

A hand holding a spray can, spraying paint onto a piece of cardboard. The cardboard has the text 'THEMATIC REVIEW OF POLICING RACE HATE CRIME' written on it. The background is a wall with graffiti and a bicycle wheel.

THEMATIC REVIEW OF  
**POLICING  
RACE HATE  
CRIME**

# Thematic Review of Policing Race Hate Crime

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## TERMS OF REFERENCE

All human beings are born free and equal in dignity and rights. All human rights are universal, interdependent, indivisible and interrelated. The Human Rights Act 1998 requires the Police Service of Northern Ireland (PSNI), as a public authority, to uphold and protect the fundamental rights and freedoms of individuals that are enshrined in the European Convention on Human Rights and Fundamental Freedoms (ECHR). The Northern Ireland Policing Board has a statutory duty to monitor the performance of the PSNI in complying with the Human Rights Act 1998.

In recognising that discrimination and abuse based on race is an issue of grave concern within Northern Ireland, that must be addressed with some urgency, the Board through its Performance Committee, undertook a thematic review to examine policing with and for all members of the community who may be identified as being within a minority racial group.<sup>1</sup> This thematic review considers specifically race hate crime. PSNI and the Board used the definition recommended by the Stephen Lawrence enquiry, namely “any incident which is perceived to be racist by the victim or any other person.” A racial group is defined as being a group of persons defined by reference to race, colour, nationality or ethnic or national origin and references to a person’s racial group refer to any racial group into which he or she falls. Racial group includes Irish Travellers.

The thematic review considers the PSNI approach to policing with and for those individuals and in particular its compliance with the Human Rights Act 1998 in, but not limited to:

- Identifying, recording and encouraging the reporting of race hate crimes;
- Supporting victims of race hate crime;
- Investigating race hate crimes and arresting and prosecuting the perpetrators;
- Effectiveness of the police use of powers to bring offenders before the court;
- Strategies to combat race hate crime;

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<sup>1</sup> PSNI records 6 different categories of hate crime: racist; homophobic; transphobic; disability; faith/religion (non-Sectarian); and Sectarian (Protestant/Catholic). The thematic review will consider racist hate crime.

- Supporting police officers and staff from minority ethnic communities; and
- Engaging with external partners and stakeholders.

This thematic review also raises awareness by putting into the public domain information on the policing of hate crime for the benefit of victims, the public and all statutory and non-statutory partners. Awareness-raising is vital to counter the myths that encourage racism and intolerance by substituting them with facts and informing the public generally and victims in particular about their rights and available redress. It is well recognised that law is only effective if those for whose benefit it is enacted know about it and how it is implemented and trust that it will be applied equally to all. Throughout the thematic review it became clear that the level of understanding was very mixed; many victims are unaware of their rights and others, including some police officers, have significant gaps in their understanding.



## THEMATIC REVIEW OF POLICING RACE HATE CRIME

### INTRODUCTION

Northern Ireland has become an increasingly diverse society comprising individuals from wide ranging racial, religious, political, socio-economic and familial backgrounds. While Northern Ireland has been home to a number of small but well-established black and minority ethnic communities for several decades, most notably the Indian and Chinese communities, the 2004 expansion of the European Union (EU) facilitated the arrival of thousands of individuals from new member states such as Poland and Lithuania. Moreover a reduction in the incidence of violence and “relative economic stability, especially in the period 1998 to 2008, made Northern Ireland a more attractive location for migrant workers, and consequently a more culturally diverse society.”<sup>2</sup>

On Census Day 2011, 1.8% (32,400) of the usually resident population of Northern Ireland belonged to minority ethnic groups, more than double the proportion in 2001 (0.8%; 14,300). The groups were Chinese (0.4%; 6,300), Indian (0.3%; 6,200), ‘Mixed’ (0.3%; 6,000), ‘Other Asian’ (0.3%; 5,000), ‘Other’ (0.1%; 2,400), Black African (0.1%; 2,300), Irish Travellers (0.1%; 1,300), Pakistani (0.1%; 1,100), ‘Black other’ (0.01; 1,000), Bangladeshi (0.03%; 500) and Black Caribbean (0.02%; 400).<sup>3</sup> White immigrants are not included within the meaning of the term ‘ethnic’ for the purposes of the census. However in terms of countries of birth, the proportion of the usually resident population born outside Northern Ireland rose from 9% (151,000) in 2001 to 11% (202,000) in 2011. This change was largely as a result of inward migration by people born in the 12 EU accession countries, who accounted for 2% (35,700) of people usually resident in Northern Ireland compared with less than 0.1% of the 2001 Census Day population. The remainder of the population born outside Northern Ireland consisted of 4.6% (82,800) born in Great Britain, 2.1% (37,800) born in the Republic of Ireland, 0.5% born in countries which were EU Members before 2004 and 2% born elsewhere.

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<sup>2</sup> *Research Update: A ‘Shared Society’? Attitudes on Immigration and Diversity*, P. McDermott, ARK, November 2013, page 1.

<sup>3</sup> *Census 2011: Key Statistics for Northern Ireland*, Northern Ireland Statistics and Research Agency (NISRA), Statistics Bulletin, December 2012. Figures are rounded up to the nearest 100.

English was not the main language for 3.1% (54,500) of Northern Ireland residents aged 3 years and over. The most prevalent main language other than English was Polish (1.0%; 17,700). The rates for other languages included: Lithuanian (0.4%; 6,300); Irish (0.2%; 4,200); and Portuguese (2,300), Slovak (2,300), Chinese (2,200), Tagalog/Filipino (1,900), Latvian (1,300), Russian (1,200), Malayalam (1,200) or Hungarian (1,000), each accounting for around 0.1% of the usually resident population.

Such diversity has enriched our society, economically and culturally. A research report produced in 2014, which challenges the many myths about migrants who have made their home in Northern Ireland, demonstrates that migration in recent years has contributed to sustaining economic growth, filling labour shortages and bringing much needed skills.<sup>4</sup> According to that report, recent European immigrants into the United Kingdom have paid £8.8 billion more in tax than they have consumed in public services. Furthermore, minority ethnic enterprises contribute £13 billion per year to the United Kingdom economy. The report challenges the many myths that surround the impact of migration on the local job market, housing allocation, the welfare system, crime, the health service and the education system. It highlights that when incorrect perceptions about migrants and competition for resources such as jobs and housing take root, “they can create an atmosphere of ethnic intolerance, resentment and hostility, often resulting in hate crimes.”<sup>5</sup>

The Northern Ireland Life and Times Survey puts on record the attitudes, values and beliefs of the people in Northern Ireland on a wide range of social policy issues. Despite the benefits of migration, there appears to have been a negative shift in attitudes. Between 2013 and 2015, there has been an increase in negative attitudes across all categories. The Life and Times survey asked a range of questions aimed at gauging attitudes to various racial groups. The results reveal that while the majority of people surveyed in 2013 would willingly accept people from such groups as neighbours, colleagues, friends and relatives, a substantial proportion of people

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<sup>4</sup> *Challenging Racism: Ending Hate*, R. Montague and P. Shirlow, Queen’s University Belfast in conjunction with the Centre for Democracy and Peace Building, Belfast City Council and Belfast PCSP, November 2014.

<sup>5</sup> *Ibid.* page 1.

would not.<sup>6</sup> By 2015, in many instances over half of the people surveyed now display negative attitudes.<sup>7</sup>

In 2013, in relation to people from Eastern Europe, 22% of people surveyed said they would not willing accept them as a resident living and working in Northern Ireland; 27% would not willingly accept them as a resident in their local area; 31% would not accept them as a colleague at work; 43% would not willingly accept them as a close friend; and 47% would not willingly accept them as a relative by marriage. In relation to other minority ethnic groups, 15% of people said they would not willing accept them as a resident living and working in Northern Ireland; 21% would not willingly accept them as a resident in their local area; 27% would not accept them as a colleague at work; 41% would not willingly accept them as a close friend; and 46% would not willingly accept them as a relative by marriage.

In 2015, there was a further significant and worrying increase in the number of people who would not willingly accept people from minority groups. In respect of an Eastern European person 19% would not willingly accept them living and working as a resident of Northern Ireland; 30% would not willingly accept them as a resident in the local area; 38% would not willingly accept them as a colleague at work; 50% would not willingly accept them as a close friend; and 55% would not willingly accept them as a relative by way of marrying a close family member.

In 2015, in respect of people from a minority ethnic background, 18% would not willingly accept them as a resident living and working in Northern Ireland; 21% would not willingly accept them as a resident in the local area; 34% would not willingly accept them as a colleague at work; 47% would not willingly accept them as a close friend; and 53% would not willingly accept them as a relative by way of marrying a close family member.

Views in relation to Irish Travellers were even more negative. In response to the 2013 survey, 49% of people said they would not willingly accept an Irish Traveller as

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<sup>6</sup> *Northern Ireland Life and Times Survey 2013: Attitudes to Minority Ethnic People*, ARK, June 2014.

<sup>7</sup> *Northern Ireland Life and Times Survey 2015: Attitudes to Minority Ethnic People*, ARK, December 2015.

a resident in their local area; 42% would not accept them as a colleague at work; 60% would not willingly accept them as a close friend; and 64% would not willingly accept them as a relative by marriage. In 2015, 52% would not willingly accept Irish Travellers living in a house in the local area; 52% would not willingly accept an Irish Traveller as a colleague at work; 65% would not willingly accept an Irish Traveller as a close friend; and 70% would not willingly accept an Irish Traveller as a relative by marriage.

Referring to a spate of racist attacks on Roma people living in South Belfast in 2009, one researcher commented, “If one digs a little deeper, it is clear that racism directed towards the Roma people is far from being confined to a handful of extremists. Indeed it is much more widespread, although manifested differently. For instance, an undercurrent of racial prejudice often surfaced in radio chat shows and in the comments sections of local online newspapers and blogs. Although there are condemnations of these attitudes as well, the point to make is that racism is much more widespread and not necessarily confined to a narrow band of extremists... racism cannot be tackled in its entirety until the full extent of racism is acknowledged.”<sup>8</sup>

The results of the Life and Times Survey do not mean that people holding such views are necessarily going to discriminate directly against certain racial groups or commit race hate crime. However, they are indicative of the social environment within which such incidents flourish. It should alert the PSNI and other partners to the real risk that hate crime may increase. It is more important than ever that the PSNI measures and understands the nature and scale of the problem and develops a strategy to respond to it.

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<sup>8</sup> *Racism in Northern Ireland: The Racial Equality Strategy from Policy to Practice*, F. Haughey, July 2014, page 9. This was a Summary Report based on findings from Doctoral Research of the same title published in 2010.



PSNI records and publishes statistics on all reported hate incidents<sup>9</sup> and hate crimes<sup>10</sup> where there is a perception on the part of the victim or any other person that the motivation for the prejudice or hate towards the injured party is based upon:

- (i) Race or ethnicity (Racist);
- (ii) Sexual orientation (Homophobic);
- (iii) Faith or religion (Non-Sectarian incidents);
- (iv) Faith/religion<sup>11</sup> or political opinion (Sectarian);
- (v) Disability; or
- (vi) Gender identity (Transphobic).

The perception test used by PSNI for hate motivated incidents and crimes derives from the definition of racially motivated incidents recommended by Lord McPherson following the Stephen Lawrence enquiry, namely, “any incident, which is perceived to be racist by the victim or any other person.” A racial group is defined as being a group of persons defined by reference to race, colour, nationality or ethnic or national origins and references to a person’s racial group refer to any racial group into which he or she falls. Racial group includes Irish Travellers.

To put race hate crime in Northern Ireland in perspective, a race hate incident is reported approximately every seven hours. Racist hate crimes are the second most common type of hate crime recorded by PSNI, with sectarian hate crime being the most common. The levels of racist hate crimes recorded by PSNI began to decline in 2010/11 following a peak in 2009/10 however they began to increase again in 2012/13. There was a significant increase in reported racially motivated hate incidents in Northern Ireland in 2014/15 when racist hate crime reached its highest level ever recorded (1,356 incidents within which there were 920 crimes). That reflects a year on year increase since 2011, with only a minor decrease in 2015/16

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<sup>9</sup> A hate incident is defined by PSNI as being, “any incident, which may or may not constitute a criminal offence, which is perceived by the victim or any other person, as being motivated by prejudice or hate.”

<sup>10</sup> A hate crime is defined by PSNI as being, “any hate incident, which constitutes a criminal offence, perceived by the victim or any other person as being motivated by prejudice or hate. A hate crime requires a full and comprehensive investigation with a view to maintaining the confidence of the victim and detecting and prosecuting the offender.”

<sup>11</sup> I.e. Protestant/Catholic.

(1,221 incidents within which there were 853 crimes).<sup>12</sup> This is particularly troubling given the increase in negative public attitudes evidenced in the 2015 Life and Times Survey. In that survey 40% of people thought there was more racial prejudice in Northern Ireland in 2015 than in 2010.<sup>13</sup>

The Policing Board's Performance Committee recognises that tackling racism is a wider societal issue that cannot be addressed by the PSNI alone, but police officers clearly have a very central role to play where racism manifests, or has the potential to manifest, in the form of hate incidents and hate crimes. Through this thematic review the Committee examines all aspects of the police response to racism, from prevention to detection, from victim support to engagement with the wider community. While recommendations are made where it is believed improvement is required, this review also highlights the very good work that is taking place across the Police Service and is intended to support the police as they continue their efforts to tackle racist hate crime and to secure safer communities for the whole of Northern Ireland.

In conducting this thematic review the Policing Board kept in mind the words of the European Court of Human Rights which said "Racial discrimination is a particularly invidious kind of discrimination and, in view of its perilous consequences, requires from the authorities special vigilance and a vigorous reaction. It is for this reason that the authorities must use all available means to combat racism, thereby reinforcing democracy's vision of a society in which diversity is not perceived as a threat but as a source of enrichment."<sup>14</sup>

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<sup>12</sup> *Trends in Hate Motivated Incidents and Crimes Recorded by the Police in Northern Ireland 2004/05 to 2015/16*, PSNI, November 2016.

<sup>13</sup> *Northern Ireland Life and Times Survey 2015: Attitudes to Minority Ethnic People*, ARK, December 2015.

<sup>14</sup> *DH v Czech Republic* (2007) 47 EHRR 59, para 176.

## BACKGROUND AND SIGNIFICANCE

Any response to hate crime must, if it is to achieve anything, start with and be informed by a proper understanding of what it is. Unless and until hate crime is understood in all its complexity any attempt to combat it will prove inadequate. The term ‘hate crime’ appears routinely in government policy and is used frequently in public discourse but it is often applied inconsistently. Confusion often arises from the fact that there is, in fact, no specific criminal offence for ‘hate crime’ in Northern Ireland and no simple legal definition of it. Understanding the background to specific policy for dealing with hate crime however puts it in context.

In the United Kingdom in the 1990s hate crime came to particular prominence in the wake of the racist murder of black British teenager Stephen Lawrence and escalated further by the racist and homophobic bomb attacks in London. Allegations surfaced quickly of incompetence and racism against Metropolitan Police Officers in charge of the Stephen Lawrence investigation. The ensuing internal police inquiries, which exonerated the police, fractured race relations and caused wide spread concern about the actions of the police. A Judicial Inquiry followed, chaired by Sir William Macpherson of Cluny. In February 1999, Sir William published his report which was considered by many as a defining moment in British race relations. The report found that the police investigation into Stephen’s murder was “marred by a combination of professional incompetence, institutional racism and a failure of leadership by senior officers”.<sup>15</sup>

The words of warning by Sir William Macpherson in setting the context for and purpose of the Inquiry are as important today as they ever were. He said “we believe that the immediate impact of the Inquiry, as it developed, has brought forcibly before the public the justifiable complaints of Mr & Mrs Lawrence, and the hitherto underplayed dissatisfaction and unhappiness of minority ethnic communities, both locally and all over the country, in connection with this and other cases, as to their treatment by police... We believe that the Stephen Lawrence Inquiry has provided such publicity and such awareness of the problems directly and indirectly revealed

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<sup>15</sup> *The Stephen Lawrence Inquiry: Report of an Inquiry by Sir William Macpherson of Cluny*, Home Office, Cm 4262-I, February 1999, para 46.1.

that there is now a signal opportunity to deal with specific matters arising from the murder and all that followed. We believe that there should be a clarion call to seize the chance to tackle and to deal with the general problems and differing perceptions that plainly exist between the minority ethnic communities and the police... We do believe that the debate about policing and racism has been transformed by this Inquiry, and that the debate thus ignited must be carried forward constructively and with imagination into action”.<sup>16</sup>

The Macpherson report delivered a damning assessment of "institutional racism" within the Metropolitan Police Service and policing more generally. It made 70 recommendations, many of which were targeted specifically at improving police attitudes to racism. The report also stressed the importance of a rapid increase in the numbers of Black and Asian police officers. On the tenth anniversary of the murder, the Home Affairs Committee carried out an inquiry into progress made in implementing the recommendations and addressing the findings of the report. The Committee reported in July 2009.<sup>17</sup> In the ten years following the Macpherson report considerable progress was recorded with Mr Neville Lawrence (Stephen's father) observing that "police forces have paid a lot of attention; they have put a lot of resources in". It was noted that there had been various measures put in place to effect a cultural change within the Metropolitan Police Service such as the establishment of the Hydra Leadership Academy, the Diversity Excellence Model, the Diversity Crime Survey, the introduction of the Cultural and Communities Resource Unit, the introduction of the Staff Associations Meeting Up and Interacting, introduction of appropriately trained Family Liaison Officers (FLOs) in critical incidents and the setting up of an Independent Advisory Group. Police witnesses cited the introduction of FLOs as key to improving homicide detection rates because they were more "effective at maintaining relationships with families, at getting the evidence that is required and keeping people on side".<sup>18</sup>

Since the Lawrence Inquiry report there have been a number of incidents which have provoked a well-documented increase in hate crime on the ground of religion. For

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<sup>16</sup> *Ibid.* para 2.17.

<sup>17</sup> *The Macpherson Report – Ten Years On*, Home Affairs Committee, Twelfth Report of Session 2008–09, 22 July 2009.

<sup>18</sup> *Ibid.* para 5.

example the terrorist attacks in New York on 11 September 2001 and in London on 7 July 2005 were followed by a rise in Islamophobia.

## **Defining hate crime**

The concept of hate crime is grounded in the universal principles of equal rights, tolerance and democratic values that are reflected in a number of international treaties and instruments. Hate, however, is an emotionally charged and subjective word that can mean different things to different people. That can affect negatively the policing and societal approach to and even acceptance of the legitimacy of hate crime. During this thematic review a number of contributors, including some police officers, suggested that victims of hate crime received ‘special treatment’ which was not merited. In other words, that hate crime and its victims were treated more favourably because of their status. That perception must be addressed as a matter of urgency. It is not more favourable treatment that is required or delivered but different treatment that is required to enable victims to receive an equal service.

As the European Court of Human Rights (ECtHR), considering a case concerning a police investigation into a racist attack against a person of Roma origin by individuals suspected to belong to a ‘skinhead’ group, emphasised: “treating racially induced violence and brutality on an equal footing with cases that have no racist overtones would be turning a blind eye to the specific nature of acts that are particularly destructive of fundamental rights.”<sup>19</sup> The ECtHR considered it unacceptable that a violent act which was most probably racially-motivated had not been investigated seriously and expeditiously with a view to identifying and prosecuting the perpetrators. This is explored and developed throughout this thematic review.

The characteristics of racist hate crime commonly (but not exclusively) include the victim’s membership of a distinct racial or ethnic minority group, an imbalance in power between the victim and perpetrator and a perception that the distinct minority group presents a threat to the perpetrator’s quality of life. Hate crime has been described as involving “acts of violence and intimidation, usually directed towards

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<sup>19</sup> *Šečić v. Croatia*, App. No. 40116/02, ECHR 2007, para 67.



already stigmatised and marginalised groups. As such, it is a mechanism of power and oppression, intended to reaffirm the precarious hierarchies that characterise a given social order. It attempts to recreate simultaneously the threatened (real or imagined) hegemony of the perpetrator's group and the 'appropriate' subordinate identity of the victim's group. It is a means of marking both the Self and the Other in such a way as to re-establish their 'proper' relative positions, as given and reproduced by broader ideologies and patterns of social and political inequality".<sup>20</sup> Or, put another way, hate crime involves acts of violence and intimidation directed towards people because of their identity or perceived difference.

Viewed from that perspective it can be seen that hate crime derives from and is fed by prejudice, marginalisation and oppression experienced by minority groups. In turn, the perpetration of hate crime on a minority group fuels further marginalisation and oppression of that minority group. Hate crime does not begin and end with an isolated offence; it occurs within a social and political context which is ever changing. Nor is hate crime perpetrated on the victim alone. Rather, it is directed towards the wider community to which the victim belongs. Hate crime impacts upon the wider community by engendering fear, hostility and suspicion.

