criteria. For example, protesters at an abortion clinic should not be able to call on a private conversations defence, as the conversation occurs in a public place. Similarly, someone contacting an individual on their publicly available social media profile – or phone number or email address in the case of elected representatives and many entrepreneurs - should not be able to claim that threats or comments made in such a conversation are private. However, individuals engaging in personal conversations at home or in a closed, two way only online communication would be able to show that the criteria for public communication have not been met, and their freedom of speech would thus be protected. In addition, such an approach would safeguard against situations where accusations are made vexatiously against groups of individuals holding views others may find controversial and sharing these in a genuinely private forum.

Consideration could also be given to instituting an onus on those accused of stirring up offences to prove that no harm was intended and that the situation could not reasonably be identified as enabling a stirring up offence. This does not infringe on the ECHR freedom of speech provisions, as existing case law from the European Court of Human Rights shows that freedom of speech does not extend to causing or threatening harm to others.

Question 12: If a specific defence for private conversations was introduced, should consideration be given to defining the term “private conversations”?

- Yes
- No

Comment: The comments made above under Q11 also apply to this question. A core difficulty with the proposed private conversations defence is that it is difficult to define and delineate private from public conversations. Should a private conversations defence be introduced, it is vitally important to include a clear definition of the concept of ‘private’ within the legislation, and provide guidance to law enforcement, PPS and the judiciary in line with this.

Question 13: If you agree that consideration should be given to defining the term “private conversations”, have you any proposals on the criteria for the concept of private conversations?

- Yes
- No

Comment: The crucial element of the definition hinges on what is defined as private, and the difficulties with this have been set out in Q11 above. Critical to a definition would be that a conversation has been held truly in private, without any element of it either audible to or made available in an online format potentially accessible to large numbers of individuals. Women’s Platform would refer to the discussion of ‘thought crimes’ in the Scottish Working Group on Misogyny in Criminal Justice, which holds

that the right to privately hold any view is sacrosanct in any but totalitarian societies, but issues arise when this view is shared with others.³⁹

Question 14: Under the current arrangements, decisions on whether or not to prosecute stirring up offences can be taken by or with the consent of the DPP (meaning that a prosecutor who has a delegated authority to initiate proceedings can do so without the need to seek the Director’s personal consent). Do you agree this arrangement is an adequate safeguard in the consideration of stirring up offences by the Public Prosecution Service?

- Yes
- No

Comment: Women’s Platform agrees with the discussion in the consultation document and believes that personal consent by the DPP is neither practically workable or ethically defensible, as this would burden an individual while giving them undue influence over decisions to prosecute often over long periods.

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 15: Do you agree that all decisions on whether or not to prosecute stirring up offences do not necessitate being taken personally by the Director of Public Prosecution?

- Yes
- No

Comment: The response to Q14 above also applies to this question.

Question 16: The criminal justice system currently provides the opportunity for victims of hate crime to apply for special measures in that an application can currently be made by PPS to explain that a victim of hate crime is in fear/intimidated and requires special measures. Do you agree/disagree that these current provisions are sufficient for hate crime victims?

- Agree
- Disagree

Comment: Women’s Platform strongly disagrees with this proposal, as it increases fear for victims and reduces willingness to report and go through with court proceedings, thus reducing access to justice. There is also an equality element, as victims of homophobic, transphobic and racist (and misogynist) hate crime are particularly likely to report significant psychological and emotional harm from

³⁹ Working Group on Misogyny and Criminal Justice (March 2022) [Misogyny – a human rights issue](#), p.10

offending, and thus are particularly likely to experience additional trauma regarding arrangements at court. Women's Platform believes access to special measures should be automatically granted, and victims would then have the option to not utilise these, should they so prefer.

Special measures are essential to enable many complainants to engage with court proceedings, as the fear, alarm and distress experienced often continues to manifest as trauma long after the hate crime has occurred and/or ceased. Currently there is evidence that not all complainants are aware of special measures, and it is essential to strengthen communication so that all complainants are aware of their options. It is also essential to ensure that special measures requested or agreed are put in place, so that complainants arriving at court can be sure their needs have been accommodated.

Ensuring appropriate support for victims and survivors, including gender sensitive court procedures and measures is encapsulated in a range of recommendations in CEDAW General Recommendation 35.⁴⁰ Women's Platform would recommend that responsibility for information, communication and is assigned to a specific agency within the criminal justice system, to ensure that effective procedures, programmes and campaigns can be put in place. Alternatively, responsibility for communication regarding all procedures and services relating to hate crime proceedings should lie with the Department of Justice as part of its role in providing guidance on this legislation. This responsible stakeholder should also be in ongoing communication with organisations supporting victims to ensure that information is shared as widely and effectively as possible.

Question 17: Do you agree/disagree that hate crime victims in criminal proceedings, involving the proposed aggravated offences or stirring up offences, should automatically be eligible for consideration of special measures when giving evidence?

- Agree**
- Disagree**

Comment: Women's Platform strongly agrees with this proposal. The rationale is given under Q16 above.

