THE BAR of NORTHERN IRELAND

The Independent Review of Hate Crime Legislation in Northern Ireland

Consultation Response

Introduction

1. The Bar Council is the regulatory and representative body of the Bar of Northern Ireland. Members of the Bar specialise in the provision of expert independent legal advice and courtroom advocacy. Access to training, experience, continual professional development, research technology and modern facilities within the Bar Library enhance the expertise of individual barristers and ensure the highest quality of service to clients and the court. The Bar Council is continually expanding the range of services offered to the community through negotiation, tribunal advocacy and alternative dispute resolution.

2. The Bar welcomes the opportunity to comment on the consultation paper produced as part of the independent review of hate crime legislation in Northern Ireland chaired by Judge Desmond Marrinan. David McDowell QC and Michael Chambers BL represented the Bar on the Review's Core Expert Group whilst Joseph O'Keefe BL took part in the Key Stakeholder Group. This submission also reflects the views of the Criminal Bar Association which represents the views of prosecuting and defence counsel, serving to ensure an independent and quality source of specialist criminal law advocacy in Northern Ireland. The Bar's response is structured according to the questions contained in the consultation paper.

Hate Crime: Definition and Justification

Q1. What do you consider to be hate crime?

Q2. 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?

3. The Bar welcomes the Review's efforts to reach a workable and agreed definition of what constitutes a hate crime. The background and academic discussion provided in chapter one of the paper is helpful and the Bar considers that the working definition provided at paragraph 1.7 of "acts of violence, hostility and intimidation directed towards people because of their identity or perceived 'difference'" covers what should be regarded as hate crime by the law of Northern Ireland. However, it might also be worth making reference to these acts constituting criminal offences within the definition.

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Q3. Should we have specific hate crime legislation in Northern Ireland?

4. Yes - The Bar agrees that there should be specific hate crime legislation in Northern Ireland. We agree with the observation in chapter 1 that hate crimes have consequences which set them apart from other crimes and which justify a difference in legal approach. Therefore it is important that Northern Ireland's criminal law is updated to provide more consistent and effective protection from conduct motivated by hatred of protected groups or characteristics.

Q4. Should hate crimes be punished more severely than non-hate crimes?

5. Yes – The Bar agrees that hate crimes should be punished more severely than non-hate crimes and that the courts must have access to enhanced sentencing powers when this is appropriate. Members of minority or vulnerable groups who have been made victims of crime by reason of their particular characteristics deserve the fullest protection of the law.

Q5. 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?

6. No – practitioners have some concerns around the enhanced sentencing model set out in the Criminal Justice (No. 2) (Northern Ireland) Order continuing to be used as the core method of prosecuting hate crimes in Northern Ireland. 'Offences aggravated by hostility' under the 2004 Order require sufficient evidence to be adduced before the court that the offence was aggravated by hostility and also places requirements on the court when it is considering the seriousness of an offence. However, our practitioners observe that at present this does not always work effectively in practice and that not all relevant cases from the PPS are always being marked prominently to indicate to the prosecutor at court that there is evidence that the offence has been aggravated by hostility. We understand that the PPS now receives an automatic prompt on their recently introduced tablet unit system to remind the prosecutor to alert the judge that the particular offence was motivated by hostility which may improve this issue.

7. Whilst the Bar generally takes the view that it is best to rationalise and improve existing sentencing provisions wherever possible before moving directly to the

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creation of a new model in legislation, we acknowledge there is now a need to consider an alternative approach in Northern Ireland in order to promote greater consistency in the prosecution of hate crimes.

Q7. Do you think the statutory aggravation model as used in England and Wales and Scotland should be introduced into Northern Ireland law?

8. Yes - The Bar notes that England and Wales has an extensive and complex framework of legislation for hate crime. However, we take the view that the statutory aggravation model used in England, Wales and Scotland should be introduced in Northern Ireland as this has the greatest potential to address hate crime by providing for a system wide response to the criminalisation of the hate element of crimes in a manner which enhanced sentencing alone does not. However, there is also the issue of how this should be followed through with proper record keeping of the offence and the sentence. This could see any aggravation being recorded on the Criminal Record Viewer, which does not currently take place as acknowledged in paragraph 7.27, and help to ensure that administrators including prosecutors and court clerks know what they should be recording.