The Macpherson report emphasised the need "to ensure that nobody obscures the approach to incidents involving racism because of lack of appreciation or willingness to accept that racism is involved. A clear and uncompromising definition of such incidents is needed to ensure that there is no shelter for such views".<sup>21</sup> It recommended a new definition for a racist incident as "any incident which is perceived to be racist by the victim or any other person". This definition gives primacy to the perception of the victim rather than the judgement of the officer attending.<sup>22</sup> It also stressed that the term "racist incident" must be understood to include crimes and non-crimes in policing terms; both must be reported, recorded and investigated with equal commitment.<sup>23</sup> The Macpherson report has resulted in a

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<sup>20</sup> *In the Name of Hate Understanding Hate Crimes*, Barbara Perry, March 2001.

<sup>21</sup> *Ibid.* para 46.36.

<sup>22</sup> Before the Macpherson recommendation was accepted the definition used by police was as follows. "A racist incident is any incident in which it appears to the reporting or investigating officer that the complaint involves an element of racial motivation made by any person."

<sup>23</sup> *The Stephen Lawrence Inquiry: Report of an Inquiry by Sir William Macpherson of Cluny*, Home Office, Cm 4262-I, February 1999, recommendation 12.

number of developments to policing across the United Kingdom, including Northern Ireland, relating to critical incident management, family liaison, community engagement and independent advice, third-party reporting, and changes in the way hate crime investigations are conducted.

In 2005, the Association of Chief Police Officers (ACPO)<sup>24</sup> issued new guidelines giving primacy to the views of the victim or any other person as the defining feature in the determination of a hate incident. ACPO defined a hate incident as “any incident, which may or may not constitute a criminal offence, which is perceived by the victim or any other person, as being motivated by prejudice or hate.” The ACPO definition of hate crime was “any incident, which constitutes a criminal offence, perceived by the victim or any other person, as being motivated by prejudice or hate.” Therefore, at the recording stage any hate incident whether displaying the elements of a crime or not had to be recorded as such if the threshold test provided by Macpherson (of perception) was met. In 2014, the College of Policing issued new guidelines which adopted the same definition save that “prejudice and hate” were replaced with “hostility or prejudice”. Hostility is a wider concept than hate and more accurately reflects the nature and scale of such incidents.

During this thematic review some PSNI officers asked why “attacks on police officers are not hate crimes?” While not underestimating the impact of crime upon police officers directed at them because they wear a uniform, it is essential that hate crime which targets individuals and groups because of personal immutable characteristics is not diluted by an attempt to broaden out its application beyond personal characteristics. As the Organisation for Security and Cooperation in Europe (OSCE) and the Office for Democratic Institutions and Human Rights (ODIHR) put it “group characteristics are often apparent or noticeable to others, such as language, gender or ethnicity, and are often immutable; they cannot be changed by a decision of the bearer. Therefore, if an offender targets wealthy people for theft, such cases would not be recognized as hate crimes. This is because wealth is not a characteristic that creates a shared group identity, nor is it a deep and fundamental part of a person’s

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<sup>24</sup> ACPO guidelines applied in England, Wales and Northern Ireland. ACPO was replaced in April 2015 by the National Police Chiefs’ Council.

identity in the same way as race or religion. By contrast, crimes that target victims because of their national origin, for example, would be hate crimes”.<sup>25</sup>

The evolution of the definition is important because it reveals the progression of understanding and experience of hate incidents and crimes and provides a more realistic explanation of what motivates such incidents and crimes. This is more than academic pedantry and must be remembered by police officers, some of whom continued to question the legitimacy of treating hate crime differently or who believe that hate is “too difficult an emotion to prove”. Hate incidents and crimes deny the human dignity and individuality of the victim and attack the principle that each individual is entitled to the equal protection of the law. As guardians of the rule of law and defenders of constitutional rights, police play an essential role in ensuring that fundamental rights are given meaning.

The differential impact of hate crime is now widely understood: crimes motivated by hostility or prejudice towards a person’s core human identity or difference can cause extreme hurt and distress beyond the hurt experienced from comparable crimes which are not so targeted. Furthermore, hate crimes are ‘signal crimes’ or ‘message crimes’ that are intended to signal that the community of which the victim is a member is different and not accepted. Where hate crime occurs, there usually follows a sense of vulnerability and fear which resonates throughout that entire community. In other words, hate crime affects the victim to a greater extent than other crime and affects the wider community to a greater extent than other crimes. As recognised by the College of Policing “In a modern democratic and diverse society, protecting all the composite groups of that society in accordance with their needs is vital if the service is to continue to police by consent”.<sup>26</sup>

That justifies the special attention paid to hate crime and must be appreciated by police officers. As noted, during the course of the thematic review some police officers, although well-meaning and committed to the protection of people, did not either understand or accept that hate crime merited special treatment. Some officers for example expressed that “equality requires all victims to be treated the same:

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<sup>25</sup> *Prosecuting Hate Crimes: A Practical Guide*, OSCE and ODHIR, September 2014, page 21.

<sup>26</sup> *Hate Crime Operational Guidance*, College of Policing, May 2014, page 1.

equality demands it". Equality does not mean treating every person the same. Rather, it means ensuring that every person has equal access to services but that services must be tailored to individual needs. To use an obvious example, a wheel chair user needs special assistance to access services to the same standard as those who do not have restricted mobility. It would not be suggested that different treatment should not be afforded to meet those needs.

In the College of Policing Operational Guidance, it is explained that "hate crimes are far more prevalent than official statistics suggest. Proportionately, they are more likely to be directed against the person than non-hate crimes, and they tend to be experienced repeatedly. Victims often expect their victimisation to continue, or are otherwise fearful of attacks in the future. Hate crimes can have a greater emotional impact on the victim than comparable non-hate crimes, and can cause increased levels of fear and anxiety that can also permeate through wider communities. This is precisely why all victims should not be treated the same. Rather, they should receive a service from the police that is appropriate to their needs".<sup>27</sup>

In England and Wales, research has been undertaken which demonstrates that victims of hate crime who did not report incidents to the police commonly said that the police would or could not do much to help them.<sup>28</sup> The Northern Ireland Crime Survey<sup>29</sup> which seeks to collect the views of victims of crime does not specifically refer to victims of hate crime therefore it is not possible to point to any similar empirical evidence in Northern Ireland. However, during this thematic review a number of victims met with the Policing Board's Human Rights Advisor and when asked why they did not report hate crime to the police their answers mirrored those appearing in the Crime Survey of England and Wales (CSEW) report. Victims reported feeling isolated, afraid and without support.

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<sup>27</sup> *Ibid.* Page 1.

<sup>28</sup> *The Leicester Hate Crime Project: Findings and Conclusions* Neil Chakraborti, Jon Garland & Stevie Jade-Hardy, September 2014.

<sup>29</sup> The Northern Ireland Crime Survey (NICS) is a representative, continuous, personal interview survey of the experiences and perceptions of crime of approximately 4,000 adults living in private households throughout Northern Ireland. Previously conducted on an ad hoc basis in 1994/95, 1998, 2001 and 2003/04, the NICS began operating on a continuous basis in January 2005.

Since the Macpherson report, police services across Great Britain have been addressing hate crime with more rigour and transparency including by challenging their own relationship with minority communities. In Northern Ireland, the PSNI has also dedicated significant time and resources to improving its service to victims of hate crime and keeping them safe. That good work is recognised by the Committee and reported upon in this thematic review; however there remain areas in which further improvement is possible.



## HATE CRIME IN NORTHERN IRELAND: TRENDS AND PATTERNS

Collecting data on hate crime is essential for tracking patterns in and therefore increasing understanding of hate crime which in turn assists in monitoring if and why police attempts to combat hate crime may be unsuccessful. Member States participating in the Organisation for Security and Cooperation in Europe (OSCE), which includes the United Kingdom, have committed to collect data on hate crimes and to make the information publicly available, including through the annual reports of the Office for Democratic Institutions and Human Rights (ODIHR).<sup>30</sup> Comprehensive data enable police (and others) to understand the nature and scale of hate crime and to monitor the effectiveness of any strategy to combat it. A comprehensive approach includes collecting data and statistics on the number of cases reported to police, the number of cases prosecuted and the number of cases sentenced. Disaggregation of that data by types of crimes and hate motivation is also useful in analysing patterns of hate crimes.

PSNI records and publishes a substantial quantity of data on hate incidents and hate crimes.<sup>31</sup>

Table 1 below shows the number of hate incidents and crimes across all six hate crime categories recorded by the police between 2014/15 and 2015/16.

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<sup>30</sup> *Hate Crimes in the OSCE Region – Incidents and Responses*

<sup>31</sup> Note, according to the 2011 census, 32,400 people - 1.8% of the usually resident population - belonged to minority ethnic groups. Ten years previously the figure was 0.8%

**Table 1: Number of hate incidents and hate crimes recorded by PSNI and outcome rate, by type of hate motivation, 1 April 2014 to 31 March 2016<sup>32</sup>**

<b>Motivation</b>	<b>Incidents</b>		<b>Crimes</b>		<b>Crime Outcomes<sup>33</sup></b>	
	<b>14/15</b>	<b>15/16</b>	<b>14/15</b>	<b>15/16</b>	<b>14/15</b>	<b>15/16</b>
<b>Racist</b>	1,356	1,221	920	853	130 (14%)	161 (19%)
<b>Homophobic</b>	334	343	209	210	44 (21%)	55 (26%)
<b>Sectarian</b>	1,517	1,352	1,043	1,001	151 (15%)	146 (15%)
<b>Faith/Religion</b>	53	39	27	19	3 (11%)	1 (5%)
<b>Disability</b>	138	134	74	74	9 (12%)	4 (5%)
<b>Transphobic</b>	21	19	8	12	1 (13%)	0 (0%)

As illustrated above, the number of recorded incidents with a hate motivation decreased across all but one of the six categories in 2015/2016.<sup>34</sup> The number of hate crimes decreased in three of the six categories (racist, sectarian and faith/religion). 2015/16 is the first year in which a decrease has been recorded. Hate

<sup>32</sup> *Incidents and Crimes with a Hate Motivation Recorded by the Police in Northern Ireland: Quarterly Update to 31 March 2016*, PSNI, May 2016.

<sup>33</sup> An outcome can be counted where a crime has been 'cleared up' by the police on the grounds that there has been a charge/summons, a caution (adult and juvenile), a discretionary disposal or a penalty notice for disorder issued; or where no action was taken against the offender but on grounds such as the offender died before proceedings, the PPS directed no prosecution or the offender was below the age of criminal responsibility. A more detailed explanation is available in *User Guide to Police Recorded Crime Statistics in Northern Ireland*, PSNI, December 2016, which is available through the PSNI website.

<sup>34</sup> The PSNI quarterly bulletin covering the period up to 30 September 2016 indicates that the number of incidents and crimes reported has continued to decrease.

crime, however, is known to be under-reported by victims and suspected to be under-recorded by police so the fact that reports have decreased is not necessarily an indication that hate crime is on the decrease; it may indicate that fewer victims are reporting to the police.

Where there is a small number of reports or a decrease in reporting, the United Nation's Committee on the Elimination of all forms of Racial Discrimination (CERD) has stressed that "such a statistic should not be viewed as necessarily positive, contrary to the belief of some States. It may also reveal either that victims have inadequate information concerning their rights, or that they fear social censure or reprisals, or that victims with limited resources fear the cost and complexity of the judicial process, or that there is a lack of trust in the police and judicial authorities, or that the authorities are insufficiently alert to or aware of offences involving racism".<sup>35</sup>

One thing that will undoubtedly encourage victims to report is where it is seen that perpetrators are being brought to justice. The outcome rate for hate crime across all categories is always lower than the outcome rate for overall crime and 2015/16 was no exception, with an outcome rate for all crime recorded by PSNI during the year being 29%. As evidenced by Table 1, there was an improvement in the outcome rate for racist and homophobic crimes, the rate for sectarian crimes remained on a par with 2014/15 and the outcome rate for faith/religion, disability and transphobic hate crime decreased.

Turning to consider race hate crime specifically, Tables 2 - 5 show the number of race hate crimes and incidents, the types of crimes involved, the ethnicity and nationality of victims and the geographical distribution of the incidents and crimes.

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<sup>35</sup> CERD General Recommendation 31 on the prevention of racial discrimination in the administration and functioning of the criminal justice system, from A/60/18, pages 98-108.

**Table 2: Racist incidents, crimes and outcome rates, 2004/05 to 2015/16<sup>36</sup>**

	04/5	05/6	06/7	07/8	08/9	09/10	10/11	11/12	12/13	13/14	14/15	15/16
<b>Incidents</b>	813	936	1,047	976	990	1,038	842	696	750	982	1,356	1,221
<b>Crimes</b>	634	746	861	757	771	711	531	458	470	691	920	853
<b>Outcome Rates (%)</b>	16.0	20.5	13.4	11.4	12.5	16.2	13.4	19.2	18.9	17.2	14.1	18.9

As evidenced by Table 2, the levels of racist hate crimes recorded by PSNI began to decline in 2010/11, however they began to increase again in 2012/13 and reached a peak in 2014/15 when both incidents and crimes reached the highest level on record. Therefore while there was a minor decrease in 2015/16, the levels of reported incidents and crimes still remained high compared to the years preceding 2014/15. Just as a decrease in reported incidents and crimes cannot be assumed to mean a reduction in occurrences but may in fact signal a decrease in the proportion of victims reporting to the police, an increase in reported incidents and crimes may mean an increase in occurrences or it could be attributable to increased confidence in reporting.

One statistic that does speak for itself is the outcome rate. As evidenced by Table 2, the outcome rate for race hate has improved in 2015/16 (19%) although it remains considerably less than the outcome rate for crime overall (29%). As can be seen in Table 3 below, outcome rates for violence against the person offences motivated by racism are considerably higher than the outcome rate for offences involving theft and criminal damage. This may be due to the fact that the victim or other witnesses are more likely to have seen the identity of the perpetrator. As theft and criminal damage offences, with their low outcome rate, account for over half of racist hate crimes this means that the overall outcome rate for all race hate crime is lowered. The impact of crimes involving theft and criminal damage on victims and the intimidation such crimes may cause should not however be under-estimated. They may act as a pre-

<sup>36</sup> *Incidents and Crimes with a Hate Motivation Recorded by the Police in Northern Ireland: Quarterly Update to 31 March 2016*, PSNI, May 2016.

cursor to more serious offending. It is therefore important that police focus on improving the outcome rate for racist hate crime across all crime types.

**Table 3: Racist motivated crimes and crime outcomes, by crime type, 1 April 2014 to 31 March 2016<sup>37</sup>**

<b>Crime Type</b>	<b>Crimes Recorded</b>		<b>Crime Outcomes (%)</b>	
	<b>14/15</b>	<b>15/16</b>	<b>14/15</b>	<b>15/16</b>
<b>Violence against the Person</b>	415	468	22.2	28.2
<b>Theft (including burglary) &amp; criminal damage</b>	475	363	7.2	6.3
<b>All other offences</b>	30	22	13.3	27.3
<b>TOTAL</b>	<b>920</b>	<b>853</b>	<b>14.1</b>	<b>18.9</b>

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<sup>37</sup> *Ibid.*



**Table 4: Racist motivated crimes by ethnicity and nationality of victim, 1 April 2014 to 31 March 2016<sup>38</sup>**

<b>Ethnicity (Nationality)</b>	<b>2014/15</b>	<b>2015/16</b>	<b>change %</b>
<b>Asian: of which</b>	<b>124</b>	<b>85</b>	<b>-39</b>
<i>Bangladesh</i>	6	2	-4
<i>China</i>	23	7	-16
<i>India</i>	24	21	-3
<i>Pakistan</i>	24	15	-9
<i>Philippines</i>	3	8	5
<i>UK and Ireland</i>	20	12	-8
<i>All other nationalities</i>	14	13	-1
<i>Nationality missing</i>	10	7	-3
<b>Black: of which</b>	<b>118</b>	<b>119</b>	<b>1</b>
<i>Nigeria</i>	22	16	-6
<i>Portugal</i>	10	9	-1
<i>Somalia</i>	8	20	12
<i>South Africa</i>	8	4	-4
<i>Sudan</i>	10	10	0
<i>UK and Ireland</i>	18	19	1
<i>Zimbabwe</i>	7	6	-1
<i>All other nationalities</i>	21	26	5
<i>Nationality missing</i>	14	9	-5
<b>Mixed/Other</b>	<b>71</b>	<b>48</b>	<b>-23</b>
<b>White: of which</b>	<b>454</b>	<b>471</b>	<b>17</b>
<i>Czech Republic</i>	7	9	2
<i>Hungary</i>	20	14	-6
<i>Latvia</i>	9	8	-1
<i>Lithuania</i>	28	24	-4
<i>Poland</i>	143	134	-9
<i>Portugal</i>	9	11	2
<i>Romania</i>	14	19	5
<i>Slovakia</i>	28	21	-7
<i>Turkey</i>	1	4	3
<i>UK and Ireland</i>	140	158	18
<i>All other nationalities</i>	29	47	18
<i>Nationality missing</i>	26	22	-4
Ethnicity Missing/Unknown Person	84	83	-1
<b>Number of racist crimes with a person victim</b>	<b>851</b>	<b>806</b>	<b>-45</b>

<sup>38</sup> *Ibid.*

**Table 5: Racist motivated crimes by policing District, 1 April 2014 to 31 March 2016<sup>39</sup>**

Districts	Incidents		Crimes		Outcome Rates %	
	14/15	15/16	14/15	15/16	14/15	15/16
Belfast City:	694	604	505	427	9.3	16.9
East	210	136	160	100	3.1	18.0
North	159	182	137	133	10.2	13.5
South	257	236	158	163	15.8	17.8
West	68	50	50	31	6.0	22.6
Lisburn & Castlereagh	51	47	35	30	22.9	13.3
Ards & North Down	53	63	27	29	25.9	20.7
Newry, Mourne & Down	49	62	32	55	25.0	25.5
Armagh City, Banbridge & Craigavon	133	117	102	83	24.5	20.5
Mid Ulster	70	48	36	39	19.4	15.4
Fermanagh & Omagh	33	34	29	42	17.2	21.4
Derry City & Strabane	83	64	46	39	21.7	30.8
Causeway Coast & Glens	48	57	29	34	10.3	32.4
Mid & East Antrim	62	58	42	36	11.9	22.2
Antrim & Newtownabbey	80	67	37	39	13.5	5.1
<b>Northern Ireland</b>	<b>1,356</b>	<b>1,221</b>	<b>920</b>	<b>853</b>	<b>14.1</b>	<b>18.9</b>

It can be seen from Table 5 above that the outcome rate for some policing Districts is considerably higher than for others. Compare for example Antrim and Newtownabbey (5.1%) to Derry City and Strabane (30.8%). Clearly, the approach adopted by some Districts is yielding better results than others. The service a victim receives, which in part is indicated by outcome rates, should not depend upon their geographic location. Inconsistency across Northern Ireland has been identified in

<sup>39</sup> *Ibid.*

numerous reports by the Policing Board and must be addressed. The Committee hopes that the greater sharing of experience and practice enabled by the regular meetings of hate and signal crime officers and the timely use of the advocacy service (reported below at page 119) will improve consistency but suggests that the PSNI consider actively the approach taken by Derry City and Strabane to uncover any initiatives that can be shared with other Districts.

The PPS compiles and publishes annually a statistical bulletin on cases received by the PPS from the PSNI involving hate crime, the prosecutorial decisions taken in such cases and the conviction rates where cases are dealt with by the Crown Court, Magistrates' Courts and Youth Courts. Tables 6 – 10 below provide some information derived from the statistical bulletin specifically in relation to race hate crime.

**Table 6: Case files received by PPS from PSNI in cases involving hate crime (race)<sup>40</sup>**

	<b>Violence against the Person</b>	<b>Public Order</b>	<b>Criminal Damage</b>	<b>All other offence groups</b>	<b>Total</b>
<b>2013/14</b>	93	30	21	23	<b>167</b>
<b>2014/15</b>	94	33	34	22	<b>183</b>
<b>2015/16</b>	139	34	18	24	<b>215</b>

**Table 7: Prosecutorial decisions in cases involving hate crime (race)<sup>41</sup>**

	<b>Indictable Prosecution</b>	<b>Summary Prosecution</b>	<b>Diversion</b>	<b>No Prosecution</b>	<b>Total</b>
<b>2013/14</b>	5	104	16	90	<b>215</b>
<b>2014/15</b>	10	122	20	98	<b>250</b>
<b>2015/16</b>	11	128	27	113	<b>279</b>

<sup>40</sup> *Statistical Bulletin on Cases Involving Hate Crime 2014-15*, PPS, July 2015 & *Statistical Bulletin on Cases Involving Hate Crime 2015-16*, PPS, July 2016.