Question 18: Do you agree/disagree that victims in hate crime criminal proceedings, involving the proposed aggravated offences or stirring up offences, would benefit from protection from cross examination where the alleged perpetrators choose to exercise a right to cross examine their victims in person?

- Agree**
- Disagree**

⁴⁰ CEDAW Committee (67th session, 2017) [General Recommendation 35 on gender based violence against women](#), p.15

Comment: Women’s Platform strongly agrees with a ban on cross examination by the defendant. Cross examination of the complainant by the defendant is a major concern of complainants, and a key reason why many complainants disengage from court proceedings. Ensuring that this does not take place routinely is a significant measure that will serve to reassure complainants and therefore will enable justice agencies to more effectively investigate and prosecute hate crime. In addition, including a ban is in line with the Domestic Abuse and Family Proceedings (Northern Ireland) Act 2020, which includes an explicit provision preventing cross examination by defendants.

Question 19: Do you agree/disagree that automatic eligibility to protection from cross examination by the alleged perpetrator would support reporting of hate crime by victims?

- Agree
- Disagree

Comment: The response to Q18 above also applies to this question.

Question 20: Do you agree/disagree that there is a potential detriment for abuse of the criminal justice system if the defendant is unable to cross examine the hate crime victim?

- Agree
- Disagree

Comment: The response to Q18 above also applies to this question. It is vital that the legislation takes a victim centred approach, considering the significant and long term impact of hate crime on victims, and therefore protecting complainants from cross examination is vital.

The use of alternative methods provided for under special measures, in particular pre recorded statements, also provides a mechanism for accessing relevant information in specific circumstances, should this be necessary. Arrangements for this can be clarified in guidance to the courts. In addition, there is an onus on clarifying investigation and prosecution procedures to ensure that any potentially vexatious claims are identified at an early stage of the process.

Question 21: Of the options outlined as proposals for addressing violence against women and girls, which is your preferred option, if any (please tick one):

- Sex/Gender as a protected characteristic
- Misogyny (and transmisogyny) as a statutory aggravating factor
- Misogyny (and transmisogyny) as a stand-alone crime/specific offence
- No recognition of sex/gender for the purposes of aggravated offences and enhanced sentencing

○ Other

Comment: Women's Platform believes that misogyny must be addressed through specific offences, in order to effectively begin addressing the misogynist violence and offending that women and girls are subjected to on a daily basis. For a detailed analysis of the issues, Women's Platform would refer to the Women's Policy Group response to this consultation, and the survey undertaken by the Women's Policy Group to inform the Call for views on a domestic and sexual violence strategy and a strategy on violence against women and girls⁴¹.

Women's Platform refers to the Scottish Working Group on Misogyny in Criminal Justice, and would recommend that the proposals developed by this Working Group are adopted in Northern Ireland as well. The Working Group recommends a Statutory Misogyny Aggravation, which could be invoked in relation to any crime, except crimes that are misogynistic by definition, such as domestic abuse and rape⁴². This would enable the judge to take account of the misogynistic motivation of the offence, and would be available for crimes such as assault, threatening behaviour criminal damage and online communications where there is evidence of misogyny. Women's Platform believes that this would be an effective and proportionate approach to addressing serious offending motivated by misogyny, and would create a system with clear parameters for investigating and prosecuting misogynistic offending.

In its report, the Scottish Working Group provides a detailed discussion of the nature of misogyny and how it pervades society, including the judicial system, which is a core reason why women and girls do not trust the criminal justice process in relation to violence against women and girls. Women's Platform would urge for this report to inform development of the legislation in Northern Ireland in detail. The report emphasises that women are not a minority, and because of this and the pervasive nature of misogyny in western societies, adding sex and/or gender as a protected characteristic is not sufficient to address offending. It also provides a detailed overview of the harm created by misogynistic offending, and provides a legally workable definition of misogyny, which offers a model readily transferable to Northern Ireland. The definition reads as follows:

'Misogyny is a way of thinking that upholds the primary status of men and a sense of male entitlement, while subordinating women and limiting their power and freedom. Conduct based on this thinking can include a range of abusive and controlling behaviours including rape, sexual offences, harassment and bullying, and domestic abuse.'⁴³

Importantly, the Scottish Working Group proposes introducing three additional offences related to misogynistic hate crime, under a consolidated piece of legislation. The additional offences are Stirring up hatred against women and girls, Public misogynistic harassment and Issuing Threats of, or Invoking, Rape or Sexual Assault or Disfigurement of Women and Girls online and offline. The Working Group argues,

⁴¹ Women's Policy Group (March 2022) [Women's Policy Group Joint Written Response to Call for Views: New Strategies: Domestic and Sexual Abuse Strategy \(DOJ, DOH\) Violence Against Women and Girls Strategy \(TEO\)](#)

⁴² Working Group on Misogyny and Criminal Justice (March 2022) [Misogyny – a human rights issue](#)

⁴³ Ibidem, p. 29

supported by significant evidence, that these additional offences are required to begin addressing the root causes of misogyny and misogynistic hate crime, as the statutory aggravation in itself is not sufficient to achieve this.