9. However, if this is to be done then it must be treated with caution. The Bar would point to the possibility for an increased deployment of Newton hearings and the potential for an inconsistent approach in the use of Newton hearings if an aggravated sentence was recorded on a Criminal Record Viewer. If that was to be the case, then the hostility would have to proven to the criminal standard and if denied by the offender, would require a Newton hearing. This may be unsatisfactory to a victim who has been informed that the offender has pleaded guilty and has now been informed they must attend a hearing and be cross-examined. It could further be unsatisfactory to the victim if they give testimony and the hostility is not proven to the criminal standard, leaving them despondent at the process. Furthermore, it may be unsatisfactory to an offender who pleads guilty early to a serious offence and risks losing significant credit by contesting the hostility element of the offence.

Q8. 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?

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10. The Bar considers that the statutory aggravation model used in England, Wales and Scotland should be introduced instead of the enhanced sentencing model. The Bar does not foresee that this model would necessitate the creation of new offences, rather the model would involve an existing offence, such as an assault, being motived by or demonstrating hostility in respect of one or more protected characteristics. Express provisions under this model would require the police and wider criminal justice system to be aware of the need to take potential identity hostility into account when investigating crime. It would also allow for accurate records to be maintained as well as greater potential for the monitoring of statistics and trends on hate crime. Therefore this model would provide a more clear and comprehensive scheme of hate crime legislation for Northern Ireland.

> Q9. Irrespective of whichever model is used (aggravated offences or enhanced sentencing), should there be specific sentencing guidelines for hate crimes in Northern Ireland?

11. The Bar highlighted in response to a recent DOJ consultation on a Sentencing Review that there could be merit in exploring the establishment of a sentencing guidance mechanism in Northern Ireland to build on the work of the Sentencing Group. If a guidance mechanism was to be established in legislation, it would be best placed to perform functions such as the preparation and publication of draft sentencing guidelines, the monitoring of the operation of these and the collation and dissemination of information on sentences imposed by the courts. This could include the consideration of guidelines for hate crimes.

12. However, we would also highlight that the judiciary already conduct a careful and weighted assessment of aggravating and mitigating factors when assessing the starting point of a sentence in cases involving hate crimes. It will remain important for the sentencing judge to be able to have the flexibility and discretion to depart from any guidelines based on the circumstances of an individual case and where there are justifiable reasons for doing so.

> Q10. 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?

13. It is the experience of the Bar that the judiciary do treat hostility as an aggravating factor when sentencing and state this in open court. As stated above, the judiciary conduct a careful and weighted assessment of aggravating and mitigating factors

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when assessing the starting point of a sentence. However, we take the view that to indicate precisely how the hostility affected the sentence could disturb this careful assessment.

Protected Groups

Q11. Should gender and gender identity be included as protected characteristics in Northern Ireland hate crime legislation?

Q12. Should Transgender identity be included as a protected characteristic in Northern Ireland hate crime legislation?

Q13. Should Intersex status be included as a protected characteristic in Northern Ireland hate crime legislation?

Q14. Should age be included as a protected characteristic in Northern Ireland hate crime legislation?

Q15. Should a general statutory aggravation covering victim vulnerability and/or exploitation of vulnerability be introduced into Northern Ireland hate crime legislation?

Q16. Should homeless status be included as a protected characteristic in Northern Ireland hate crime legislation?

Q17. Do you consider any other new characteristics should be protected in Northern Ireland hate crime legislation other than those mentioned above?