<sup>41</sup> *Ibid.*

As discussed above, the police outcome rate in relation to race hate crime is low hence why the number of files passed to PPS by PSNI involving race hate crime is considerably lower than the number of hate crimes recorded by the police each year. The number of hate crime cases received which are then prosecuted or for which there is a diversionary outcome is lower again. The reason for no prosecution in the vast majority of cases is that the case did not pass the 'evidential test' i.e. the PPS did not believe the evidence available which could be offered in court was sufficient to provide a reasonable prospect of conviction. Thus the quality of PSNI's investigation and the manner in which evidence is presented in the case file provided to the PPS is of crucial importance. File preparation and quality is considered later in this thematic review at pages 90 - 92.

As evidenced by Tables 8 and 9 below, where the PPS does prosecute a race hate crime, the conviction rate is high.

**Table 8: Defendants dealt with in the Crown Court in cases involving hate crime (race) <sup>42</sup>**

	<b>Convicted of at least one offence</b>	<b>Acquitted</b>	<b>Other</b>
<b>2013/14</b>	7	1	0
<b>2014/15</b>	4	0	0
<b>2015/16</b>	5	2	0

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<sup>42</sup> *Ibid.*

**Table 9: Defendants dealt with in the Magistrates' and Youth Courts in cases involving hate crime (race) <sup>43</sup>**

	<b>Convicted of at least one offence</b>	<b>Acquitted</b>	<b>Other</b>
<b>2013/14</b>	75	4	18
<b>2014/15</b>	89	11	14
<b>2015/16</b>	91	13	35

The figures in Tables 6 and 7 relate to case files received by PPS which PSNI have flagged as involving race hate crime. However as explained elsewhere in this thematic review (at page 46), there is no specific offence of racial hate crime, therefore the prosecutions referred to in Tables 8 and 9 will have been for the base offence, such as assault, criminal damage etc. and do not necessarily mean that the offender in the case will have been found culpable in court for the racist element of the offence. The PPS does however provide separate figures in its statistical bulletin which show the number of case files received which the prosecutor considers to be 'aggravated by hostility' for the purposes of the Criminal Justice (No. 2) (Northern Ireland) Order 2004. This means that in these cases at least, the hate element of the offence will be expressly cited in court and, if proved, the offender will receive an enhanced sentence as a consequence.

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<sup>43</sup> *Ibid.*

**Table 10: Cases Considered by a Prosecutor to have involved Hate Crime which was ‘Aggravated by Hostility’ (race) - Prosecutorial Decisions Issued by Decision Type<sup>44</sup>**

	<b>Indictable Prosecution</b>	<b>Summary Prosecution</b>	<b>Diversion</b>	<b>No Prosecution</b>	<b>Total</b>
<b>2013/14</b>	8	100	6	40	<b>154</b>
<b>2014/15</b>	11	118	17	73	<b>219</b>
<b>2015/16</b>	7	137	17	76	<b>237</b>

**Table 11: Cases Considered by a Prosecutor to have involved Hate Crime which was ‘Aggravated by Hostility’ (race) - Defendants dealt with in the Crown Court by outcome (race)<sup>45</sup>**

	<b>Convicted of at least one offence</b>	<b>Acquitted</b>	<b>Other</b>
<b>2013/14</b>	7	1	0
<b>2014/15</b>	7	2	0
<b>2015/16</b>	3	0	0

**Table 12: Cases Considered by a Prosecutor to have involved Hate Crime which was ‘Aggravated by Hostility’ (race) - Defendants dealt with in the Magistrates’ and Youth by outcome (race)<sup>46</sup>**

	<b>Convicted of at least one offence</b>	<b>Acquitted</b>	<b>Other</b>
<b>2013/14</b>	65	5	18
<b>2014/15</b>	90	10	12
<b>2015/16</b>	104	16	26

<sup>44</sup> *Ibid.*

<sup>45</sup> *Ibid.*

<sup>46</sup> *Ibid.*

Unfortunately, it is not possible to provide a ‘case flow through system’ analysis<sup>47</sup> because the statistics required to analyse case flow are not recorded and kept centrally unlike in England and Wales, where it is possible to derive the figures for reported incidents through police recorded crimes to detections and thereafter proceedings to convictions. That is disappointing and means the success or failure of the police response to hate crime is more difficult to gauge. On the face of it, however, it certainly seems to be clear that far fewer cases result in court proceedings and convictions than are recorded as crimes by the police. This is considered further below.

While the annual statistics published by the PPS show the number of files submitted by the PSNI, the prosecutorial decisions taken and the conviction rates, they are not matched by case number to identify cases as they go through the system. While the PSNI does not record that information it should be possible to devise a method of tracing individual cases from report to final outcome including to conviction or acquittal. Furthermore, it should be possible to identify if there are any points in the process that are more problematic than others. The Committee understands that the PSNI are not custodians of all of the requisite information and that the PSNI, PPS and Court Service need to work together to produce reliable case flow through system analysis and suggest that all three address the barriers to collecting the information.

### **Recommendation 1**

**The PSNI should liaise with the Department of Justice to consider a ‘case flow through system’ mechanism for tracking hate crime prosecutions.**

In England and Wales information is available from the Crime Survey for England and Wales (CSEW) on the wider aspects of hate crime which shows that victims are more likely to be ‘very much’ or ‘quite a lot’ affected emotionally by the incident (68%) compared with victims of overall crime (37%). Furthermore, hate crime victims are less likely to be satisfied by the police handling of the incident, with 53 per cent being very or fairly satisfied compared with 72 per cent for crime overall. That

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<sup>47</sup> Which tracks cases through the system to success or failure in court.



information has not been collected in Northern Ireland, but should be. Given the three key objectives which drive the PSNI's action plan are to: prevent hate crime happening in the first place; increase reporting and victims' access to support; and to improve the operational response to hate crime, it is essential that victims' views are recorded. There must be a commitment across the criminal justice system to improving the recording of hate crimes, and to developing a better understanding of the issue by strengthening the evidence base so that a more robust picture can be built up of the types of hate crimes that are occurring, the victims who are affected and offenders' motivations. Without data collection and analysis it will be impossible to examine the true levels of hate crime reporting and patterns of offending. Without that examination the PSNI and other criminal justice agencies will be less able to focus their resources appropriately.

## LEGAL FRAMEWORK

### INTERNATIONAL STANDARDS

International human rights standards require the state to refrain from violating individuals' rights but also require the state to take positive action to ensure that the rights of individuals are not violated by others.

#### United Nations

The United Nations was founded in 1945 by 51 countries committed to maintaining international peace and security, developing friendly relations among nations and promoting social progress, better living standards and human rights. On 10 December 1948, the member states of the United Nations (by then there were 58) adopted the Universal Declaration of Human Rights. That represented “a world milestone in the long struggle for human rights.”<sup>48</sup> For the first time, a document considered to have universal value, setting out in detail how fundamental human rights should be universally protected, was given broad international support.

Whilst the 58 member states of the United Nations had differing values and ideologies, different political systems and different religious and cultural backgrounds, the Universal Declaration of Human Rights represented a common statement of goals and aspirations: a vision of the world as the international community wanted it to be, free from tyranny and oppression. Its creation arose largely from the strong desire for peace following World War II. The preamble to the Declaration emphasises that “disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind”.

Despite their conflicting views on certain questions, those tasked with drafting the Declaration agreed to include in the document the principles of non-discrimination, civil and political rights, and social and economic rights. Fundamental rights recognised by the Declaration include, among others, the right to life, liberty and

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<sup>48</sup> In the words of a United Nations General Assembly representative from France.

security of person; the right to an adequate standard of living; the right to seek and to enjoy in other countries asylum from persecution; the right to own property; the right to freedom of opinion and expression; the right to education; the right to freedom of thought, conscience and religion; and the right to freedom from torture and degrading treatment. These rights are inherent rights, to be enjoyed by all human beings equally. They are particularly pertinent for members of minority communities.

Since 1948, the Universal Declaration of Human Rights has been translated into more than 200 languages and remains one of the best known and most cited human rights documents in the world. Although the Declaration is not a legally binding document in the sense that it cannot be relied upon directly by an individual in a domestic court in the United Kingdom, it has inspired more than 60 other human rights instruments and is meant to be implemented by member states.

The United Nations human rights framework requires states to guarantee equal rights and the equal protection of laws and to prevent discrimination. The Universal Declaration of Human Rights provides the framework for the principles of equal rights and non-discrimination, and was the first international instrument to affirm that “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as “race”, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” The International Covenant on Civil and Political Rights (ICCPR), adopted by the United Nations General Assembly in 1966, expands on those principles. For example, Articles 6 and 7 ICCPR protect an individual’s right to life and freedom from inhuman and degrading treatment, respectively. Article 2 requires that states have sufficient legislative, judicial and other measures to ensure that a remedy is available in the event of treaty violations.

The United Nations Human Rights Committee, which oversees the ICCPR’s implementation, has observed that states have an obligation to investigate violations committed by state and private actors against individuals.<sup>49</sup> In particular, Article 2

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<sup>49</sup> *General Comment 31: The Nature of the General Legal Obligations imposed by the Covenant, adopted on 29 March 2004*, United Nation Human Rights Council (UNHRC), UN Doc CCPR/C/21/Rev.1/Add.13, paras 6-8.

ICCPR provides for the non-discrimination principle while Article 26 provides for equality before the law, equal protection of the law and protection from discrimination. The ICCPR therefore obliges states to investigate, for example, offences of violence and to do so without discrimination.

The International Convention on the Elimination of All Forms of Racial Discrimination (CERD), adopted by the United Nations General Assembly in 1965, provides specifically states' duties to investigate racist violence. CERD also requires states to implement legislation prohibiting acts of violence and incitement to violence based on racism. The CERD Committee, which oversees the treaty's implementation, has stressed the "importance of prosecuting racist acts, including minor offences committed with racist motives, since any racially motivated offence undermines social cohesion and society as a whole."<sup>50</sup> The Committee has also recommended that, in order to assist victims of racism in bringing cases to court, states should ensure that victims are allowed to participate in criminal proceedings, are kept informed about progress, are protected against reprisals or intimidation and that they have access to compensation and assistance, where available.<sup>51</sup>

It is the duty of the state agencies (including the PSNI and PPS) to ensure that a racist motivation is investigated fully. Failure to do so when there is *prima facie* evidence of motivation in connection with a serious crime is considered to be a violation of Article 6 CERD (on effective remedies) and Article 2 CERD (on bringing an end to racial discrimination by all appropriate means).<sup>52</sup> The CERD Committee has considered the duty to take effective action against acts of discrimination under Article 2, and to provide effective remedies under Article 6 in relation to the adequate investigation and prosecution of hate crimes. In the case under consideration, the petitioners were a family of Iraqi immigrants living in Denmark, who were repeatedly subjected to racist taunts and verbal abuse. On one occasion neighbours broke into the family's home causing damage and physically assaulting two male occupiers.

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<sup>50</sup> *General Comment 31 on the prevention of racial discrimination in the administration and functioning of the criminal justice system*, Committee on the Elimination of Racial Discrimination, Sixtieth Session, Supplement No. 18 (2005) UN Doc A/60/18, page 103, para. 15.

<sup>51</sup> *Ibid.* At pages 104-05, para. 17.

<sup>52</sup> *Communication No. 46/2009, Opinion adopted by the Committee at its eightieth session, 13 February to 9 March 2012: Mahali Dawas & Yousef Shava v. Denmark*, Committee on the Elimination of Racial Discrimination, CERD/C/80/D/46/2009.

The police investigated the incident however when the prosecution service secured admissions of guilt on assault and property damage charges it amended the charges to refer only to the violent offences but not to the aggravating racial motivation and requested a summary hearing. The prosecutor thereby failed to inquire into the potential bias motivations of the crime. The CERD Committee was of the opinion that when investigating and prosecuting crimes with a potential bias motivation, the prosecution has a duty to ensure that racist motivation is fully investigated through the criminal proceedings. The Committee stressed that the potential gravity of the incident required a full investigation of the potential bias motivation. In that case, the offensive comments made during the attack and the xenophobic statements leading up to the incident imposed a duty to consider fully the racist motivation of the crime. Even though there were other possible motives, racist motivation must not be excluded without a thorough investigation.

### **Organisation for Security and Cooperation in Europe (OSCE)**

The OSCE comprises 57 participating states in North America, Asia and Europe, including the United Kingdom, and is the world's largest regional security organisation. The OSCE is a forum for political dialogue on a wide range of security issues and a platform for joint action to improve the lives of individuals and communities. The 2009 OSCE Ministerial Council Decision on Combating Hate Crimes<sup>53</sup> remains one of the most comprehensive commitments by the international community concerning state obligations to address hate crimes. In this Decision, participating States committed themselves to, amongst other things: collect, and make public, data on hate crimes; enact, where appropriate, specific, tailored legislation to combat hate crimes; take appropriate measures to encourage victims to report hate crimes; develop professional training and capacity-building activities for law enforcement, prosecution and judicial officials dealing with hate crimes; and promptly investigate hate crimes, and ensure that the motives of those convicted of hate crimes are acknowledged and publicly condemned by the relevant authorities and the political leadership.

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<sup>53</sup> *Decision No. 9/09 on combating hate crimes*, OSCE Ministerial Council, December 2009.

The OSCE has restated many times that “What police officers do and say in the first several minutes at a crime scene can affect the recovery by victims, the public’s perception of governmental commitment to addressing hate crimes, and the outcome of the investigation. Officers who recognize a probable hate crime, interact with the victims with empathy, and take action to initiate a hate crime investigation send a strong message that hate crimes are a serious issue”.<sup>54</sup>

## **Council of Europe**

The Council of Europe was founded on 5 May 1949 by 10 states (including the United Kingdom). It was formed as a result of popular movements to improve society and create a lasting peace following World War II. The Council of Europe now has 47 member states and works to protect and promote democracy, human rights and the rule of law for its 800 million citizens.

The European Convention on Human Rights (ECHR) was the first Council of Europe convention<sup>55</sup> to deal with the protection of human rights. It is based directly upon the Universal Declaration of Human Rights<sup>56</sup> and was signed by member states of the Council on 4 November 1950. The ECHR came into force on 3 September 1953 and consists of a number of articles which have been supplemented over the years by protocols. By ratifying the ECHR, member states of the Council of Europe must guarantee for their citizens the rights and freedoms contained within the ECHR. The United Kingdom ratified the ECHR in 1991 but did not incorporate it into domestic law until 2000. Not all rights contained within the ECHR are absolute. There are some specified circumstances which enable a member state to lawfully interfere with certain individual rights. The rights can be categorised as follows:

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<sup>54</sup> *Preventing and Responding to Hate Crimes, Organisation for Security and Cooperation in Europe’s Office for Democratic Institutions and Human Rights, 2009.*

<sup>55</sup> A convention is a legal agreement between two or more states. States are invited to first sign a convention, showing that they want to follow what it says, then, when they are sure that they are able to do so, they can ‘ratify’ the convention: this means that they commit themselves to its values and instructions.

<sup>56</sup> However, whilst the Universal Declaration of Human Rights includes civil, political, social and economic rights, the ECHR mostly contains civil and political rights.

- Absolute rights, such as the right to protection from torture and inhuman and degrading treatment (Article 3 ECHR), are rights which member states can never withhold or take away in any circumstances.
- Limited rights, such as the right to liberty (Article 5 ECHR), are rights which may be limited by member states under explicit and finite circumstances.
- Qualified rights are rights which require a balance between the rights of the individual and the needs of the wider community or state interest. These include: the right to respect for private and family life (Article 8 ECHR); the right to manifest one's religion or beliefs (Article 9 ECHR); freedom of expression (Article 10 ECHR); freedom of assembly and association (Article 11 ECHR); the right to peaceful enjoyment of property (Protocol 1, Article 1 ECHR); and, to some extent, the right to education (Protocol 1, Article 2 ECHR).<sup>57</sup>

An absolute right may *never* be interfered with. In other words, interference with an absolute right will never be lawful. In respect of limited or qualified rights, they may only be interfered with by a member state if the interference: (i) is intended to serve a legitimate aim; (ii) is proportionate to the intended objective (i.e. do not use a sledgehammer to crack a nut); and, (iii) is necessary in a democratic society.

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<sup>57</sup> When the United Kingdom ratified Protocol 1, Article 2, it accepted the principle of education in conformity with parents' religious and philosophical convictions "only so far as it is compatible with the provision of efficient instruction and training, and the avoidance of unreasonable expenditure."



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## SUMMARY OF SELECTED ARTICLES AND PROTOCOLS OF THE ECHR

**Article 2** Right to life

**Article 3** Prohibition of torture, inhuman or degrading treatment

**Article 4** Prohibition of slavery and forced labour

**Article 5** Right to liberty and security

**Article 6** Right to a fair trial

**Article 7** No punishment without law

**Article 8** Right to respect for private and family life

**Article 9** Freedom of thought, conscience and religion

**Article 10** Freedom of expression

**Article 11** Freedom of assembly and association

**Article 12** Right to marry

**Article 14** Prohibition of discrimination in enjoyment of ECHR rights

**Protocol 1** Right to peaceful enjoyment of property; education; and free elections

**Protocol 4\*** Freedom of movement

**Protocol 6** Abolition of the death penalty

**Protocol 7\*** Right of appeal in criminal matters and right to compensation for wrong convictions

**Protocol 12\*** General prohibition of discrimination

**Protocol 13** Abolition of the death penalty in all circumstances

\* N.B. the United Kingdom has not ratified Protocols 4, 7 or 12

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To guarantee the rights enshrined in the ECHR for everyone under the jurisdiction of member states, the European Court of Human Rights (ECtHR) was set up in 1959 and sits permanently in Strasbourg, France. Case law emanating from the ECtHR ensures that the ECHR remains a 'living instrument' capable of adapting as society evolves. The ECtHR consolidates the rule of law (i.e. it enforces the legal maxim that no-one is above the law) and democracy throughout the Council of Europe's jurisdiction. In its 52 years, the ECtHR has delivered more than 10,000 judgments. Those judgments are binding on member states. If the ECtHR finds that a violation of the ECHR has occurred, the member state concerned is required to take action to

ensure a similar violation will not recur. Judgments of the ECtHR therefore supplement the law in the United Kingdom.<sup>58</sup>

The European Court of Human Rights has considered specifically the extent of states' obligations in relation to hate crimes. From those judgments a number of principles emerge, which can be summarised as follows. States are obliged to conduct prompt and effective investigations into violent crimes involving violations of Article 2 (the right to life) and Article 3 (the right to be free from torture, inhuman or degrading treatment) in order to give effect to those rights.<sup>59</sup> Furthermore, state agencies investigating crime must be impartial in their assessment of the evidence. In one case involving Romanian authorities, in which the alleged ill-treatment by police of a Roma child left him with permanent disabilities, it was held that the military prosecutors had premised their findings on the statements of the police who had reason to wish to exonerate themselves and their colleagues from any liability. The prosecutors had also dismissed all statements by other witnesses, all of whom were Romani, on the ground that they were biased in favour of the child. The prosecution had ignored statements by police that the witnesses' behaviour was "purely Gypsy." The court believed that statement demonstrated the "stereotypical views" of the police.<sup>60</sup>

While there is not a requirement on states to introduce specific hate crime legislation, the criminal justice system must be able to identify, recognise and punish appropriately racist motivated crime. In one case before the ECtHR, the applicants alleged that the state (Bulgaria) had failed in its obligation to conduct an effective and prompt investigation into the death of a Roma man, and that the lack of legislation for racially motivated murder failed to provide adequate legal protection against such crimes.<sup>61</sup> The Court held that the absence of hate crime laws did not hinder the ability of the state agencies to pursue the racist motivation during the criminal process, and that the general legal framework allowed for an appropriate and enhanced punishment for such crimes. In other words, crimes that are

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<sup>58</sup> The ECHR is also enforceable through the United Kingdom's domestic courts by virtue of the Human Rights Act 1998, details of which are provided below at page 41.

<sup>59</sup> *Nachova and Others v. Bulgaria*, App. Nos. 43577/98 & 43579/98, ECHR 2005.

<sup>60</sup> *Stoica v. Romania*, App. No. 42722/02, ECHR 2008.

<sup>61</sup> *Angelova and Iliev v Bulgaria*, App. No. 55523/00, ECHR 2007.

particularly egregious, including those causing increased harm to individuals and society, such as hate crimes, require proportionate punishment under the law.