It is important to note that the Working Group does not propose altering any other element of the judicial process; eg. the threshold of proving an offence beyond reasonable doubt will also apply to these offences, and the Working Group argues that retaining sufficiently high prosecution thresholds remains vital to ensure the integrity of the legal system. This also ensures that freedom of speech provisions in the ECHR are protected, as the threshold for identifying specific behaviour as an offence remains high.

Women's Platform would urge for consideration to be given to introducing these additional offences in Northern Ireland. These offences cover a wider range of offending than the statutory aggravation can do, and provide an important and progressive mechanism for addressing the pervasive violence against women and girls in our society. Introducing these would also significantly strengthen the developing Gender Equality Strategy, as well as the developing strategies on domestic and sexual violence and violence against women and girls, by providing remedies in law for violent behaviour that amounts to offending. It would also fulfil an important symbolic function, by emphasising the unacceptable nature of and harm caused by behaviour that many consider harmless, or even benign as in the case of catcalling. Women's Platform would urge for legislation to be developed with a rights based approach, in collaboration with organisations working with women and girls and women and girls with experience of misogynistic hate crime, in order to develop legislation that takes account of the impact of misogynistic offending, while protecting the rights of defendants.

In its previous submission to Judge Marrinan, Women's Platform endorsed the definition of hate crime set out by Barbara Perry and quoted in the consultation paper (p. 16-17). Women's Platform believes that a stand alone misogyny offence is essential in light of this understanding of hate crime as a function of social power relations into the definition; 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. As women and girls are not a minority, including sex/gender as a protected characteristic is not sufficient, but a stand alone offence is necessary. The Scottish Working Group also sets out detailed evidence showing that including sex/gender as a protected characteristic has not led to increasing prosecutions and is thus ineffective; for example in New Jersey, where gender is a protected characteristic, cases remain far fewer than for racist hate crime, and there is evidence that police and prosecutors are reluctant to bring cases, due to deeply ingrained misogynistic beliefs within the judicial system⁴⁴.

⁴⁴ Working Group on Misogyny and Criminal Justice (March 2022) [Misogyny – a human rights issue, p.70](#)

Women's Platform 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.

Question 22: Many of the issues surrounding misogyny are closely linked to sexual offences and domestic abuse. If misogyny is considered for inclusion as a hate crime statutory aggravator, do you agree/disagree that domestic abuse and sexual offences be excluded?

- Agree**
- Disagree**

Comment: The comments made above in relation to Q21 also apply to this question. As noted above, the Scottish Working Group on Misogyny in Criminal Justice explicitly states that domestic abuse and sexual offences be excluded, as they are misogynistic by definition and go beyond the regular definition of hate crime, and must be addressed under separate legislation focused on the specific characteristics of such serious offending. This is vital, as lack of a clear distinction creates a risk of diluting legislation on hate crime as well as domestic abuse and sexual offences. However, Women's Platform would emphasise that hate crime legislation should be developed taking cognisance of the Gillen review and ongoing work to implement its recommendations, as appropriate alignment is important for coherent legislation.

Question 23: Whilst evidence demonstrates the disproportionate experience of females, if misogyny is considered for inclusion in hate crime law, to ensure fairness in legislation, do you agree/disagree an act of misandry should also be considered to recognise the experience of male victims?

- Agree**
- Disagree**

Comment: Comments made above in relation to Q21 and Q22 are relevant to this question. Women's Platform does not agree that misandry as a specific category of offending exists; men and boys do experience hate crime, but this is rarely, if ever, due to their gender per se. Therefore, introducing an offence of misandry is not only unnecessary, it risks diluting the legislation without effectively addressing dynamics at work in hate crime, as outlined throughout this response. Women's Platform believes that this proposal is an unhelpful approach and will not protect gender equality, but rather deepen inequality by drawing attention away from the power dynamics at work and the pervasive gender based violence women and girls experience. It is disappointing to see this proposal, as it indicates a lack of

understanding of these dynamics and an unwillingness to take account of evidence provided by the women's sector and also human rights organisations.

Rather, power relations are at work in this type of offending, as men and boys are typically subjected to hate crime by members of a more powerful group, as members of a less powerful group. In relation to sectarian crime, these power relations are more subtle, but nevertheless present: sectarian hate crime occurs because perpetrators believe that they are 'more right' and therefore have a right to harass and abuse members of another faith community, or in the Northern Ireland case, national identity.

It should be noted that the concept of patriarchy also incorporates stratification of power and privilege among men and boys; wealthier, older, and white men hold more status and more power than low income, younger and non white men. Therefore, understanding inequality through the lens of power also allows a new analysis of other forms of hate crime, including hate crime and violence that boys and men experience. Therefore, Women's Platform would urge for the Perry definition of hate crime referenced in Judge Marrinan's hate crime review to be integrated in legislation as a framework for understanding and addressing all types of hate crime.