14. The Bar acknowledges that there can be difficulties in extending legislation to a wide range of new characteristics as this requires different judgments to be made regarding who should be deserving of special protection. Therefore it is important that there is evidence to show that the certain groups being considered as part of the Review are being subjected to sustained forms of targeted victimisation. The Bar does not take a view on the merits of the inclusion of the specific groups outlined in this section of the consultation paper. However, we would caution that to extend the law to further specific groups could risk causing confusion as it is often difficult to place people into a particular group. For example, we would query at what age we should consider that someone becomes an older person.

15. We also consider that it would be helpful to understand further the work of the Law Commission which is currently conducting a further review into hate crime

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legislation in England and Wales and includes additional protected characteristics. We note that this project will publish a consultation paper in the middle of 2020.

Q18. Do you consider that intersectionality is an important factor to be taken into consideration in any new hate crime legislation? Q19. 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?

16. The Bar takes the view that issues in practice might arise in proving intersectionality prejudices and that this may unduly complicate matters for the judge and jury. We consider that the concept of intersectionality could be more useful in the recording of data and in understanding how to support victims rather than it being reflected at the offence or sentencing stage.

Towards a New Hate Crime Law for Northern Ireland

Q20. 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?

17. Yes – the Bar takes the view that if the enhanced sentencing model remains as the core provision for dealing with hate crimes then it should be amended to provide for the recording of convictions on the Criminal Record Viewer.

Q21. 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?

18. Yes – Paragraph 9.28 helpfully highlights the way in which this model could simplify and strengthen the law in Northern Ireland by removing any issues associated with the sentencing provisions and thereby ensuring that identity based hostilities are included as part of the basic offence in the criminal law. This would also mean that the Criminal Justice (No. 2) (Northern Ireland) Order 2004 would no longer be required.

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Q22. In dealing with an aggravated offence, should the court state on conviction that the offence was aggravated? Q23. In dealing with an aggravated offence, should the court record the conviction in a way that shows that the offence was aggravated?

19. Yes – the Bar agrees that the court should state on conviction that the offence was aggravated. The recording of convictions by the courts will also allow for improved monitoring of statistics and trends on hate crime.

Q24. In dealing with an aggravated offence, should the court take the aggravation into account in determining the appropriate sentence?

20. The judiciary already treat hostility as an aggravating factor when determining the appropriate sentence for an offender.

Q25(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? Q25(2). In dealing with an aggravated offence, should the court otherwise state the reasons for there being no such difference?

21. No – see reasons given in response to Q10. The Bar considers that it is sufficient for the court to state on conviction that the offence was aggravated, record the conviction in a way that shows that the offence was aggravated and take the aggravation into account in determining the appropriate sentence.

Q26. 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?

22. Yes – the Bar considers that improved recording of hate crime offences in criminal justice records is essential and can serve an important function in individual cases of repeat offending too. For example, a judge should be informed that the offender's previous convictions have the aggravating characteristics. It will also

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be relevant to bail applications, to enable the prosecution to take an informed view as to whether or not bail is opposed and, if so, on what grounds.

Adequacy of the Current Thresholds for Proving the Aggravation of Prejudice

> Q27. 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?
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> Q28. 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?
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> Q29. Do you consider that there should be a statutory definition of the term "hostility"?
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> Q30. 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"?

23. The Bar considers that the current thresholds of a demonstration of hostility and motivation should be maintained as per section 28(1) of the Crime and Disorder Act 1998 if Northern Ireland follows the statutory aggravation model. This would mean that the majority of hate crime cases would likely fall within Section 28(1)(a) which would represent an important tool in tackling most hate crimes where an outward manifestation of hostility has been expressed. However, we would query the rationale for expanding this to a third "by reason of" threshold as no evidence is presented in the paper to suggest that this is necessary or that it would extend the scope of the criminal law. The Bar expects that the ongoing review being conducted by the Law Commission may consider this in further detail in the context of the legislation's operation in England and Wales. We consider that it might be helpful to review its findings before moving to change the law in this way in Northern Ireland.

24. The introduction of a wider range of attitudes such as "bias, prejudice or contempt", may well prove beneficial, particularly as there is no standard legal definition of "hostility". Such a change might also be seen as fair labelling and providing more certainty in understanding the nature of this species of offending.