The police had identified the alleged perpetrators, one of whom admitted the racial motivation for the crime, but police failed to conduct the necessary investigative proceedings. The Court held that the authorities had therefore failed to conduct a prompt and effective investigation into the incident, especially “considering the racial motives of the attack and the need to maintain the confidence of minorities in the ability of the authorities to protect them from the threat of racial violence.” Finally, the Court found a breach of the procedural aspect of the right to life in connection with the principle of non-discrimination because the authorities failed to make the “required distinction from other, non-racially motivated offences, which constitutes unjustified treatment irreconcilable with Article 14.”

In another case, brought against Croatia, concerning a Roma man who was severely beaten by two individuals with wooden bats while they shouted racial abuse, the Court extended the same reasoning to violations of the procedural aspect of the right to be free from ill-treatment in connection with Article 14. Despite several leads, the police failed to take reasonable investigative measures to find the perpetrators and bring them to justice. The Court held that state authorities have the duty, when investigating violent incidents, “to take all reasonable steps to unmask any racist motive and to establish whether or not ethnic hatred or prejudice may have played a role in the events. Failing to do so and treating racially induced violence and brutality on an equal footing with cases that have non-racist overtones would be to turn a blind eye to the specific nature of acts that are particularly destructive of fundamental rights.”<sup>62</sup>

The European Court of Human Rights has made clear that in crimes involving bias on the grounds of race, the state is held to a very high standard. Investigators must recognise and give additional weight to the bias element of crimes and take all reasonable steps to collect evidence of motive and bring offenders to justice. The evidence must be assessed in a fair and unbiased manner to ensure that evidence is

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<sup>62</sup> *Secic v. Croatia*, App. No. 40116/02, ECHR 2007.

not dismissed on the basis of stereotypes. Where investigators appear to have applied stereotypes, police must be aware of the responsibility to challenge and to question whether the investigation was thorough and effective.<sup>63</sup>

The Council of Europe's Framework Convention for the Protection of National Minorities (FCNM), ratified by the United Kingdom in 1998, is founded on the principle that the protection of minorities forms part of the universal protection of human rights. It sets standards, requires intergovernmental co-operation and provides for the development and consolidation of democratic stability and confidence building measures in civil society. The FCNM is the Council of Europe's most comprehensive text for protecting the rights of persons belonging to national minorities and is the first legally binding multilateral instrument devoted to the protection of national minorities worldwide. It was adopted on 10 November 1994 by the Committee of Ministers and it entered into force on 1 February 1998. It has 39 member states to date. While it is a legally binding instrument under international law, the fact that it is a framework document highlights the scope for member states to translate the FCNM provisions through national legislation and appropriate governmental policies. Parties to the FCNM undertake to promote full and effective equality of persons belonging to minorities in all areas of economic, social, political, public and cultural life together with conditions that will allow them to express, preserve and develop their culture, religion, language and traditions. States have to ensure the freedom of assembly, association, expression, thought, conscience, religion and access to and use of media for national minorities.

## **European Union**

The European Union Framework Decision on Combating Racism and Xenophobia, an official response to hate crime,<sup>64</sup> binds all EU member states to review their legislation and ensure compliance. It is intended to harmonise criminal law across the European Union and to ensure that states respond with effective, proportionate and dissuasive penalties for racist and xenophobic crimes. Article 4 provides that all

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<sup>63</sup> *Milanovic v. Serbia*, App. No. 44614/07, ECHR 2010.

<sup>64</sup> *Council Framework Decision of 28 November 2008 on Combating Certain Forms and Expressions of Racism and Xenophobia by Means of Criminal Law*, Council of the European Union, 2008/913/JHA.

states must “take the necessary measures to ensure that racist and xenophobic motivation is considered an aggravating circumstance, or, alternatively that such motivation may be taken into consideration by the courts in the determination of the penalties.” Article 8 requires that the initiation of investigations must not be dependent on a victim’s report or accusation. Therefore, while the decision does not require the enactment of any specific legislation, it does require criminal justice systems to recognise and sentence appropriately bias-motivated crimes.

The European Union’s Victims Directive establishes minimum standards on the rights, support and protection of victims of crime.<sup>65</sup> The Directive recognises that criminality leaves victims vulnerable and often in need of assistance. It stresses that victims are, often for the very first time, involved in the criminal justice system and may have to speak to police officers, lawyers and judges and ultimately go to court. It therefore ensures that victims are recognised and treated with respect and dignity; are protected from further victimisation and intimidation from the offender and further distress when they take part in the criminal justice process; receive appropriate support throughout proceedings and have access to justice; and have appropriate access to compensation. Victims must be guaranteed a minimum level of rights without discrimination across the EU, irrespective of their nationality or country of residence. These rights apply whether a minor or serious crime is involved. Victims, and their family members, should also have access to support services - whether or not they have reported the crime – and be protected from further harm.

The Directive identifies hate crime victims as particularly at risk of secondary or repeat victimisation. That risk must be assessed at the earliest possible stage of criminal proceedings as part of the individual assessment of the victim. Special protection measures provided for in the Victims Directive must be applied where necessary. European Union member states were required to bring their laws and policies in compliance with the Directive by 16 November 2015. Guidance was issued in which member states were asked to consider “nation-wide codes of conduct/guidelines for professionals in regular contact with victims of crime... and probably will require setting clear responsibilities...Paying particular attention to inter-

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<sup>65</sup> *Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime*, European Parliament and the Council of the European Union, October 2012.

agency co-operation. It is of utmost importance to ensure horizontal collaboration and coherence between police, judicial authorities and victim support organisations, when they are dealing with a victim's case in order to minimize the burden upon the victim. Ensuring that rights set out in this Directive are not made conditional on the victim having legal residence status in their territory or on the victim's citizenship or nationality".<sup>66</sup>

In September 2015 the Department of Justice laid the Victim Charter before the Northern Ireland Assembly, thus placing the Charter on a statutory footing.<sup>67</sup> The Charter provides details of entitlements as set out in relevant parts of the EU Directive and services to be provided to victims by a range of service providers in Northern Ireland. The rights conferred by the Charter apply regardless of a victim's residence status in Northern Ireland, citizenship or nationality.

## **DOMESTIC LAW**

### **Police (Northern Ireland) Act 2000**

Section 32 of the Police (Northern Ireland) Act 2000 imposes a general duty on all police officers to protect life and property; to preserve order; to prevent the commission of offences; and, where an offence has been committed, to take measures to bring an offender to justice.

### **Human Rights Act 1998**

The United Kingdom was one of the key architects of the ECHR. However, it was only when the Human Rights Act 1998 came into force on 2 October 2000 that the ECHR became directly enforceable in domestic courts. The Act was intended to 'bring rights home', to enable individuals to litigate the ECHR rights in their local jurisdiction. Importantly, public authorities in the United Kingdom, before 2 October

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<sup>66</sup> *DG Justice Guidance Document related to the transposition and implementation of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime*, European Commission, DG Justice, December 2013.

<sup>67</sup> *Victim Charter: A Charter for Victims of Crime*, Department of Justice, September 2015.

2000, were not *required*, as a matter of domestic law, to comply with the ECHR and the judiciary were not *obliged* to take the ECHR or judgments of the ECtHR into account.

The Human Rights Act makes it unlawful for a public authority to act incompatibly with specified articles of the ECHR,<sup>68</sup> which are referred to by the Human Rights Act as 'convention rights'.<sup>69</sup> Any individual whose convention rights have been infringed by a public authority can raise the matter in an appropriate court or tribunal in the United Kingdom. If they are dissatisfied with the court's decision and have pursued the issue as far as it can go in the United Kingdom (in most cases that means to the Supreme Court), they may take their complaint to the ECtHR in Strasbourg. The Human Rights Act requires courts and tribunals in the United Kingdom to take account of the case law of the ECtHR and to develop the common law compatibly with convention rights.<sup>70</sup>

When carrying out its duties the PSNI as a public authority for the purposes of the Human Rights Act must act compatibly with all convention rights. All policies, practices and procedures must be compatible. In order to act compatibly, police officers must not only refrain from unlawfully interfering with an individual's convention rights, they must also intervene in certain situations to protect third parties from violating another person's convention rights. For example, under Article 2 ECHR (the right to life) the police must not only refrain from the intentional and unlawful taking of life, they must also take all reasonable steps to safeguard lives within their jurisdiction from a threat of which they are aware. Where a death has occurred under suspicious circumstances, they must carry out an independent, effective, timely investigation which is capable of holding the perpetrator to account

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<sup>68</sup> Section 6 Human Rights Act 1998.

<sup>69</sup> The convention rights referred to by the Human Rights Act 1998 are Articles 2 – 12, 14 and Protocols 1 and 13 of the ECHR.

<sup>70</sup> Domestic courts and tribunals are not obliged to apply Strasbourg jurisprudence, but they must take the judgments of the ECtHR into account. Domestic courts and tribunals must interpret legislation, insofar as possible, in a way which is compatible with the convention rights. They cannot strike down or amend legislation but a higher court may issue a declaration of incompatibility if it finds legislation to be incompatible with convention rights. It is left to Parliament to decide how to respond to that declaration. Thus, the Human Rights Act has expressly maintained the primacy of the legislature and the judiciary.



and which affords the relatives of the deceased sufficient access to the investigative process.

### **Race Relations (Northern Ireland) Order 1997**

For the purposes of the Race Relations (Northern Ireland) Order 1997, a person discriminates against another if, on racial grounds he treats that other less favourably than he treats or would treat other persons; or he applies to that other a requirement or condition which he applies or would apply equally to persons not of the same racial group as that other but (i) which is such that the proportion of persons of the same racial group as that other who can comply with it is considerably smaller than the proportion of persons not of that racial group who can comply with it; and (ii) which he cannot show to be justifiable irrespective of the colour, race, nationality or ethnic or national origins of the person to whom it is applied; and (iii) which is to the detriment of that other because he cannot comply with it. Segregating a person from other persons on racial grounds is deemed to be treating him less favourably. A comparison of the case of a person of a particular racial group with that of a person not of that group must be such that the relevant circumstances in the one case are the same, or not materially different, in the other.<sup>71</sup>

The 1997 Order defines “racial grounds” as meaning colour, race, nationality or ethnic or national origins. “Racial group” means a group of persons defined by reference to colour, race, nationality or ethnic or national origins. Racial group includes the Irish Traveller community. It does not include religious belief or political opinion. The fact that a racial group comprises two or more distinct racial groups does not prevent it from constituting a particular racial group.<sup>72</sup>

It is unlawful for a person, in relation to employment,<sup>73</sup> to discriminate against another (i) in the arrangements he or she makes for the purpose of determining who should be offered that employment; or (ii) in the terms on which he offers him or her that employment; or (iii) by refusing or deliberately omitting to offer him or her that

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<sup>71</sup> Article 3 Race Relations (Northern Ireland) Order 1997.

<sup>72</sup> Article 5 Race Relations (Northern Ireland) Order 1997.

<sup>73</sup> Holding the office of constable is treated as employment, article 72A Race Relations (Northern Ireland) Order 1997.

employment. Furthermore, it is unlawful to discriminate against an employee (i) in the terms of employment which is afforded; or (ii) in the way access is afforded to opportunities for promotion, transfer or training, or to any other benefits, facilities or services, or (iii) by refusing or deliberately omitting to afford access to them; or (iv) by dismissing an employee, or subjecting him or her to any other detriment.<sup>74</sup>

It is also unlawful for any person concerned with the provision (for payment or not) of goods, facilities or services to the public or a section of the public to discriminate against a person by refusing or deliberately omitting to provide him or her with any of them; or by refusing or deliberately omitting to provide him or her with goods, facilities or services of the same quality, in the same manner and on the same terms as are normal in his case in relation to other members of the public or (where the person so seeking belongs to a section of the public) to other members of that section. The kind of services etc. for which this applies includes (but are not limited to) access to and use of any place which members of the public are permitted to enter; facilities for transport or travel; and the services of any profession or any local or other public authority.<sup>75</sup>

### **Northern Ireland Act 1998**

The PSNI must ensure that the ECHR rights of all members of the public are secured without discrimination on any ground.<sup>76</sup> Non-discrimination (or put another way, equality) is a fundamental human rights principle which underpins all of the aforementioned human rights instruments. Non-discrimination, in policing terms, does not mean that the police should treat everyone in exactly the same way: it requires the police to take differences into account and tailor their response accordingly to ensure that all individuals, regardless of, for example, race, enjoy equal access to the benefit and protection of their rights and to equality of outcomes.

In addition to ensuring that ECHR rights are secured without discrimination, PSNI has a statutory duty under section 75 of the Northern Ireland Act 1998 to have due

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<sup>74</sup> Article 6 Race Relations (Northern Ireland) Order 1997.

<sup>75</sup> Article 21 Race Relations (Northern Ireland) Order 1997.

<sup>76</sup> *As per* Article 14 ECHR.

regard to the need to promote equality of opportunity between persons of different religious belief, political opinion, racial group, age, marital status, sexual orientation, sex, between persons with a disability and persons without and between persons with dependants and persons without.<sup>77</sup> The purpose of section 75 is to mainstream equality, making it central to the policy decision making of all public authorities. That means that equality must be incorporated into all policies from the drafting stage through to the review and implementation of policy. When policy is drafted or amended, it must be screened in order to identify any impact it may have on any of the groups identified by section 75. The public authority must consider how any potential adverse impact may be reduced and how an alternative policy might lessen the adverse impact that the screened policy may have. Depending on the number or nature of adverse impacts identified, the public authority should consider whether to subject the policy to an Equality Impact Assessment (EQIA) using the specified procedure. An EQIA procedure is a thorough and systematic review of policy.

Whether carrying out a full EQIA or conducting an initial screening of policy, PSNI is better placed to determine potential adverse impacts by consulting with those groups that the policy is most likely to affect. PSNI's record of consulting fully with relevant groups has been criticised in the past. The Equality Commission for Northern Ireland is the appropriate authority to analyse PSNI's compliance with its section 75 duties. The Performance Committee will maintain a keen interest in the product of the Commission's analyses and it will raise any issues directly (and additionally) with the PSNI.

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<sup>77</sup> Section 75 of the Northern Ireland Act 1998 imposes this duty on all public authorities in Northern Ireland. It also requires that public authorities have regard to the desirability of promoting good relations between persons of different religious belief, political opinion, and racial group.

## **‘HATE’ OFFENCES AND POLICE POWERS**

While there is no such thing as a ‘hate crime’ in Northern Ireland, there has been introduced specific legislation which criminalises behaviour that creates fear and promotes hatred, and provides for enhanced sentences for any offence that is aggravated by hostility towards members of one or more of a number of defined groups.<sup>78</sup> The message given by such express legislative provision is important: it demonstrates an alliance between law and policy to ensure that hate crime, bearing in mind the particular harm it does to vulnerable individuals and to society, is repugnant to a diverse civilised society.

In enacting such legislation, the legislature has recognised and implemented laws to ensure that crimes motivated by prejudice or hostility are to be treated differently to other crimes. A robust legal framework, which is applied so as to protect all victims of hate crime, demonstrates society’s condemnation of hate crime and sends out a message that victims will be protected and supported. The police, by recording hate incidents and crimes and applying the legislation can have a profound impact upon the views and attitudes of both state and the general public. Furthermore, the police are often (or at least should be) the first point of contact for a victim of crime and therefore the police response must be sufficiently targeted and informed to meet the needs of victims.

### **Acts intended or likely to stir up hatred or arouse fear**

The Public Order (Northern Ireland) Order 1987 makes it an offence to use threatening, abusive or insulting words or behaviour, or display any written material which is threatening, abusive or insulting, if it is intended thereby to stir up hatred or arouse fear or, having regard to all the circumstances, hatred is likely to be stirred up or fear is likely to be aroused by it. Such an offence may be committed in a public or a private place, save where the words or behaviour are used, or the written material is displayed by a person inside a dwelling and are not heard or seen except by other persons in that or another dwelling. It should be noted therefore that if the offensive

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<sup>78</sup> The Public Order (Northern Ireland) Order 1987 and the Criminal Justice (No. 2) (Northern Ireland) Order 2004.

words or behaviour etc. are made in a public place the police need not prove that any particular person was actually put in fear; it is sufficient if a person is likely to be put in fear. It has been suggested that the Public Order legislation does not prohibit such demonstrations of words or behaviour if the people in the immediate vicinity were not put in fear but that is to misunderstand the legislation. Furthermore, it underestimates the reach of such demonstrations in an age of YouTube and social media. If the PSNI remains in any doubt about the ambit of their powers, legal advice should be sought and training provided where needed.

A defence applies if it is proved that the person using the words etc. was inside a dwelling and had no reason to believe that the words or behaviour used, or the written material displayed, would be heard or seen by a person outside that or any other dwelling. Furthermore, if an intention to stir up hatred or arouse fear is not shown that person will not be guilty of the offence if he or she did not intend the words or behaviour, or the written material, to be, and was not aware that it might be, threatening, abusive or insulting.<sup>79</sup>

It is an offence for a person to publish or distribute written material which is threatening, abusive or insulting if in doing so he or she intends to stir up hatred or arouse fear or, having regard to all the circumstances, hatred is likely to be stirred up or fear is likely to be aroused. It is a defence for an accused who is not shown to have intended to stir up hatred or arouse fear to prove that he or she was not aware of the content of the material and did not suspect, and had no reason to suspect, that it was threatening, abusive or insulting. Publication or distribution of written material means publication or distribution to the public or a section of the public.<sup>80</sup>

It is an offence for a person to distribute, show or play a recording<sup>81</sup> of visual images or sounds which are threatening, abusive or insulting if that person intends thereby to stir up hatred or arouse fear or, having regard to all the circumstances, hatred is likely to be stirred up or fear is likely to be aroused thereby. It is a defence for an

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<sup>79</sup> Article 9 Public Order (Northern Ireland) Order 1987.

<sup>80</sup> Article 10 Public Order (Northern Ireland) Order 1987.

<sup>81</sup> "Recording" means any record from which visual images or sounds may, by any means, be reproduced; and references to the distribution, showing or playing of a recording are to its distribution, showing or playing to the public or a section of the public.

accused who is not shown to have intended to stir up hatred or arouse fear to prove that he was not aware of the content of the recording and did not suspect, and had no reason to suspect, that it was threatening, abusive or insulting.<sup>82</sup>

If a programme involving threatening, abusive or insulting visual images or sounds is included in a programme service, each of the persons providing the service, by whom the programme is produced or directed and any person by whom offending words or behaviour are used is guilty of an offence if that person intends thereby to stir up hatred or arouse fear or, having regard to all the circumstances, hatred is likely to be stirred up or fear is likely to be aroused thereby. If the person providing the service, or a person by whom the programme was produced or directed, is not shown to have intended to stir up hatred or arouse fear, it is a defence for him or her to prove that he or she did not know and had no reason to suspect that the programme would involve the offending material and, having regard to the circumstances in which the programme was included in a programme service, it was not reasonably practicable to secure the material's removal. It is a defence for a person by whom the programme was produced or directed who is not shown to have intended to stir up hatred or arouse fear to prove that he or she did not know and had no reason to suspect that the programme would be included in a programme service or that the circumstances in which the programme would be so included would be such that hatred would be likely to be stirred up or fear would be likely to be aroused.

It is a defence for a person by whom offending words or behaviour were used and who is not shown to have intended to stir up hatred or arouse fear to prove that he or she did not know and had no reason to suspect that a programme involving the use of the offending material would be included in a programme service or that the circumstances in which a programme involving the use of the offending material would be so included, or in which a programme so included would involve the use of the offending material, would be such that hatred would be likely to be stirred up or fear would be likely to be aroused. A person who is not shown to have intended to stir up hatred or arouse fear is not guilty of such an offence if he or she did not know,

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<sup>82</sup> Article 11 Public Order (Northern Ireland) Order 1987.

and had no reason to suspect, that the offending material was threatening, abusive or insulting.<sup>83</sup>

A person who has in his or her possession written material which is threatening, abusive or insulting, or a recording of visual images or sounds which are threatening, abusive or insulting, with a view to in the case of written material, it being displayed, published, distributed, or included in a programme service, whether by himself or herself or another or in the case of a recording, its being distributed, shown, played, or included in a programme service, whether by himself or another, is guilty of an offence if he or she intends hatred to be stirred up or fear to be aroused thereby or, having regard to all the circumstances, hatred is likely to be stirred up or fear is likely to be aroused thereby. For this purpose regard shall be had to such display, publication, distribution, showing, playing, or inclusion in a programme service as he or she has, or it may reasonably be inferred that he or she has, in view. It is a defence for an accused who is not shown to have intended to stir up hatred or arouse fear to prove that he or she was not aware of the content of the written material or recording and did not suspect, and had no reason to suspect, that it was threatening, abusive or insulting.<sup>84</sup> If a resident magistrate is satisfied on a complaint on oath made by a constable that there are reasonable grounds for suspecting that a person has possession of such written material or a recording the magistrate may issue a warrant authorising any constable to enter and search the premises where it is suspected the material or recording is situated and to seize and remove anything which the constable reasonably suspects to be or include the material or recording.<sup>85</sup>

For the purposes of all of the aforementioned offences contained within the 1987 Order, “fear” means fear of a group of persons defined by reference to colour, race, nationality (including citizenship) or ethnic or national origins. “Hatred” means hatred against a group of persons defined by reference to colour, race, nationality (including citizenship) or ethnic or national origins.<sup>86</sup> While both definitions include reference to race and ethnic or national origins, race and ethnicity are not synonymous. Ethnicity

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<sup>83</sup> Article 12 Public Order (Northern Ireland) Order 1987.