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Q29. Do you consider that there should be a statutory definition of the term "hostility"?

Q30. 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"?

25. No – the Bar does not consider that there should be a statutory definition of the term hostility. The Bar does not understand the purpose of question 30 as the current everyday understanding of the word in the courts is very broad and includes things like ill-will, spite, contempt, prejudice, unfriendliness, antagonism, resentment and dislike.

Stirring Up Offences

Q31. 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?

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

Q.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?

Q34. Do you consider the term "hatred" as the appropriate test to use in the Public Order (Northern Ireland) Order 1987?

26. Broadly speaking, the Bar would caution that from a human rights perspective there is a genuine danger that expanding provisions in this area will also impact adversely on freedom of speech and a danger that legitimate criticism could be construed as "stirring up hatred". We would query whether this could prevent legitimate demonstrations against the actions of a particular group on the basis that it could be construed as stirring up hatred.

27. In relation to the 1986 Act, given the mens rea elements of section 4 and 4A, these could be difficult charges to prove. This is potentially made all the more difficult with the defence allowed at section 5(3). One concern would appear to be from a public policy position, that in prosecution cases that could be difficult to prove,

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the person who has prima facie incited hatred has been given another platform to express his words and if acquitted, they (and others) may feel vindicated in employing the same words again. On balance, there may be some merit in adding sections 4, 4A and 5 but we would urge caution in its use.

28. The Bar also understands that the Public Order Act 1986 is currently being examined as part of the Law Commission's Review in England and Wales and therefore it may be prudent to consider if any recommendations will be forthcoming on whether the Act should be extended or reformed before additions are made to the 1987 Order.

29. In addition, we take the view that the dwelling defence should be maintained. In terms of the rationale for its maintenance to date, it does seem akin to a disorderly behaviour charge which has an essential element that the behaviour complained of must be in a public place (or possession of an offensive weapon in a public place, possession of a blade in a public place etc.). Whilst there are obvious free speech issues involved, if the dwelling defence was removed and the offence was widened to include private places, this would also create issues engaging Article 8.

30. Prosecutions taken under Part III of the Public Order (Northern Ireland) Order 1987 should be consented to by the DPP, in order to ensure that there are not frivolous or vexatious private prosecutions taken.

Q35. 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?

31. See the Bar's comments above in relation to potential issues around extending the number of protected groups.

Q36. 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? Q37. 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?

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Q38. Under Article 9(1) of the Public Order (Northern Ireland) Order 1987, should the test remain referring to a person using "threatening, abusive or insulting words or behaviour or displaying any similar written material which is threatening, abusive or insulting" or should the words "abusive" or "insulting" be removed from the test for the commission of the offence?

Q39. 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?

32. Yes – there should be specific protections around freedom of expression which is a fundamental right in modern-day society. Therefore it must be protected even for those with whom we fundamentally disagree. In addition, the words "abusive" or "insulting" should not be removed from the test for the commission of the offence under Article 9(1) as the effect of the abuse. The Article 9 offence involves an important mens rea element, namely that the words or behaviour employed was done so with the intention to stir up hatred or arouse fear. If the offence was simply that abusive or insulting words were used, then we could see how it would be right to remove these words from the legislation, but because of the underlying intent that must be used these words are deployed, and therefore it is appropriate to maintain the terms "abusive" and "insulting".

Online Hate Speech

Q40. Should social media companies be compelled under legislation to remove offensive material posted online?

33. Hate crimes which occur online are already subject to the same laws that would apply if the crime occurred in person in NI. We note that the UK Government's 'Online Harms' White Paper published in 2019 puts forward an extensive regulatory regime and that the role of social media companies forms part of this. A dual approach is required to tackling these offences both through the prosecution of individuals and by regulation of social media companies to include the removal of hate speech online.

Q41. Are there lessons from the English and Welsh experience of the Public Order Act 1986 that may apply for Northern Ireland?

34. The Bar has no comment to make on this.

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Q42. Should the dwelling defence under Article 9(3) of the Public Order (Northern Ireland) Order 1987 be amended/removed?

35. No - the Bar takes the view that the dwelling defence under Article 9(3) of the Public Order (Northern Ireland) Order 1987 should remain in place. However, if it is to be removed then we recognise that it would be essential for some form of defence for 'private' conversations to be implemented and that one which relies on the word 'dwelling' may not be entirely appropriate for the online world with regard to other forms of private communication.

Q43. Should the term "publication" in the Public Order (Northern Ireland) Order 1987 be amended to include "posting or uploading material online"?

36. Yes – this term should include posting or uploading material online. Concerns around private conversations must be dealt with by making clear that this offence does not apply to these conversations.

Q44. Should there be an explicit defence of "private conversations" in the Public Order (Northern Ireland) Order 1987 to uphold privacy protection?

37. Yes – the creation of this defence would help to ensure that there is a specific protections around privacy and freedom of expression which is a fundamental right in modern-day society.

Q45. Should gender, gender identity, age and other characteristics be included as protected characteristics under the Public Order (Northern Ireland) Order 1987?

38. See the Bar's comments above in relation to potential issues around extending the number of protected groups.

Q46. Should the Malicious Communications (Northern Ireland) Order 1988 be adapted to deal with online behaviour? Q47. Should the wording of the Malicious Communications Act 1988, the Malicious Communications (Northern Ireland) Order 1988, the Malicious

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Communications (Northern Ireland) Order 1988 and the Communications Act 2003 use terms such as "grossly offensive", "indecent" and "obscene"?

39. Yes – Following the English modernising approach in 2001 to include electronic communications, the Bar believes that the legislation in NI should be amended to include online behaviour. Unlike the English legislation which carries a maximum sentence of 12 months custody upon summary conviction and 2 years custody on indictment (see section 1(5) of the MCA 1988), the Northern Ireland legislation does not provide for trial on indictment and does not attract a custody sentence (the maximum sentence being a Level 4 fine, see Article 3(4) of the MCO 1988). This is not consistent either with an offence committed per Article 127(1) which attracts a maximum sentence of 6 months custody and / or Level 5 fine upon summary conviction, but also cannot be tried on indictment. Given these offences may be aggravated by hostility, per the 2004 Order, from a public policy perspective, it may be viewed that the sentencing ranges are not reflective of the offence.

40. Many seemingly arcane legal terms may appear outdated for the online world and we would query what 'grossly offensive', 'indecent' and 'obscene' should be updated to as practitioners have not given any indication that the use of these terms present a particular area of concern in their operation in Northern Ireland. In any case there is common law assistance through case law to provide guidance to the legal profession and judiciary in interpretation.

Q48. Are the offences under the Malicious Communications Act 1988, the Malicious Communications (Northern Ireland) Order 1988, the Malicious Communications (Northern Ireland) Order 1988 and Communications Act 2003 too broadly drafted and require some modification to clarify and narrow their application? Q49. Should online harm be part of a general law applying to hate crime? Q50. Is the current law contained in the Malicious Communications Act 1988, the Malicious Communications (Northern Ireland) Order 1988, the Malicious Communications (Northern Ireland) Order 1988 and the Communications Act 2003 sufficiently clear to protect freedom of expression?

41. No, the offences are not too broadly drafted - given that there is such a range of potential offending through messages, threats, information, in communication

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and/or online, a broad drafting ensures a wide scope to ensure there are no 'loopholes' in the legislation.

42. Online harm should be included if there is to be a general law against hate crime, given the prevalence of online communications. The current law contained in the Malicious Communications Act 1988, the Malicious Communications (Northern Ireland) Order 1988, the Malicious Communications (Northern Ireland) Order 1988 and the Communications Act 2003 is sufficiently clear to protect freedom of expression and this is also protected by the HRA 1998 and Article 10 ECHR too.