<sup>84</sup> Article 13 Public Order (Northern Ireland) Order 1987.

<sup>85</sup> Article 14 Public Order (Northern Ireland) Order 1987.

<sup>86</sup> Article 8 Public Order (Northern Ireland) Order 1987. Both definitions also encompass fear or hatred against a group of persons defined by reference to religious belief, sexual orientation and disability.



refers to "the social group a person belongs to, and either identifies with or is identified with by others, as a result of a mix of cultural and other factors including language, diet, religion, ancestry and physical features traditionally associated with race".<sup>87</sup> Furthermore, ethnicity is different from country of origin, since many countries include more than one ethnic group. It became clear during this thematic review that some police officers were confused about the possibility of inter-racial hate crime based on ethnic prejudice. As stated elsewhere in this thematic review, it is the insufficient attention to training which has resulted in some officers being ill-equipped to deal effectively with or even fully understand the complexities involved in hate crime.

It is also an offence if a person who in any public place or at or in relation to any public meeting or public procession uses threatening, abusive or insulting words or behaviour; or displays anything or does any act; or being the owner or occupier of any land or premises, causes or permits anything to be displayed or any act to be done thereon, with intent to provoke a breach of the peace or by which a breach of the peace or public disorder is likely to be occasioned (whether immediately or at any time afterwards).<sup>88</sup>

When prosecuted for breach of one of the above offences contained within the 1987 Order, the right to free speech protected by Article 10 of the ECHR is sometimes relied upon. A number of contributors to this thematic review, including a number of police officers, clearly questioned the balance to be struck between what is commonly referred to as "hate speech" and the right to free speech. In fact, it has been suggested that there is nothing that can be done about hate speech because of the right to free speech enshrined in the ECHR. This is often misunderstood but if it is inhibiting police officers from taking action in appropriate cases, it is imperative that it is understood.

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<sup>87</sup> *Glossary of terms relating to ethnicity and race: for reflection and debate*, R. Bhopal, *J Epidemiol Community Health* 2004;58:441-445. See also *R (on the application of E) (Respondent) v Governing Body of JFS and the Admissions Appeal Panel of JFS (Appellants)* [2009] UKSC 15.

<sup>88</sup> Article 19 Public Order (Northern Ireland) Order 1987.

### ***Free speech v. hate speech***

Article 10 of the ECHR provides “1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises. 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

Article 17 of the ECHR however, which is often overlooked, provides “Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.”

The ECtHR has considered the interplay between hate speech and free speech. For example, in one case a man who had been convicted under the English equivalent of the Public Order (Northern Ireland) Order for displaying a poster in the window of his flat which showed a picture of the Twin Towers in flames with the words “Islam out of Britain – Protect the British People” and a symbol of a crescent and a star in a prohibition sign alleged that his Article 10 right had been violated. The ECtHR rejected his allegation and observed that the display was a vehement attack on a religious group which came within Article 17 and held that it was not therefore protected by Article 10.<sup>89</sup> In another case in the House of Lords, a man convicted of sending a grossly offensive message contrary to the Communications Act 2003 unsuccessfully argued that the offence was an unjustified interference with his Article 10 rights. The House of Lords held that whether or not the message was grossly

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<sup>89</sup> *Norwood v. United Kingdom*, App. No. 23131/03, ECHR 2004.

offensive (which is for a court of fact to determine) the offence was a proper restriction on the use of public communications networks to infringe the rights of others and in those circumstances he could not avail of Article 10 ECHR.<sup>90</sup>

The balance is struck so that the criminal law prohibiting the publication of race hate speech must not extend beyond that which is strictly necessary and proportionate. For example, a prosecution of a journalist who disseminated the racist statements of others without any comment or disclaimer was disproportionate bearing in mind the importance of journalistic freedom.<sup>91</sup> In another case, going the other way, in which a man had been convicted of an offence of disparaging the memory of the dead in connection with protests about Holocaust denial laws, the ECtHR said “the public interest in the prevention of crime and disorder due to disparaging statements regarding the Holocaust, and the requirements of protecting the interests of the victims of the Nazi regime, outweigh, in a democratic society the applicant’s freedom to impart views denying the existence of the gas chambers and mass murder therein.”<sup>92</sup>

In another case, the applicant complained that he had been fined for displaying the striped Árpád flag, which had controversial historical connotations, less than 100 metres away from a demonstration against racism and hatred. The ECtHR held that there had been a violation of Article 10 read in the light of Article 11 (freedom of assembly and association). It was accepted that the display of a symbol, which was ubiquitous during the reign of a totalitarian regime in Hungary, might create uneasiness amongst past victims and their relatives who could rightly find such displays disrespectful. It nevertheless found that such sentiments, however understandable, could not alone set the limits of freedom of expression. In addition, the applicant had not behaved in an abusive or threatening manner. In view of his non-violent behaviour, of the distance between him and the demonstrators, and of the absence of any proven risk to public security, the Court found that the Hungarian authorities had not justified prosecuting and fining the applicant for refusing to take down the flag in question. The mere display of that flag did not disturb public order or

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<sup>90</sup> *DPP v. Collins* [2006] UKHL 40.

<sup>91</sup> *Jersild v. Denmark*, App. No. 15890/89, ECHR 1994.

<sup>92</sup> *Witsch v. Germany*, App. No. 41448/98, ECHR 1999.

hamper the demonstrators' right to assemble, as it had been neither intimidating, nor capable of inciting violence.<sup>93</sup>

One case concerned the criminal conviction of a Turkish politician for publicly expressing the view, in Switzerland, that the mass deportations and massacres suffered by the Armenians in the Ottoman Empire in 1915 and the following years had not amounted to genocide. The Swiss courts held in particular that his motives appeared to be racist and nationalistic and that his statements did not contribute to the historical debate. The applicant complained that his criminal conviction and punishment had been in breach of his right to freedom of expression. The Court held that there had been a violation of Article 10. Being aware of the great importance attributed by the Armenian community to the question whether those mass deportations and massacres were to be regarded as genocide, it found that the dignity of the victims and the dignity and identity of modern-day Armenians were protected by Article 8 (right to respect for private life) of the Convention. The Court therefore had to strike a balance between two ECHR rights – the right to freedom of expression and the right to respect for private life – taking into account the specific circumstances of the case and the proportionality between the means used and the aim sought to be achieved.

The ECtHR concluded that it had not been necessary, in a democratic society, to subject the applicant to a criminal penalty in order to protect the rights of the Armenian community. In particular, the ECtHR took into account the following elements: the applicant's statements bore on a matter of public interest and did not amount to a call for hatred or intolerance; the context in which they were made had not been marked by heightened tensions or special historical overtones in Switzerland; the statements could not be regarded as affecting the dignity of the members of the Armenian community to the point of requiring a criminal law response in Switzerland; there was no international law obligation for Switzerland to criminalise such statements; the Swiss courts appeared to have censured the applicant simply for voicing an opinion that diverged from the established ones in

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<sup>93</sup> *Faber v. Hungary*, App. No. 40721/08, ECHR 2012.

Switzerland; and the interference with his right to freedom of expression had taken the serious form of a criminal conviction.<sup>94</sup>

Had the elements been satisfied, for example, if there had been heightened social tensions or particular historical overtones in Switzerland, the decision would probably have been different. As the ECtHR has repeated many times “tolerance and respect for the equal dignity of all human beings constitute the foundations of a democratic, pluralistic society. That being so, as a matter of principle it may be considered necessary in certain democratic societies to sanction or even prevent all forms of expression which spread, incite, promote or justify hatred based on intolerance..., provided that any ‘formalities’, ‘conditions’, ‘restrictions’ or ‘penalties’ imposed are proportionate to the legitimate aim pursued.”<sup>95</sup>

The United Kingdom has a duty under EU law to legislate against the incitement of hatred directed towards a group of people or member of the group defined by reference to race, colour, religion, descent or national or ethnic origin.<sup>96</sup> The Policing Board believes more can and should be done to implement the Directive.

### **Breach of the peace**

In the absence of one of the above specific offences under the Public Order (Northern Ireland) Order 1987, a person’s behaviour may nonetheless constitute a breach of the peace, for which a constable may arrest without warrant. Breach of the peace is a common law concept which is used to prevent unlawful violence against people or property. It is not a criminal offence in its own right however the police have powers which they may exercise for the purpose of stopping or preventing any person from breaching or threatening to breach the peace by committing unlawful violence. In short, breach of the peace encompasses actions which harm another person, or harm his property in his presence, or actions which

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<sup>94</sup> *Perincek v. Switzerland*, App. No. 27510/08, ECHR 2015.

<sup>95</sup> *Erbakan v. Turkey*, App. No. 59405/00, ECHR 2006.

<sup>96</sup> *Council Framework Decision of 28 November 2008 on Combating Certain Forms and Expressions of Racism and Xenophobia by Means of Criminal Law*, Council of the European Union, 2008/913/JHA. See also the recent *General Policy Recommendation No. 15 on combating hate speech*, European Commission against Racism and Intolerance (ECRI), December 2015.

are likely to provoke such harm. A breach of the peace may occur on either public or private property.<sup>97</sup>

The police are able to arrest and detain anyone who is committing, or they have reasonable cause to believe is about to commit, a breach of the peace. If the police reasonably believe that a breach of the peace is being committed, or is about to be committed, on private property, they may use their common law power to enter the property without a warrant in order to stop or prevent the breach. An arrest for an anticipated breach of the peace will only be lawful if the threat of the breach is imminent. Furthermore the arrester's apprehension of the breach must be reasonable in the circumstances. This means that there must be an objectively reasonable cause which led the arrester to believe that a breach was about to occur

In respect of the exercise of the common law power to arrest to prevent a breach of the peace, officers must be aware of the potential to violate Articles 5, 10 and 11 ECHR, the rights to liberty and security, freedom of expression, and assembly and association respectively. Any decision to arrest must therefore be lawful, necessary and proportionate.

## **Harassment**

### ***Harassment***

The Protection from Harassment (Northern Ireland) Order 1997 makes it an offence for a person to pursue a course of conduct which amounts to harassment of another which he or she knows or ought to know amounts to harassment of that other person. "Harassing" a person includes alarming a person or causing the person distress. A "course of conduct" must involve conduct on at least two occasions. "Conduct" includes speech.<sup>98</sup> A person ought to know that the conduct amounts to harassment if a reasonable person in possession of the same information would think the course of conduct amounted to harassment. It is a defence to an allegation if the conduct: is shown to have been pursued for the purpose of preventing or detecting crime; was pursued under express statutory provision or rule of law or to

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<sup>97</sup> *R v. Howell* [1981] 3 ALL ER 383.

<sup>98</sup> Article 2 Protection from Harassment (Northern Ireland) Order 1997.

comply with a requirement imposed by a person under a statutory provision; or, in the light of the particular circumstances it was reasonable.<sup>99</sup>

### ***Putting people in fear of violence***

A person whose course of conduct causes another to fear, on at least two occasions, that violence will be used against him is guilty of an offence if he or she knows or ought to know that the course of conduct will cause the other to fear violence on each of those occasions. A person ought to know that the conduct will cause another to fear that violence will be used if a reasonable person in possession of the same information would think it would cause the other to fear violence on that occasion. It is a defence to show that: the course of conduct was pursued for the purpose of preventing or detecting crime; the course of conduct was pursued under any statutory provision or rule of law or to comply with any condition or requirement imposed by any person under any statutory provision; or, the pursuit of the course of conduct was reasonable for the protection of self or another or for the protection of property.<sup>100</sup>

### **Anti-social behaviour**

The Anti-Social Behaviour (Northern Ireland) Order 2004<sup>101</sup> introduced the anti-social behaviour order (ASBO) to Northern Ireland. Breach of an ASBO is a criminal offence. The 2004 Order enables designated authorities to apply by complaint to the Magistrates' Court for an ASBO restricting the future behaviour of a person committing anti-social behaviour. The authorities that may apply for an ASBO are:<sup>102</sup> a district council who may apply for an ASBO against a person within the district of the Council; the Northern Ireland Housing Executive which may apply in respect of a person who is residing in, or who is otherwise on or likely to be on premises provided or managed by the Housing Executive, or a person who is in the vicinity of or likely to be in the vicinity of such premises; and, the Chief Constable who may apply in

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<sup>99</sup> Article 3 Protection from Harassment (Northern Ireland) Order 1997.

<sup>100</sup> Article 6 Protection from Harassment (Northern Ireland) Order 1997.

<sup>101</sup> As amended by the Criminal Justice (Northern Ireland) Order 2005.

<sup>102</sup> Article 2 Anti-Social Behaviour (Northern Ireland) Order 2004. As per Article 2(4A), the Secretary of State may by Order add to the category of relevant authorities that may apply for an ASBO.

respect of any person in Northern Ireland.<sup>103</sup> An ASBO may be applied for in relation to any person aged ten years or over if the person has acted in an anti-social manner; that is to say, in a manner that caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household as himself/herself; and that such an order is necessary to protect relevant persons from further anti-social acts by him or her.<sup>104</sup>

The definition of anti-social behaviour as behaviour “likely to cause harassment, alarm or distress” is similar to that found in the Public Order legislation which, likewise, contains no requirement to prove that the anti-social behaviour has actually *caused* any person harassment, alarm or distress. Accordingly, it is unnecessary to produce a ‘victim’ of the behaviour and it is sufficient that there is evidence of conduct *likely to cause* harassment, alarm or distress. Furthermore, there is no requirement that the defendant intended his or her behaviour to have such effect.

If the Court is satisfied on an application that the defendant has acted in an anti-social manner, it must go on to consider whether an ASBO is necessary to protect persons from further anti-social acts by the defendant. If a victim is not prepared to give evidence to the Court because of a genuinely held fear, a professional witness can give that evidence to the Court explaining the reason for the fear. In England and Wales for example ASBOs have been made based on evidence that neighbours have applied to move away from the defendant, and evidence of the cost of, for example, cleaning graffiti and repairing the effects of vandalism.

## **Criminal damage**

The Criminal Damage (Northern Ireland) Order 1977 provides for a number of offences relating to the destruction or damage of property; threats to destroy or damage property; and the possession of anything with intent to destroy or damage property.

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<sup>103</sup> The Chief Constable may delegate his functions to designated officers: article. 2(6) Anti-Social Behaviour (Northern Ireland) Order 2004.

<sup>104</sup> Article 3(1) Anti-Social Behaviour (Northern Ireland) Order 2004.



A person who without lawful excuse destroys or damages any property belonging to another intending to destroy or damage property or being reckless as to whether any property would be destroyed or damaged shall be guilty of an offence. Furthermore, a person is guilty of an offence if he without lawful excuse destroys or damages any property, whether belonging to himself or another, intending to destroy or damage any property or being reckless as to whether any property would be destroyed or damaged; and intending by the destruction or damage to endanger the life of another or being reckless as to whether the life of another would be thereby endangered. An offence committed by destroying or damaging property by fire must be charged as arson.<sup>105</sup>

It is also an offence to without lawful excuse make a threat to another intending that that other would fear it would be carried out; to destroy or damage any property belonging to that other or a third person; or to destroy or damage his own property in a way which he knows is likely to endanger the life of that other or a third person.<sup>106</sup>

A person who has anything in his custody or under his control intending without lawful excuse to use it or cause or permit another to use it to destroy or damage any property belonging to some other person, or to destroy or damage his own or the user's property in a way which he knows is likely to endanger the life of some other person, is also guilty of an offence.<sup>107</sup>

## **Offences against the person**

The Offences against the Person Act 1861 creates a number of specific offences committed by assaulting another person. It is an offence to unlawfully assault or beat any person,<sup>108</sup> to assault any person occasioning actual bodily harm,<sup>109</sup> to wound or

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<sup>105</sup> Article 3 Criminal Damage (Northern Ireland) Order 1977.

<sup>106</sup> Article 4 Criminal Damage (Northern Ireland) Order 1977.

<sup>107</sup> Article 5 Criminal Damage (Northern Ireland) Order 1977.

<sup>108</sup> Often referred to as common assault, section 42 Offences against the Person Act 1861.

<sup>109</sup> Section 47 Offences against the Person Act 1861.

cause grievous bodily harm with intent,<sup>110</sup> to wound or inflict grievous bodily harm<sup>111</sup> and to threaten to kill any person.<sup>112</sup>

## **Malicious communications**

The Malicious Communications (Northern Ireland) Order 1988 makes it an offence to send a letter or other article including by email or other electronic means (e.g. Facebook, Twitter, Text and SMS messages etc) which conveys a message which is indecent or grossly offensive; a threat; or information which is false and known or believed to be false by the sender; or any other article which is, in whole or part, of an indecent or grossly offensive nature, if the purpose in sending it is to cause distress or anxiety to the recipient or to any other person to whom he or she intends that it or its contents or nature should be communicated.<sup>113</sup>

If more than one message is sent police officers should also consider whether the Protection from Harassment (Northern Ireland) Order (outlined above) because, if so, a court may impose an order prohibiting the perpetrator from contacting the victim.

Increasingly, hate speech is found on the internet: hate groups often spread and survive online. Many if not most incitement to hate crimes are now found online, therefore the police also need to be online monitoring and dealing with it. While the PSNI have begun to address cyber enabled crime more vigorously there does not appear to be any concerted focus on incitement to hatred. That should be addressed expeditiously but the Committee understands the Silver Commander is in the process of developing a response to cyber hate crime so will review that in due course and report once complete.

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<sup>110</sup> Section 18 Offences against the Person Act 1861.

<sup>111</sup> I.e. without intent, section 20 Offences against the Person Act 1861.

<sup>112</sup> Section 16 Offences against the Person Act 1861.

<sup>113</sup> Article 3 Malicious Communications (Northern Ireland) Order 1988.

## Enhanced sentences

The Criminal Justice (No.2) (Northern Ireland) Order 2004, which came into force in September 2004, provides for an enhancement (i.e. an increase) in sentence for offences aggravated by hostility. The offences for which sentence may be enhanced are not limited. In other words, any behaviour which constitutes a criminal offence may be aggravated by hostility.

The 2004 Order provides that where a court is considering the seriousness of an offence, if it was aggravated by hostility the court must treat that fact as an aggravating factor. Hostility is not defined by the 2004 Order but if the court is satisfied that hostility was an aggravating factor the court must state that in open court. An offence is aggravated by hostility if at the time of committing the offence, or immediately before or after committing it, the offender *demonstrates* towards the victim hostility based on the victim's membership (or presumed membership) of a racial group. Furthermore, and in the alternative, an offence is considered to be aggravated by hostility if it is *motivated* (wholly or partly) by hostility towards members of a racial group based on their membership of that group.<sup>114</sup> It is immaterial for these purposes whether or not the perpetrator's hostility is also based, to any extent, on any other factor.<sup>115</sup> Therefore, demonstration of hostility is sufficient whether the offence is motivated by it or not; if hostility is demonstrated there is no need to prove that it was motivated by hostility. During this thematic review, it was clear that some officers confused the two elements of the Order, sometimes overlooking the demonstration of hostility if the evidence of motivation was absent.

Some hate crimes involve the targeting of victims not because of their personal characteristics, but because of their association with a person or people against whom the perpetrator is prejudiced. Membership for the purposes of the 2004 Order includes association with members of a racial group. The OSCE explains "targets by association can include for example interracial couples or people who support minorities or human rights causes, including members of civil society groups and

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<sup>114</sup> The 2004 Order also provides for enhanced sentencing where hostility is demonstrated or motivated upon the grounds of sexual orientation, religion or disability.

<sup>115</sup> Article 2 Criminal Justice (No.2) (Northern Ireland) Order 2004.

organizations working on human rights' issues on behalf of minority groups, such as migrants".<sup>116</sup>

There is a distinction between the information required to record (simple perception) and the evidence required to prosecute. While the perception of the victim or any other person that the offence is motivated by or demonstrated hostility is all that is required for the offence to be recorded and thereafter investigated as a hate incident or crime, if an enhanced sentence is sought the prosecution must be able to prove motivation or demonstration. Police officers therefore must accept the perception of the person attributing hostility to the incident but thereafter pursue the evidence to satisfy a criminal court. It became clear that some police officers found this distinction difficult to understand or to accept with some describing it as counterintuitive. However, the distinction is relatively simple if properly explained and very important to maintain if victims are to be protected. The perception test is there to ensure that the hate element in any incident is not overlooked, to trigger the process for investigating the hate element and to protect vulnerable victims. Furthermore, if there is no evidence of a crime, the incident will nonetheless be recorded and can be retrieved if any further reports are made. Having accepted the perception of the incident and having gathered evidence to establish or eliminate the hate element the police must determine whether a crime has been committed. Questions can and should be asked for the purposes of gathering evidence but they should not be put so as to suggest that the perception is not accepted. This should be addressed in interactive training with examples provided and scenarios presented for officers to work through.

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<sup>116</sup> *Prosecuting Hate Crimes: A Practical Guide*, OSCE and ODHIR, September 2014.

## POLICE POLICY AND PRACTICE

Hate incidents and crimes can take many forms but the most common are violence against the person, criminal damage and anti-social behaviour.<sup>117</sup> A hate incident is any incident, which may or may not constitute a criminal offence, which is perceived by the victim or any other person, as being motivated by prejudice or hate.<sup>118</sup> Any other person may include for example the victim's neighbour, a family member, an elected representative, a support organisation, a passerby or any police officer or member of staff.

A racist incident is any incident which is perceived to be racist by the victim or any other person. A racial group is defined as a group of persons defined by reference to race, colour, nationality or ethnic or national origins<sup>119</sup> and references to a person's racial group refer to any racial group to which he or she belongs. Racial group includes the Irish Traveller community. This includes incidents which the police have no statutory power to deal with but which may be dealt with by other agencies, for example, the Equality Commission. A hate crime is any hate incident, perceived by the victim or any other person as being motivated by prejudice or hate, which constitutes a criminal offence.

While not all hate incidents will include crimes, the recording, monitoring and support to victims outlined in PSNI Service Procedure should apply equally to hate incidents whether it constitutes a criminal offence or not.<sup>120</sup> Hate incidents and crimes are particularly hurtful to victims who are targeted because of their racial or ethnic origin.<sup>121</sup> The impact varies from victim to victim but it leaves many feeling permanently unsafe. As well as having a physical impact on victims, hate crime can

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<sup>117</sup> *Hate crime problem profile*, PSNI, January 2016.

<sup>118</sup> This is the definition of the National Police Chiefs' Council (formerly ACPO) and it has been adopted by the PSNI.

<sup>119</sup> Which includes UK National origins i.e. Scottish, English, Welsh and Irish

<sup>120</sup> *Hate Crime/ Incidents*, PSNI Service Procedure 01/2016, January 2016.

<sup>121</sup> For further research into the impact of hate crime on victims, see for example *Equality Groups Perceptions and Experiences of Crime*, S. Botcherby, F. Glenn, P. Iganski, K. Jochelsen and S. Lagou for the Equality and Human Rights Commission and University of Lancaster, 2011, which considers findings from the British Crime Survey, including the emotional reaction to crime of victims who perceived the crime to have been an identity based crime.

lead to poor mental health and increase the risk of suicide. The impact of the incident or crime is also likely to resonate throughout the wider community.

PSNI policy does reflect those principles but the application of policy in practice occasionally falls below that dictated by policy. That is considered throughout this review.

## **PSNI operational structures**

By the end of 2015 a new, tailored policing structure was in place for hate incidents and crimes. That structure mirrors police command structures that have been used effectively to manage critical incidents. There is one Gold Commander (Assistant Chief Constable District Policing) who defines the strategic objectives of the PSNI, one Silver Commander (Superintendent) who develops the tactical plan to coordinate and deliver the strategic priorities and seven Bronze Commanders (Chief Inspectors) who take the lead on each of the following areas: policy, investigative standards,<sup>122</sup> communications,<sup>123</sup> training, engagement, analytical information<sup>124</sup> and intelligence. Bronze Commanders meet regularly with each other and with the Silver Commander. There are regular meetings between the Gold and Silver Commanders and occasional meetings of all Commanders. In developing the new structure the intention was to ensure that hate crime was a strategic priority across all 11 policing Districts with consistency in practice across Northern Ireland under a single command structure.

Furthermore, each policing District has nominated a Chief Inspector to take the lead within that District for hate crime. All Chief Inspectors meet on a quarterly basis with the Silver Commander in the chair. These meetings are aimed specifically at driving improvements in performance and sharing information. Each District commander has identified at least one Lead Hate and Signal Crime Officer (LHSCO). Within Belfast

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<sup>122</sup> A Detective Chief Inspector created Minimum Investigative Standards for the investigation of hate crime, quality assured by dip sampling investigations and liaises with the PPS.

<sup>123</sup> A member of the Corporate Communications Department works closely with the Silver Commander to develop and deliver on the PSNI's communications strategy including internal and external communications and social media campaigns.

<sup>124</sup> An analyst provides information and advice to the Silver Commander to establish a greater data base of trends and patterns in hate crime and to inform the allocation of resources.

there are four LHSCOs; one for North, South, East and West. The LHSCOs also meet quarterly with the Bronze Commander (policy) in the chair. The relevant District Commander is responsible for determining the number of HSCOs based on the level of need within the District. Each Commander will remain accountable through the hate crime command structure (Gold and Silver) to justify his or her decisions and demonstrate that local need is being met. That is yet another reason for encouraging the reporting of hate crime and collecting accurate data. Unless need is accurately assessed, the number of officers required to deal with it will be not available.

The Performance Committee believes this approach has been effective and has begun to drive improvements in victim support, investigative standards and the collection of analytical information. Contributors to this thematic review however expressed dissatisfaction that there was not an identified single point of contact within the PSNI at neighbourhood level, which they believed was contributing to a reduction in engagement. When the new structures became operational, stakeholders and some victims reported that the level of engagement with the police diminished rapidly. They believed that was as a result of fewer dedicated neighbourhood officers and a 'disengagement' by officers who did not have time to discharge all of the roles allocated to them. That criticism was repeated across all partner groups. In April 2016, however, the PSNI reconsidered the number of HSCOs within Districts and was dissatisfied at the number available. An additional number of HSCOs were (and are still being) recruited. Towards the end of the thematic review (late 2016) some stakeholders did say they had noticed an improvement and were hopeful that as the new structures and procedures bedded down there would be an increase in the engagement undertaken by the PSNI. The Committee notes that the significant restructuring encountered 'teething problems' but anticipates that as everyone becomes more familiar with the reorganisation and the new policy (outlined in the next section below) that the service received by victims will reap benefits.

It is hoped that a single point of contact will be identified within each policing area. Those officers can thereafter maintain contact with and receive calls from those representing black and minority ethnic groups. This will be kept under review over the next 12 months.

## PSNI Service Procedure

The Service Procedure *Hate Crime/Incidents*<sup>125</sup> defines a racist hate incident or crime as “any non-crime incident/criminal offence which is perceived, by the victim or any other person, to be motivated by a hostility or prejudice based on a person’s race or perceived race”. The key priority for the police in terms of hate and signal crime is “to ensure that the needs of the victim are paramount, these in turn will shape the nature of the police response and subsequent investigation: (a) To assess and manage the risks to the victim/s and to manage those risks through appropriate interventions; (b) To effectively investigate all reported hate incidents in line with investigative standards; (c) To work in partnership with other agencies and organisations to collaboratively address Hate Crime”.

The Service Procedure underwent a fundamental review to take account of developments in practice, to consider recommendations from reviews and audits (including from the Performance Committee) and the new operating model of police delivery of Local Policing Teams. As part of that review, the Bronze Lead for Investigative Standards developed minimum standards for hate crime investigations, including for race hate crime investigations, which aims to improve investigative outcomes.

The Performance Committee heard from a number of stakeholders that they have been frustrated by officers seeming to query whether there was a hate motivation and raised that with the PSNI. The PSNI took that criticism on board. The recently revised Service Procedure provides “Evidence is NOT the test when reporting a hate incident; when an incident or crime has been reported to police by the victim or by any other person and they perceive it as being motivated by prejudice or hate, it will be recorded and investigated as a hate incident or crime. The perception of the victim or any other person is the defining factor in determining whether an incident is a hate incident, or in recognising the hostility element of a hate crime. Perception-based recording refers to the perception of the victim, or any other person. It would not be appropriate to record a crime or incident as a hate crime or hate incident if it

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<sup>125</sup> *Hate Crime/ Incidents*, PSNI Service Procedure 01/2016, January 2016.



was based on the perception of a person or group who had no knowledge of the victim, crime or the area, and who may be responding to media or internet stories or who are reporting for a political or similar motive. The other person could, however, be one of a number of people, including: police officers or staff; witnesses; family members; civil society organisations who know details of the victim, the crime or hate crimes in the locality, such as a third-party reporting charity; a carer or other professional who supports the victim; someone who has knowledge of hate crime in the area – this could include many professionals and experts such as the manager of an education centre used by people with learning disabilities who regularly receives reports of abuse from students; a person from within the group targeted with the hostility, for example, a Traveller who witnessed racist damage in a local park. When an incident or crime has been reported to police by the victim or by any other person and they perceive it as being motivated by prejudice or hate, it will be recorded and investigated as a hate incident or crime... PSNI will accept without challenge the view of a victim or any other person that the crime was motivated by hate on one of the defined grounds”.

The revised Service Procedure certainly aims to provide tight procedures on the investigation of hate crime but it contains fewer context notes within the body of the procedure than its predecessor. For example, the previous procedure explained to officers the devastating impact that hate crime can have on a victim and the effect it can also have on the wider community. It reminds officers that hate crime must be dealt with sensitively and knowledgeably. It provided “(a) The impact of hate and signal crime can be long lasting and far reaching going beyond the victim’s own experience to change the behaviour and increase fear in the victim’s wider family/group/community. It can also increase fear and change behaviour of individuals/families and groups around the local and regional areas once knowledge spreads of hate incidents. (b) Hate crime differs from other crime. Victims of racism for example cannot change their nationality; ethnicity or the colour of their skin therefore the impact of hate on signal crime has a fundamental impact on their essence of being. (c) Victims can often be repeat victims and this compounds the impact and effects of prejudice/hate incidents (d) It is recognised that low level hate incidents can lead to more serious type of incidents occurring and therefore victims of low level incidents should be encouraged to report and be treated as seriously as

other incidents. (e) Where the victim may have difficulties with either written or spoken English (e.g. crimes based on race or disability); those dealing with and recording the incident will be sensitive and responsive to these issues, and alternative formats will be made available as necessary. (f) For all these reasons prejudice/hate crime/incidents need to be handled sensitively and well at first contact point with the victim”.<sup>126</sup>

That guidance, provided as it was within the Service Procedure itself, presented a valuable opportunity to remind officers of the context within which hate crime occurs and to challenge cultural attitudes to hate crime. The revised Service Procedure however was sent out to officers attached to an email and in advance of any training being delivered to those officers expected to apply the policy. That was not an appropriate means of informing officers of important changes to police policy or equipping them to deal with hate crime.

There is additional information available on PoliceNet (the PSNI intranet) such as hate crime guidance and a *Practical Peeler* guide but the information is not coordinated or shared adequately to enable officers and staff to access it easily during busy working days. Back in 2007, following an inspection of hate crime, the Criminal Justice Inspection Northern Ireland observed “E-mailing important guidance to officers proves not to be an effective means of communication” and that there were “concerns regarding the lack of corporate or local training to help officers and supervisors implement the policy.”<sup>127</sup> It is therefore deeply disappointing that in 2016 policy was emailed to officers without any prior training. The Committee understands that specific training has now been delivered. Training is considered further at page 127 of this thematic review.

The *Practical Peeler* guide available through PoliceNet sets out in summary form the actions that officers must take when a report of a hate incident or crime is received. It is a useful resource and reminds officers of the advocacy service and the Hate Incident Practical Action scheme but it does not remind officers that a victim may

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<sup>126</sup> *Police Response to Hate Incidents*, PSNI SP 16/2012.

<sup>127</sup> *Hate Crime in Northern Ireland: A Thematic Inspection of the Management of Hate Crime by the Criminal Justice System in Northern Ireland*, CJINI, January 2007.

need translation services or how to access them and it is confined, in so far as the law is concerned, to the Criminal Justice (NI) Order 2004. The 2004 Order provides for enhanced sentences if the offence is motivated by hostility but there are a number of other statutes that need to be considered, for example the Public Order (Northern Ireland) Order 1987 (considered above at page 46). In the absence of reference to other important statutes in a quick reference guide such as *Practical Peeler*, it may be the case that they will not be considered.

### **New hate crime investigatory and risk assessment process**

PSNI has introduced a new Hate Crime Investigatory and Risk Assessment Process which, in essence, requires all officers to follow two concurrent processes when responding to all hate incidents and crimes: (i) an investigation process; and (ii) a risk assessment process. The addition of a risk assessment process has been welcomed by stakeholders because its central focus is on the victim. The process can be summarised as follows.

#### *(i) Investigation process*

The officer attending the scene (the Attending Officer / AO) will carry out the initial investigation and is responsible for ensuring the incident or crime is properly recorded and marked as being hate motivated. If lines of enquiry such as CCTV, forensics or door to door enquiries reveal no investigative lead, that must be reviewed by a Sergeant before the file can be closed. If, upon the initial investigation, it is determined that further investigation is required, the AO will usually assume the role of Investigating Officer (IO) unless certain risk factors are identified or the victim is a repeat victim. Then, the IO role may be transferred to, for example, a Lead Hate and Signal Crime Officer (LHSCO) or to another unit such as a Public Protection Unit. In Belfast Area, the AO will never be the IO as all cases will be transferred to the Case Progression Team (CPT) to investigate. That is limited to Belfast because there are no CPTs outside of Belfast.

The IO's investigation is supervised by a Sergeant. Only that Sergeant can decide that there is to be no further police action and the file closed. A percentage of all

investigation files will be dip-sampled by PSNI.<sup>128</sup> Furthermore, PSNI also dip-samples files that have been sent to the PPS but which the PPS have not progressed because they have not met the evidential test. As with all victims of crime, victims of hate crime will be given a 10 day update in respect of progress on their case.

*(ii) Risk assessment process*

The Attending Officer (AO) must complete a Vulnerability Risk Assessment Matrix (VRAM) if they respond to any hate crime. The VRAM is based upon the Threats to Life Risk Assessment tool. The VRAM will give a risk score which will fall into one of three categories: low, medium or high risk. If a victim is deemed high risk, the AO must notify a LHSCO within the District. In all cases, whether low, medium or high risk, the AO must also link in with their District Electoral Area (DEA) officers. This means that the DEA officers will be aware of the hate crime victims in their areas and can if required take steps to prevent further crimes occurring and/or to reassure the victim by increased patrolling in a particular area.

The risk scoring and any proposed action plan is reviewed by a Sergeant where the score is low risk and an Inspector where the score is medium or high risk. Where the case is high risk, the action plan is reviewed at Daily Management Meetings and a lead Senior Risk Officer (SRO) is appointed. It is anticipated that the SRO will often be the District Lead Chief Inspector for hate crime. Where the risk on a case is to be closed off (i.e. no further police action is required), closure can only be made by a Sergeant for low risk cases, Inspector for medium risk cases, and the SRO for high risk cases. Closing the risk on a file does not necessarily mean that the *investigation* is closed. The investigation may well continue but the risk to the victim will be recorded as no longer existing or having been sufficiently mitigated.

The recently revised Service Procedure, incorporating new Investigatory and Risk Assessment processes, is an admirable attempt to set out strict procedures and provides unambiguous guidance for officers in respect of the perception test. However, the Performance Committee observes that the flow charts developed by

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<sup>128</sup> The percentage of files to be dip-sampled has not yet been agreed.

PSNI to illustrate the processes to be applied are complicated and difficult to follow. It may be that police officers who are well trained in the procedures can understand the flow charts but it seems unlikely that members of the public for whose benefit the procedure is implemented will begin to understand what can be expected of police officers. The Committee reminds the PSNI that police policy is not solely for the benefit of police officers but must be available to the public so that they might understand fully the practical effect of police policy. At the time of writing, the service procedure is undergoing further review and revision with an aim to making it more comprehensible. While the Committee is disappointed that there have been so many recent changes and further change will require further training, it is hopeful that the review will result in a service procedure that is comprehensive and accessible to police and public.

### **PSNI Code of Ethics**

The PSNI Code of Ethics lays down standards of conduct and practice for police officers and is intended to make police officers aware of their rights and obligations under the Human Rights Act 1998. The Code provides, at article 6, “In carrying out their duties police officers shall treat all persons or classes of persons equally regardless of race, colour, sex, language, religion, political or other opinion, national or social origin, association with a national minority, disability, age, sexual orientation, marital or family status, property, birth or any other status. Any difference in treatment shall be required to be justified and proportionate.”<sup>129</sup> It is explained that “This Article reflects the Police Service attestation which requires police officers to act with fairness, self-control, tolerance and impartiality when carrying out their duties. In carrying out your duties, you must treat all persons or classes of persons equally, giving equal respect to all individuals and their traditions, beliefs and lifestyles so long as those are compatible with the law”.

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<sup>129</sup> Article 6.2 PSNI Code of Ethics (reissued 2008).

## REPORTING AND RECORDING HATE CRIME

### Reporting

In Northern Ireland, a victim or witness of hate crime may report by telephone either on the emergency or non-emergency number. He or she may also report (including anonymously) online directly on the PSNI website. The online service diverts the reporter to the emergency number if the report is an emergency. Reports may also be made through third parties such as the Hate Crime Advocacy Service.<sup>130</sup> Crimestoppers, a national charity which works in partnership with the police and the media to help fight crime, offers the public a free telephone number<sup>131</sup> to call totally anonymously and give information about individuals involved in crime, or about any criminal activity. Victim Support NI, a charity supporting people affected by crime, offer a free and confidential service, whether or not a crime has been reported and regardless of how long ago it occurred.

Despite the various means of reporting, hate crime is significantly under-reported, not only in Northern Ireland but across Europe.<sup>132</sup> A survey undertaken in 2008 of a random sample of 23,500 migrants and minorities across Europe revealed that 37% had personally experienced discrimination<sup>133</sup> and 12% had personally experienced a racist hate crime in the preceding 12 months. However, 80% of those did not report the incident to the police. Speaking at a conference in Belfast on 22 September 2016, the UK National Point of Contact to the Office for Democratic Institutions and Human Rights on hate crime presented figures on hate crime reported across the UK. He estimated that of the 49,930 reports of racist hate crime reported to the police, victimisation surveys showed that approximately a further 63,000 crimes were committed but not reported.<sup>134</sup> Furthermore, the Leicester Centre for Hate Studies, which conducted a comprehensive survey of hate crime victims, recorded that only “a quarter of respondents stated that they had reported their most recent experience

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<sup>130</sup> The Hate Crime Advocacy Service provides specialist Advocates within independent community organisations who can assist victims of hate crime to access services, provide support, guidance and be the voice of the victim. The Advocacy Service is discussed in more detail at page 119 below.

<sup>131</sup> Freephone 0800 555 111

<sup>132</sup> *The European Union Minorities and Discrimination Survey, Main Results Report*, European Union Fundamental Rights Agency, 2009.

<sup>133</sup> With Africans and Roma experiencing the highest levels of discrimination and hate crime.

<sup>134</sup> Mr Paul Gianassi speaking at the Good Practice Plus Final Policy Conference, 21-22 September 2016.

of hate crime to the police... When asked why, the most frequently cited reasons were that they did not feel the police would take it seriously (30%), that they dealt with it themselves or with the help of others (27%), or that the police could not have done anything (20%)”.<sup>135</sup>

Durham Constabulary described it as follows “Large numbers of people who experience hate crime do not report it to the police because they lack confidence in the police’s willingness to deal with it. Some victims believe that the police are prejudiced, unsympathetic and/or untrustworthy and that making a report will make matters worse. Some victims do not understand what a hate crime is or how to report it. Others believe that hate crimes happen too frequently to report or that what happened to them was not serious enough to report. The result is that, for some people, hate crime is a part of their daily lives.”<sup>136</sup> This mirrors evidence given by victims in Northern Ireland throughout this thematic review.

There are some common factors that help explain why a victim of hate crime may be reluctant to report to the police. A victim may be frightened to be identified because of irregular migrant status or may fear coming to the attention of extremists. A victim may, due to his or her negative experience of the authorities, lack sufficient trust in the system to report. That is more likely to be the case if that victim or another member of the victim’s community has previously reported a hate crime that was either not pursued at all or not pursued as a hate crime. If police officers have tried to dissuade the victim from reporting the hate element of the crime (which was reported as a not infrequent occurrence during this thematic review) he or she is likely to doubt whether hate crimes will ever be investigated or prosecuted fully. Any victim who has suffered discrimination or hostile treatment from, for example, neighbours or the authorities is likely to fear similar discrimination or hostility if he or she reports a hate crime. A victim may also fear retaliation from the perpetrator or those associated with the perpetrator. Hate crimes are not always random acts of hate but can occur within close local communities causing the victim to fear repercussions

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<sup>135</sup> *The Leicester Hate Crime Project: Findings and Conclusions* Neil Chakraborti, Jon Garland & Stevie Jade-Hardy, September 2014.