Sectarianism and Hate Crime Legislation in Northern Ireland

Q51. Would you support a specific reference to the term 'sectarian' within any new hate crime legislation? Q52. Should the list of indicators for sectarianism (i.e. religious belief and political opinion) be expanded?

43. Sectarian behaviour is never acceptable and existing legislation aimed at tackling discrimination tends to rely on the protected category of 'religious group' as the sole indicator for sectarian aggravation. Whilst the legislative framework may be complex and could be consolidated to provide more consistent and effective protection, we see no evidence to suggest that the current provisions are not operating as intended to properly protect against sectarianism.

Removing Hate Expression from Public Space

Q53. Should the law relating to the duties of public authorities to intervene to tackle hate expression in public space be strengthened or further clarified?

44. The Bar has no comment to make on this.

Restorative Justice

Q54. Should restorative justice be part of the criminal justice process in dealing with hate crime in Northern Ireland? Q55. Should restorative justice schemes be placed on a statutory footing? Q56. Should there be a formal justice system agency responsible for the delivery of adult restorative justice for hate crime?

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Q57. What role do you envisage for the accredited community based restorative justice organisations in the delivery of adult restorative justice for hate crime?

Q58. Do you consider diversion from prosecution is an appropriate method of dealing with low level hate crimes as per the practice in Scotland?

45. Yes – the Bar takes the view that there may be potential in exploring diversion and restorative justice approaches in this area as they can be very beneficial. However, it will be important to recognise that this may not always be appropriate or practical. For example, a victim may not wish to engage or it may not be appropriate based on the nature of the offending.

46. Yes – there could be merit in these schemes being placed on a statutory footing in order to ensure certainty and uniformity of application. If a formal justice system agency is to be made responsible for the delivery of adult restorative justice then an organisation such as the PBNI might be well placed to coordinate this and any collaborative engagement with accredited community based restorative justice organisations.

Victims

Q59. Do you have any views as to how levels of under reporting might be improved?

47. The Bar acknowledges concerns around reporting levels outlined but it is also important to note the dangers associated with suggestions that our criminal justice system should be targeting higher conviction rates in certain areas. Instead we should be ensuring that the institutions which sustain and uphold the rule of law are defended and strengthened, thereby promoting public confidence in a high-quality criminal justice system that works effectively for all citizens across our community.

Q60. Do you consider that the Hate Crime Advocacy Scheme is valuable in encouraging the reporting of hate crime?

Q61. Do you consider that the Hate Crime Advocacy Scheme is valuable in supporting victims of hate crime through the criminal justice process?

Q62. How might the current Hate Crime Advocacy Scheme be improved?

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Q63. 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?

48. The Bar has no specific comments to make on the operation of the Hate Crime Advocacy Service but would recognise that it performs an important role in supporting victims through the criminal justice process.

Q64. Do you consider that, in certain circumstances, press reporting of the identity of the complainant in a hate crime should not be permitted?

Q65. In what circumstances should a restriction on press reporting of the identity of the complainant in a hate crime be permissible?

49. No - Any restrictions on press reporting can already be considered on a case by case basis by a judge where appropriate. Open justice is a fundamental principle which has been a pillar of our criminal justice system for many years and it represents a vital element in commanding public confidence in the court system and should be open to scrutiny. The media provides the channel through which most members of the public receive information about court proceedings and therefore restrictions should not generally be permissible.

Legislation: Consolidation and Scrutiny

Q66. 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?

Q67. Should any new legislation on hate crime be subject to post-legislative scrutiny?

Q68. In what way should post-legislative scrutiny be provided for?

50. Yes – It is essential that any further specific hate crime legislation is clearly expressed in a single piece of legislation along with any appropriate guidance as this will bring clarity, transparency and consistency of approach to the law. The Bar also agrees that there should be provision of post-legislative scrutiny to ensure that the policy objectives of the legislation have been met and considers

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that this might be best conducted by the Department of Justice. Any review should be provided for at least three years after the legislation has been passed to allow time for it to bed in and be put into practice by actors across the criminal justice system.

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