<sup>136</sup> Durham Constabulary website, October 2016.

within that locality. That is especially so, but not only, if the perpetrator is involved in a paramilitary group.<sup>137</sup>

The European Union Victims' Directive requires member states to ensure that individual assessments to identify the specific protection needs of victims are carried out by the first point of contact, usually the police.<sup>138</sup> Individual assessments must be carried out with the close involvement of the victim and take into account their wishes including where they do not wish to benefit from special measures. Furthermore, if the elements that form the basis of the individual assessment have changed significantly, member states shall ensure that it is updated throughout the criminal proceedings. In other words, an assessment must be kept under review. The EU Fundamental Rights Agency (FRA) advises that "Member States should review the methods applied to assess the needs of victims of bias-motivated crime, including requirements for effective protection against secondary and repeat victimisation, intimidation and retaliation".<sup>139</sup>

The police must consider whether there are any special measures that can be taken to afford a degree of protection to such victims. Early and active engagement with Hate Crime Advocates is enormously useful to police officers and assists in addressing barriers to reporting and addressing various inhibiting factors. Hate Crime Advocates are considered further at page 119 of this thematic review.

Any reluctance to report must not in itself be assumed to be evidence of a failure to cooperate. Instead, the police must build trust with individual victims and with minority communities and raise their awareness of cultural differences. During this thematic review, some victims suggested that police officers, they believed, had assessed their credibility (or lack of it) based upon negative stereotyping or inherent

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<sup>137</sup> The PSNI and the Northern Ireland Affairs Committee have recognised significant loyalist paramilitary involvement in racist violence: *Report on the Committee's Inquiry in the Criminal Justice Services Available to Witnesses and Victims of Crime in Northern Ireland*, Committee for Justice, 2012, para.683. See also McVeigh, Robbie *The Next Stephen Lawrence? Racist Violence and Criminal Justice in Northern Ireland*, NICEM, 2006, para 4.11.

<sup>138</sup> Article 22, *Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime*, European Parliament and the Council of the European Union, October 2012,

<sup>139</sup> *Opinion on the Framework Decision on Racism and Xenophobia – with special attention to the rights of victims of crime*, Fundamental Rights Agency Opinion 02/2013, Vienna, page 16.



bias.<sup>140</sup> Some contributors to this thematic review observed that in their view members of minority groups are more quickly believed to be the perpetrators of specific offences and the police seem less likely to trust them as witnesses or victims of ‘ordinary’ crime. That is never acceptable but will only be addressed by training and awareness-raising geared towards undermining that stereotyping and challenging that bias.

Many victims, during this thematic review, commented that more extreme acts seem to attract media and political attention but the “ordinary and everyday” abuse and harassment seem to go unnoticed or at least unacknowledged. Yet, persistent abuse contributed in a profound way to their feelings of isolation and vulnerability. As observed by the Leicester Centre for Hate Studies, which conducted a comprehensive survey of hate crime victims, “To an outsider, incidents such as being stared at, being threatened and being called abusive names may seem relatively trivial. However, for many of the victims in this study these experiences were a routine feature of their daily lives and had a profound emotional and psychological impact upon them... Within the total sample of participants there were certain groups of victims whose experiences of hate crime victimisation formed part of their day-to-day life... the impact of hate crime had, to some extent, been ‘neutralised’. In part this can be seen as a coping strategy whereby participants had come to accept that targeted hostility was an ‘ordinary’, ‘routine’ feature of their everyday life”.<sup>141</sup> Furthermore, “When research participants were asked what would make for more effective service delivery, many spoke of their desire for organisations to recognise the pervasive and damaging nature of verbal abuse and harassment. If organisations were to take these incidents more seriously, and to intervene at an earlier stage, participants felt that this would prevent future victimisation and would make them feel less vulnerable and more supported.”<sup>142</sup>

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<sup>140</sup> In the cases of *Stoica v. Romania* and *Milanovic v. Serbia*, referred to above at pages 37 - 39, for example, the ECtHR found a breach of the obligation to investigate cases involving hate motivation effectively. The ECtHR stressed that the stereotyped views of investigators and prosecutors contributed to the Court’s decision that failure to investigate was partly due to racial discrimination in breach of Article 14 ECHR.

<sup>141</sup> *The Leicester Hate Crime Project: Findings and Conclusions*, Neil Chakraborti, Jon Garland & Stevie Jade-Hardy, September 2014, pages 16 and 44.

<sup>142</sup> *Ibid.* page 80.

There is no similar research relevant to Northern Ireland but similar views were expressed during this thematic review. In particular, victims expressed their disappointment and sense of heightened vulnerability when agencies including the police offered little in response to persistent abuse other than advising the victim to move out of the area. Those victims also reported the difficulty in finding alternative accommodation in order to act on such advice, forcing them to remain living in the area that the abuse occurs and feeling terrified that it would escalate into violence. Some victims who had engaged housing providers such as the Northern Ireland Housing Executive reported that they did not receive sufficient assistance which only increased their sense of vulnerability and isolation. There is however a number of initiatives aimed at responding to hate crime and supporting victims of hate crime. For example, there is a Hate Incident Practical Action Scheme (HIPA) which is available across Northern Ireland to support victims of hate crime in their homes by providing personal and home protection measures.<sup>143</sup>

Supporting Tenancies for People from Ethnic Minority Backgrounds (STEM) is a floating support service which will provide support and assistance to people whose tenancy may be at risk due to harassment or intimidation because of their ethnicity. It is one of NIACRO's Assisting People and Communities (APAC) services, which help people deal with the difficulties they are experiencing in the community and supports people to maintain their tenancy. STEM is available for people from ethnic minority backgrounds who have a tenancy, or who have been offered a tenancy, in the Greater Belfast area and who are at risk of harassment or intimidation due to their ethnicity. STEM is funded by Supporting People through the Northern Ireland Housing Executive and works to improve the social inclusion of people from a minority ethnic background, remove barriers to integration and encourage participation in society. It also seeks to promote positive community responses to dealing with incidents of intimidation and works alongside other organisations seeking to promote community integration.

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<sup>143</sup> HIPA is supported jointly by the Community Safety Division, Department of Justice; the Police Service of Northern Ireland; the Northern Ireland Housing Executive; and the Department for Communities.

Once a person is referred to STEM the following will be conducted: an assessment of an individual's situation; a Support Plan agreed between STEM and the person referred, which considers what needs to be done, by whom, and what other agencies or people need to be involved; support and advice, including befriending, establishing links with the community, helping to identify local support groups and facilitating introductions; practical assistance, such as completing application forms, help making appointments and accompanying people to interviews; specialist advice, including claiming social security benefits, and accessing education, training and employment; connections with other relevant services in the community, such as registering with a GP; referrals to key organisations which offer support to people from black and minority ethnic backgrounds; mediation and support to deal with any actual or possible incidents of intimidation or disputes with neighbours; and trained volunteers who can provide further appropriate support.

A number of victims who engaged with the Policing Board however were unaware of HIPA or STEM. Furthermore, despite the PSNI Service Procedure requiring officers attending hate incidents to provide crime prevention advice, support and signposting, a number of police officers appeared to be unaware of the services to which victims could be referred. In a victim satisfaction survey of 92 victims in Northern Ireland, conducted by Hate Crime Advocates across all categories of hate crime between April 2015 and March 2016, respondents were asked, among other things whether the police officer offered to refer to the HIPA scheme or to a crime prevention officer. Only 29% of respondents had been offered a referral.<sup>144</sup>

The Performance Committee wishes to encourage all those dealing with victims of hate crime to recognise the importance of early intervention and work together to provide an effective response. In respect of the police, the Committee suggests that the PSNI needs to reconsider how it can intervene at an early stage to offer support, advice and protection. In particular, how it sign-posts victims to and works with the Northern Ireland Housing Executive.

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<sup>144</sup> *Good Practice Plus Project Toolkit*, September 2016, c/o NICEM.

## **Recommendation 2**

**The PSNI should consider how it engages with the Northern Ireland Housing Executive to enable early intervention on behalf of victims of hate crime for whom the advice is to move from the home. Thereafter, the PSNI should report to the Performance Committee within 6 months of the publication of this thematic review.**

On 29 July 2016, the PSNI launched a series of four videos to highlight Hate Crime and encourage reporting from both victims and members of the public who may have information which could assist officers with hate crime investigations. The first two videos covered homophobic hate crime and disability hate crime. On 10 October 2016 the third video in the series was released and it relates to race hate crime. In the video a victim tells the personal impact of how racial hate crime and discrimination has had a shattering and distressing impact on her life.

The purpose of the video series is to encourage people to think about the impact of hate crime on the victim, particularly the long lasting physiological and emotional damage it can cause. The videos are intended to encourage victims and witnesses of hate crime to report it to the police. The PSNI stresses, on its publically accessible web page, “We very much recognise that hate crime is still significantly under reported therefore we need to ensure victims have the confidence to report these incidents. We hope that by sharing the voices of victims explaining their very personal experience of how they are emotionally affected by hatred and discrimination - that we will encourage people to think about the human impact of these wholly unjustified and unacceptable attacks. There is absolutely no place in Northern Ireland for intimidation or threats and there is a collective responsibility on all parts of society to protect our most vulnerable communities. We would encourage everyone to report any concerns or suspicious activity to the police. We need this information from communities to support arrests and make subsequent prosecutions and put an end to all forms of hate crime. It is wrong on all levels and the PSNI will do everything it can to ensure that everyone can live free from prejudice, fear and discrimination. We all have a role to play to challenge attitudes of prejudice and hatred and to build confidence and trust to help increase reporting of these unacceptable attacks to ensure results are delivered.”

That initiative is very positive but currently it is limited to those who access the PSNI web site. The campaign will have more immediate impact if it is more readily accessible for example by sharing the video series with community groups and support agencies. The Committee understands that the PSNI is considering how it can make better use of the video series by sharing them via the PSNI Twitter and Facebook accounts as well as the social media accounts of partner agencies. The Committee encourages the PSNI to explore all avenues of communication with those who represent victims.

### **Recording**

Recording hate crime is separate to the reporting of hate crime but interrelated. Recording means the making of a record by the police of the hate element of an offence. That is where it all starts. To put it simply – if the police do not record the hate element of an offence none of the protections in place can be activated and the PPS will be powerless to prosecute it.

Article 14 ECHR requires that the rights and freedoms set out in the ECHR must be secured without discrimination on certain grounds including race, colour, language, national or social origin and association with a national minority. The ECtHR has interpreted that to oblige member states to “unmask” bias motives leading to criminal offences by highlighting and punishing hate crimes more severely than others. To do that, they must first be identified and recorded as such or as the ECtHR has put it they must be made visible. The police therefore have a duty to take all reasonable steps to unmask any racist motive in the offence and to establish whether or not hatred or prejudice played a role in the events.<sup>145</sup> That means the police must use their best endeavours to collect and secure the evidence; explore all practical means of discovering the truth; and deliver fully reasoned, impartial and objective decisions, without omitting suspicious facts that may be indicative of, for example, racially induced violence.<sup>146</sup>

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<sup>145</sup> *Bekos & Koutropoulos v. Greece*, Application No. 15250/02, ECHR 2005.

<sup>146</sup> *Ibid.*

The EU Victims' Rights Directive requires that member states implementing the Directive establish procedures and protocols to ensure that victims' needs are individually assessed. That assessment should include the nature and circumstances of the crime. Particular attention must be paid to victims who have "suffered a crime committed with a bias or discriminatory motive."<sup>147</sup> That being the case, it is particularly important that the police pay close attention to and thereafter record where there are any indications that offenders were motivated by discriminatory attitudes.

The ready acceptance of the perception of the victim or other person of the hate element of an offence is considered to be so important that the Committee on the Elimination of Racial Discrimination (CERD) has said that State parties should take the necessary steps to ensure that the police services have an adequate and accessible presence in neighbourhoods so that complaints can be expeditiously received. It goes on "The competent services should be instructed to receive the victims of acts of racism in police stations in a satisfactory manner, so that complaints are recorded immediately, investigations are pursued without delay and in an effective, independent and impartial manner, and files relating to racist or xenophobic incidents are retained and incorporated into databases. Any refusal by a police official to accept a complaint involving an act of racism should lead to disciplinary or penal sanctions..."<sup>148</sup>

The continued reluctance by a minority of officers to accept the perception of a victim or other person of the hate element is disappointing particularly since this has been highlighted previously by the Policing Board and a number of other organisations. For example, the Northern Ireland Human Rights Commission recorded the same concern in September 2013.<sup>149</sup> The PSNI should consider why this continues to be an issue and thereafter take all necessary steps to ensure that officers accept

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<sup>147</sup> Article 22, *Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime*, European Parliament and the Council of the European Union, October 2012,

<sup>148</sup> *CERD General Recommendation No. 31 on the prevention of racial discrimination in the administration and functioning of the criminal justice system*, A/60/18, pages 98-108, paragraphs 10-12.

<sup>149</sup> *Racist Hate Crime Human Rights and the Criminal Justice System in Northern Ireland*, Northern Ireland Human Rights Commission, September 2013.

without question the perception of the victim or other relevant person that the incident or crime was aggravated by hostility.

### **Recommendation 3**

**The PSNI should forthwith review the understanding of officers with regard to the perception test for hate incidents and crimes. Thereafter, the PSNI should take all necessary steps to ensure that officers accept without question the perception of the victim or any other relevant person that the incident or crime was aggravated by hostility.**

In all respects, the police will benefit from a focused and targeted engagement strategy working closely with partners and community groups. This is considered further at page 108 of this thematic review.

## KEEPING IN TOUCH WITH VICTIMS

The Committee has received feedback from a number of victims of crime that they have been frustrated and disappointed at the failure of police officers to keep them up-dated about the progress of their case. That has been a complaint common to victims of many different types of crime however the peculiar vulnerability of victims of hate crime and the heightened sense of isolation and fear engendered by a crime targeted at an individual because of their personal characteristics is compounded by a lack of information about progress. Victims of hate crime who contributed to this thematic review reminded the Performance Committee that the incidence of repeat victimisation is higher than most other crimes; they know they have been targeted because of who they are and therefore feel at risk of further imminent attack. Therefore, if a victim is not told whether the police have identified a suspect, whether that suspect has been arrested, remanded in custody or bailed and what further steps will be taken they are left feeling unprotected. It is imperative that victims are kept informed of progress and even if there hasn't been any real progress in their case that the police keep in touch with them to reassure and provide support and protection if necessary.

In a victim satisfaction survey of 92 victims of hate crime in Northern Ireland, conducted by Hate Crime Advocates across all categories of hate crime between April 2015 and March 2016, respondents were asked, among other things, to respond to whether they were “kept fully informed of what efforts were being made to apprehend someone for the crime”. They were asked to strongly agree, agree, disagree or strongly disagree. 22% of all respondents strongly agreed, 37% agreed, 23% disagreed and 13% strongly disagreed.<sup>150</sup> In other words, over half of all respondents were satisfied but just over a third of all respondents were dissatisfied with the extent to which they were kept fully informed of police efforts.

The Convention on the Elimination of All Forms of Racial Discrimination (CERD) provides that member states must guarantee the right of every person within their jurisdiction to an effective remedy against the perpetrators of acts of racial

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<sup>150</sup> *Good Practice Plus Project Toolkit*, September 2016, c/o NICEM.



discrimination, without discrimination of any kind, whether such acts are committed by private individuals or State officials, as well as the right to seek just and adequate reparation for the damage suffered. The CERD Committee emphasises that “In order to facilitate access to justice for the victims of racism, States parties should strive to supply the requisite legal information to persons belonging to the most vulnerable social groups, who are often unaware of their rights”.<sup>151</sup> The CERD Committee has emphasised the importance of ensuring that victims are kept informed, throughout an investigation and any subsequent prosecution, about their case.

The Victims Directive<sup>152</sup> also requires that victims should be offered information upon their first contact with police without unnecessary delay.<sup>153</sup> The nature and extent of information to be provided will vary depending upon the particular needs of the victim but should for example include: the support that is available including for example alternative accommodation; the protection that is available including how that may be accessed; how they may access legal or other advice; the translation and interpretation services that are available; and contact details for communication about progress on their case. These requirements have been incorporated into the statutory Northern Ireland Victim Charter, which is intended to give effect to the Victims Directive.<sup>154</sup>

In respect of the police investigation, the Victim Charter provides that victims are entitled to the following from the police:

- to receive an update, within 10 days, on what they are doing to investigate the crime. If it is appropriate police will give the victim further updates and agree with the victim when these updates will be;
- to contact the police and ask for an update outside of any agreed times;
- to be informed where a suspect has not been identified in connection with the crime; and

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<sup>151</sup> CERD Recommendation No. 31 on the prevention of racial discrimination in the administration and functioning of the criminal justice system, from A/60/18, pages 98-108.

<sup>152</sup> Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, European Parliament and the Council of the European Union, October 2012.

<sup>153</sup> *Ibid.* Article 4.

<sup>154</sup> *Victim Charter: A Charter for Victims of Crime*, Department of Justice, September 2015.

- to be informed, without unnecessary delay, about any decision not to proceed with or to end an investigation or to use one of the alternative disposals available to the police and the reasons for this (except where the reasons are confidential).

If a victim does not understand or speak English the victim is entitled, on request, to have the above information translated into a language that they understand. The Charter also provides that a victim is entitled to be informed by the police, without unnecessary delay, and to have the reasons explained to them when a suspect is:

- arrested;
- kept in custody;
- released on police bail, or if police bail conditions are changed or cancelled, or the suspect has absconded from police custody, unless sharing the information would endanger someone or there is an identified risk of harm to the suspect which would result from this;
- charged to court or reported to the Public Prosecution Service; or
- offered an alternative disposal available to the police.

Where necessary, victims are entitled to be informed by the police of any relevant measures issued for their protection in the case of the release or escape of a suspect.

The PSNI policy on hate crime contains a requirement that victims are provided with an update following their report within 10 days. There is not, however, any provision requiring the proactive management of updates to victims. While this is a requirement within the Victim Charter, the PSNI should consider writing explicitly into Service Procedure 01/16 the obligation to contact victims of hate crime regularly and in any event on the happening of prescribed events so as to ensure compliance with the Charter.

#### **Recommendation 4**

**The PSNI should include within Service Procedure 01/16 an obligation on relevant officers to contact victims of hate crime regularly and in any event on**

**the happening of prescribed events so as to ensure compliance with the EU Victims Directive and Northern Ireland Victim Charter.**

## PROTECTION OF VICTIMS

Perhaps the single most important duty of a police officer is to keep people safe. That is especially so when a person has been targeted on the ground of personal characteristics and therefore is vulnerable to repeat attack. The PSNI takes that responsibility extremely seriously however some deficiencies in practice were identified in this thematic review and by Her Majesty's Inspectorate of Constabulary (HMIC).

### HMIC Inspection - Vulnerability

HMIC is required to inspect and report annually to the Department of Justice (DOJ) on the efficiency and effectiveness of the PSNI.<sup>155</sup> Between 1<sup>st</sup> and 5<sup>th</sup> February 2016, HMIC conducted an inspection of the PSNI and assessed how it makes best use of its resources within the overall framework of how efficient the PSNI is at keeping people safe and reducing crime. Within that inspection HMIC also considered specifically how effective the PSNI is at protecting from harm those persons who are vulnerable and how effective it is at supporting victims. HMIC reported on 4<sup>th</sup> August 2016 in two reports.<sup>156</sup>

The Policing Board received a copy of the reports and a briefing from HMIC. The Performance Committee is concerned to ensure that the findings emanating from the inspection are taken into account by the PSNI, that the issues raised are addressed and that the PSNI improves its performance in these key areas. The Performance Committee intends to monitor the steps taken by PSNI and seeks to complement that work by thematic reviews in the coming year which will assess the compliance of the PSNI with the Human Rights Act 1998.

In summary, HMIC found that the PSNI uses its resources efficiently to keep people safe but that it could do more to reduce crime. The PSNI “has a good understanding of current demand and in the main matches resources to the needs of the

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<sup>155</sup> By section 41(2) of the Police (Northern Ireland) Act 1998, as amended.

<sup>156</sup> *PEEL: Police Efficiency. An inspection of the PSNI 1 – 5 February 2016*, HMIC, August 2016 and *PEEL: Police Effectiveness (Vulnerability). An inspection of the PSNI 1 – 5 February 2016*, HMIC, August 2016

community”.<sup>157</sup> However, while HMIC’s assessment was that the PSNI had a good understanding of current demand it also found that the PSNI needed to improve its understanding of hidden demands by, for example, attending meetings with local communities and partners. That was considered particularly important in responding to the needs of vulnerable people. The PSNI’s ability to engage with communities has to some extent been inhibited by the reduction in the number of dedicated neighbourhood teams. HMIC also found failings in the PSNI’s approach to crime prevention, which does not address the broader issues of criminality and victimisation. Greater partnership working is encouraged.

HMIC noted that the PSNI’s access to technology, which can assist in the protection of people and the reduction of crime, was limited. One example given was the absence of any electronic means of recording the data captured on risk assessment and management forms for domestic violence.<sup>158</sup> The critical importance of assessing and managing risk has been covered in the Policing Board’s thematic review of domestic abuse<sup>159</sup> and in a number of Human Rights Annual Reports. The same issue arises in respect of the risk assessment process for hate crime. The PSNI is working to address the gap identified by the HMIC and it is anticipated that that will allow better data capture for all risk assessment forms. This will be kept under review but the Committee is keen to ensure that hate crime is not overlooked and recommends that the PSNI include expressly the data capture for risk assessment forms in cases of hate crime.

## **Recommendation 5**

**While addressing the technology gap identified by HMIC in the data capture of risk assessment forms for domestic abuse the PSNI should include risk assessment forms for hate crime.**

HMIC was satisfied that the PSNI makes the protection of vulnerable people a clear priority and police officers and staff understand and share that commitment. The PSNI has also invested in those parts of the organisation which support vulnerable

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<sup>157</sup> *Ibid.* (Efficiency report), page 4.

<sup>158</sup> DASH (Domestic Abuse, Stalking, Harassment and Honour-Based Violence) forms are an important and effective measure for assessing risk and managing risk.

<sup>159</sup> *Thematic review on domestic abuse*, Northern Ireland Policing Board, March 2009.

people by, for example, creating a dedicated public protection branch which brings together under one command all the public protection resources and expertise within the PSNI. Within the public protection structure are Public Protection Units (PPUs) which deal with domestic abuse, child abuse, local offender management and vulnerable adults. Importantly, however, PPU's do not deal with hate crimes unless there is some other factor which brings that victim within its remit. HMIC found that when attending incidents involving vulnerable persons officers arrive in a timely fashion and, in the main, take steps necessary to safeguard vulnerable people and where appropriate arrest offenders. HMIC was satisfied that the PSNI's initial response to calls for service is for the most part good, with staff in the contact management centres able to identify vulnerability but that there is inconsistency in PSNI training. The result is that some staff do not have a comprehensive understanding of different types of vulnerability or sufficient understanding to advise victims how to keep themselves safe while waiting for a response. That is very significant and reflects findings that emerged in this thematic review.

The theme running throughout the HMIC report is that the PSNI needs to improve the extent to which all of its officers and staff consistently identify and assess vulnerability. HMIC noted that the PSNI had adopted a new definition of vulnerability in January 2016 but had not (at the time of the inspection) shared that with officers and staff.<sup>160</sup> HMIC found that the extent of vulnerability presented by victims is underestimated and under-recorded as a result. It is noted that call takers (who are contracted civilian staff) can follow the *process* of recording and grading calls but were less clear about the *concept* of vulnerability including the role they may play in initial safeguarding and evidence gathering. For example, in a number of cases the call taker arranged for officers to attend the scene of a domestic report but did not remain on the line to advise the victim how to stay safe. That occurred even in cases where an ongoing disturbance could be overheard by the call taker. This was also noted in the Committee's thematic review of domestic review and emerged as an issue in this thematic review. Call takers perform a critical role which can directly protect victims from harm but it would appear that they have not received sufficient

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<sup>160</sup> Likewise during the course of this thematic review of race hate crime there has been identified a similar time lag between the introduction of new policy and the circulation of policy to officers, with a further time lag before training on the new policy was delivered.

training on identifying vulnerability. The failings identified therefore are of serious concern.

HMIC also considered the investigation of offences involving vulnerable victims and partnership working aimed at keeping people safe. It found that where specialist officers employed within Public Protection Branch were involved in the investigation, vulnerability was identified consistently, safeguarding measures were applied and proper consideration was given to special measures to enable a victim to give their best evidence in court.<sup>161</sup> However, the response to victims who are not identified as high risk, and therefore do not receive the input of specialist officers, is less good. Similar concern was identified during this thematic review in respect of victims of hate crime.

HMIC identified a number of areas for improvement. In particular, that the PSNI should improve its initial assessment of risk and response to vulnerable people by ensuring all its staff in the contact management centres and who work at front counters of police stations are appropriately trained to: identify the full range of vulnerability; advise callers on initial safeguarding measures; and record why an incident is given a particular grade of response, based upon information provided by callers and held on police systems. The PSNI is currently implementing those recommendations but the Committee wishes to ensure that victims of hate crime are not overlooked and that the vulnerability of such victims is well understood by all officers and staff. Therefore in considering the recommendations of HMIC the PSNI should address specifically the vulnerability of victims of hate crime.

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<sup>161</sup> It has been noted in the Committee's previous thematic reviews that officers with specialist training provide a consistently good service to victims. In the review of domestic abuse it was recommended that specialist domestic abuse officers should be involved in investigations. The PSNI's implementation of that has been disappointing.

## BRINGING A CASE TO COURT

The effective prosecution of hate crime not only ensures that victims and potential victims are protected and makes offenders responsible for their behaviour, it upholds and protects the very essence of democratic values. While there is no statutory definition of hate crime, the law in Northern Ireland does provide for a 'statutory aggravating feature'.<sup>162</sup> This is applied if, in the view of a prosecutor, this aspect of a case can be proved to the evidential standard; that is, beyond reasonable doubt. If a Judge accepts that this aspect of the case is proven beyond reasonable doubt, he or she must increase the sentence imposed. The four statutory categories of aggravated offences are race, religion, sexual orientation and disability.<sup>163</sup> The early recognition and recording of a potential hate element to the offending can have a critical impact on the ability of the Public Prosecution Service (PPS) to secure a conviction. Triggers or indicators are considered at page 98 of this thematic review.

Responsibility for the prosecution of offences aggravated by hate rests with the PPS, but it is police officers who prepare the files upon which the PPS make their decisions and thereafter prosecute a case. While hate crime currently comprises only a small proportion of the cases dealt with by a police officer (recognising however significant under-reporting), unless equipped to recognise those cases and respond appropriately, it is likely that when such cases do arise, the aggravating feature will not be recognised. If hate crimes are not recognised or not properly addressed by the criminal justice system, both the victim and the wider community may lose confidence in the justice process.

Usually, it is a police officer who makes the first contact with a victim of hate crime. The steps taken by that officer are central to ensuring the success or failure of any subsequent prosecution. In addition to ensuring the safety of the victim and securing his or her confidence to proceed, key evidence can be lost (irretrievably) if not collected and recorded expeditiously. The PSNI has begun to roll out body worn

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<sup>162</sup> Criminal Justice (No. 2) (Northern Ireland) Order 2004.

<sup>163</sup> Note, the legislation applies to fewer categories than those recorded by the PSNI. The PSNI includes transphobic and sectarian hate in their recording of hate crime. Necessarily, therefore, in any analysis of statistics two categories cannot be subject to enhanced sentences which will have an impact on the outcome rates if traced from recording to prosecution.



video to all frontline officers across Northern Ireland. The use of body worn video by police officers responding to hate incidents and crimes should contribute to an increase in the positive outcome rate for hate crime as it enables a contemporaneous and compelling account of the victim to be recorded and has (in the case of domestic violence prosecutions) resulted in a greater number of early guilty pleas. It is anticipated that the use of body worn video will ensure that all evidence is captured at the scene and as this will be available to police supervisors and the PPS, it is hoped this will catch any cases in which the hate element may have been overlooked by the officer responding to the report. The roll-out and impact of body worn video will be kept under review by the Performance Committee and reported upon in the coming months.

The PPS has said “As there is a requirement to satisfy the evidential standard, not all cases involving hate crimes will be considered by the PPS to be ‘aggravated by hostility’. Additionally, cases may be identified by a prosecutor as being ‘aggravated by hostility’ which were not originally recorded by the PSNI as involving hate crime. As the definition of hate crime is perception-based, even if there is insufficient evidence of the hostility element, it remains a hate crime. If there is a conviction for a substantive offence, it is a conviction for a hate crime.”<sup>164</sup>

It is incumbent upon the police that case files reach the PPS with sufficient information clearly set out to identify the ‘aggravated by hostility’ element of the offence. In other words, that element of the offence must be flagged on the file so that it travels with the case through the system. In 2013, the Northern Ireland Human Rights Commission carried out an investigation of racist hate crime across the criminal justice system, which identified shortcomings in the recording and flagging of ‘aggravated by hostility’.<sup>165</sup> In its Service Procedure revised in 2016 the PSNI reminded officers that “Details of a hate motivated case where an offence is aggravated by hostility, must be clearly and fully included in the ‘structured outline of the case’ on the NICHE case papers so that PPS can properly consider whether the case can be opened in court as an offence aggravated by hostility under the Criminal

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<sup>164</sup> *Statistical Bulletin on Cases Involving Hate Crime 2015-16*, PPS, July 2016.

<sup>165</sup> *Racist Hate Crime – Human rights and the criminal justice system in Northern Ireland*, Northern Ireland Human Rights Commission, September 2013.

Justice (No 2) (Northern Ireland) Order 2004". During the course of the Policing Board's thematic review however it was not clear that officers were routinely considering and flagging properly the aggravated by hostility element of an offence. The majority of contributors to this review highlighted as an area for concern the fact that some police officers still did not record all hate incidents and crimes properly. Some posited that this may be because case files will be under a greater degree of scrutiny once the incident or crime is recorded as hate. There was certainly a perception among officers that there is more paperwork and scrutiny of hate crime which can be counterproductive. Such attitudes must be countered. Only when officers understand and accept fully the rationale for treating hate crime as a specific class of offending that requires bespoke treatment will that change. There is a need for this to be revisited as training continues to be delivered.

The Committee also noted the report of the Criminal Justice Inspection Northern Ireland (CJINI) which called for greater collaboration between the PSNI and the PPS to address significant failings in the preparation of case files more generally and the standards applied around disclosure.<sup>166</sup> It was recommended that the PSNI and PPS should immediately establish a Joint Prosecution Team to address poor practice and deliver change. The report stated "This inspection found one third of case files were either of an unsatisfactory or poor standard. We recommend a Prosecution Team, made up of representatives from both organisations, should deal with issues such as investigative standards, bail management and forensic strategy, case management and disclosure".

In response to the report of the CJINI, the PSNI suspended training on case file preparation and turned its attention to establishing a special joint project. That joint project, known as the Working Together project, is a root and branch review of case file preparation, the purpose of which is to identify failings and ensure excellence in the future preparation of case files. In particular, the project will develop PSNI/PPS agreed standards of file quality which will include measures to address timeliness. The Policing Board's Human Rights Advisor received a comprehensive briefing from

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<sup>166</sup> The Criminal Justice Inspection Northern Ireland (CJINI) recently completed an inspection of police case file preparation: *An Inspection of the Quality and Timeliness of Police Files (Incorporating Disclosure) Submitted to the Public Prosecution Service for Northern Ireland*, CJINI, 26 November 2015.

those leading the Working Together project and was impressed at the careful and honest assessment of case file preparation. She was reassured that the project can, if permitted to develop fully, address all of the issues. As recorded in the Policing Board's Human Rights Annual Report 2015, it is important that the project continues and has resources dedicated to it. To build upon the recommendation of the CJINI the Committee recommended that the PSNI should complete its Working Together project on case file preparation and implement the recommendations and findings contained within the CJINI report within 9 months of the publication of the 2015 Human Rights Annual Report. Thereafter, the PSNI should provide to the Performance Committee a written briefing on the outcomes of the project and on the steps taken or to be taken. That written briefing should be provided within 12 months of the publication of the 2015 Human Rights Annual Report.<sup>167</sup> An update in relation to this recommendation will be provided in the Human Rights Annual Report 2016.

Within the PPS there is a Special Point of Contact (SPOC) for hate crime in each region who is available to advise officers. It is anticipated that the combination of SPOCs and the Working Together project on case files will address issues such as recording and flagging of hate crime but to ensure that the opportunity is not missed the Committee wishes to make it an express requirement.

### **Recommendation 6**

**As part of the Working Together project the PSNI should include the recording and flagging of hate crime on case files.**

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<sup>167</sup> *Human Rights Annual Report 2015*, Northern Ireland Policing Board, March 2016, Recommendation 2.

## Cases received from PSNI involving hate crime<sup>168</sup>

As explained above, hate crime is defined by the PPS as any incident which constitutes a criminal offence perceived by the victim, or any other person, to be motivated by prejudice or hate towards a person's race, religion, sexual orientation or disability. It is recognised by the PPS that this "means that once an offence is perceived by the victim or any other person to be motivated by hate or prejudice towards a person's race, religion, sexual orientation or disability then it is a hate crime. Its status does not change even if there is no other evidence with regard to motivation which can be adduced before a court. The use of the perception based test ensures the early identification of an offence as a hate crime and allows investigators and prosecutors to take appropriate action. Police and prosecutors both use the same definition and the file can be marked accordingly. This assists in raising awareness of the race, religious, sexual orientation or disability aspect of any offence from the time of the reporting of the offence through investigation and up to and including prosecution".<sup>169</sup>

The PPS compiles and publishes annually a statistical bulletin which includes data relating to files received, prosecutorial decisions taken and conviction rates.<sup>170</sup> Between 1 April 2015 and 31 March 2016, the PPS received 573 files involving hate crime,<sup>171</sup> which was an increase by 3 on the number of files submitted between 1 April 2014 and 31 March 2015. 38% of files received during 2015/16 related to racial crimes as against 32% in 2014/15. The majority of files received involving hate crime fell into two categories, 'violence against the person' (343 files 60%) or 'public order' (95 files 17%). The evidential test for prosecution was met in the majority of cases (764 persons). Of those 764 persons for whom decisions were issued, 57% were issued with a decision for prosecution (362) or for diversion from the courts (76). This

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<sup>168</sup> The statistics in this section are derived from *Statistical Bulletin on Cases Involving Hate Crime 2014-15*, PPS, July 2016. The figures are based on cases submitted to the PPS which have been flagged by the Police as involving hate crime. PSNI have adopted the definition for racially motivated incidents recommended by the Stephen Lawrence Inquiry, namely, 'Any incident, which is perceived to be racist by the victim or any other person'. The PSNI apply the principles of this definition to record six types of hate crime: race/ethnicity (racist), sexual orientation (homophobic), faith/religion (non-sectarian), faith/religion or political opinion (sectarian), disability or gender identity (transphobic).

<sup>169</sup> *Hate Crime Policy*, PPS, December 2010, page 7.

<sup>170</sup> *Statistical Bulletin on Cases Involving Hate Crime*, PPS.

<sup>171</sup> This includes all hate crimes submitted. Figures for race specifically are set out in Tables 6 - 9 at pages 24 - 26 above.

represented a decrease (59%) from 2014/15. Of the 326 decisions for no prosecution issued during 2015/16, the vast majority (99%) did not pass the evidential test. The remaining 1% did not pass the public interest test. During 2015/16, 17 defendants were dealt with in the Crown Court with 58.8% of those defendants convicted. In 2014/15 the conviction rate in the Crown Court was 94.4%. In 2015/15 385 defendants were dealt with in the Magistrates' and Youth Courts. Of those 67.3% were convicted as against a conviction rate of 67.4% in 2014/15.

Tables 6 – 9 at pages 24 - 26 above provide figures on the number of race hate crime case files received by the PPS according to crime type, prosecutorial decisions issued and defendants dealt with in the Crown Court, Magistrates' Courts and Youth Court in cases involving race hate crime.

### **Considered by PPS to be aggravated by hostility<sup>172</sup>**

If a person is to be prosecuted for an offence aggravated by hostility in accordance with the Criminal Justice (No. 2) (Northern Ireland) Order 2004 the court will require objective evidence of the offender's hostility. At that stage, the perception test no longer determines the offence. If it is proved to the satisfaction of the court that the offence was beyond reasonable doubt aggravated by hostility the court must, when considering the seriousness of the offence, treat that aggravation to be a factor that increases the seriousness of the offence and a higher penalty may be imposed.<sup>173</sup>

Where there is sufficient evidence that an offence was aggravated by hostility, the PPS is required to ensure that the case is prosecuted and opened in court in accordance with the provisions of the 2004 Order. This will apply in all cases of this type, unless there has been a change in circumstances, such as the unavailability of a key witness or other evidence. If the Judge is satisfied beyond reasonable doubt that the aggravating element is proven, he/she must state so in open court and increase the sentence (i.e. over that which would otherwise have been imposed).

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<sup>172</sup> The statistics in this section are derived from *Statistical Bulletin on Cases Involving Hate Crime 2014-15*, PPS, July 2016. Offences aggravated by hostility on the grounds of race, sexual orientation, religion or disability are provided for by the Criminal Justice (No. 2) (Northern Ireland) Order 2004. The 2004 Order is explained in more detail at page 60 of this thematic review.

<sup>173</sup> Article 2 of the Criminal Justice (No. 2) (Northern Ireland) Order 2004.

Alternatively, if the court concludes that an offence was aggravated by hostility without it being opened by the prosecution in court, the Judge may state in open court that the offence was aggravated by hostility and increase the sentence accordingly.

Between 1 April 2015 and 31 March 2016, the PPS issued prosecutorial decisions in respect of 516 persons in cases considered to have involved crime which was 'aggravated by hostility' on grounds of race, sexual orientation, religion or disability. This compares to 549 prosecutorial decisions issued in such cases in 2014/2015. Of the 516 persons for whom prosecutorial decisions were issued, 20 were issued with a decision for indictable prosecution, 294 for summary prosecution, 46 for a diversionary disposal and 156 for 'no prosecution'. Of the 156 'no prosecution' decisions, 97% did not pass the evidential test. The remaining 3% did not pass the public interest test.

A total of 18 defendants were dealt with in the Crown Court in 2015/16, of which 11 were prosecuted on the basis that the alleged offences were aggravated by hostility. In the 18 cases there were a total of 14 convictions, giving a conviction rate of 77.8% as against 86.8% in 2014/15, but only one of the 14 defendants convicted received an increased sentence in accordance with the 2004 Order. This compares to 13 out of 46 receiving an increased sentence in 2014/15.

A total of 329 defendants were dealt with in the Magistrates' and Youth Courts, of which 240 (73%) were prosecuted on the basis that the alleged offences were aggravated by hostility. In the 329 cases there were a total of 244 convictions, giving a conviction rate was 74.2% as against 68.7% in 2014/15. Of the 244 defendants convicted during 2015/16, 88 (36%) received an increased sentence in accordance with the 2004 Order. This compares to 40 out of 195 (21%) receiving an increased sentence in 2014/15.

Tables 10 - 12 at page 27 above provide figures on the number of race hate crime considered by PPS to have been aggravated by hostility, the prosecutorial decisions issued and case outcomes. Table 13 below compiles available data in an attempt to provide an overview of the number of hate crimes recorded by PSNI in 2015/16

compared to the number of hate crime files passed to the PPS, dealt with through the Courts and the number of enhanced sentences passed. However it should be noted that this data does not represent a 'case flow system' given that many cases will not be dealt with from start to finish within the same financial year thus the table does not accurately reflect the exact passage of all the crimes recorded by PSNI in the year. This difficulty in tracking cases from report to final outcome is discussed elsewhere in this thematic review at page 28 and a recommendation is made accordingly (Recommendation 1).

**Table 13: Hate crime case files dealt with by the PSNI, the PPS and the Courts, 1 April 2015 – 31 March 2016<sup>174</sup>**

	<b>All hate crime 2015/16</b>	<b>Race hate crime 2015/16</b>
<b>No. of hate crimes recorded by PSNI</b>	<b>2,169</b>	<b>853</b>
<b>No. of hate crime case files received by PPS</b>	<b>573</b>	<b>215</b>
<b>No. of prosecutorial decisions issued in cases considered by PPS to have been 'aggravated by hostility' (2004 Order):</b>	<b>516</b>	<b>237</b>
- <i>Indictable</i>	20	7
- <i>Summary</i>	294	137
- <i>Diversionsary</i>	46	17
- <i>No prosecution</i>	156	76
<b>No. of convictions in cases considered by PPS to have been 'aggravated by hostility':</b>	<b>258</b>	<b>107</b>
- <i>Crown Court</i>	14	3
- <i>Magistrates or Youth Court</i>	244	104
<b>No. of enhanced sentences (2004 Order):</b>	<b>89</b>	<b>Not known</b>
- <i>Crown Court</i>	1	
- <i>Magistrates or Youth Court</i>	88	

<sup>174</sup> *Incidents and Crimes with a Hate Motivation Recorded by the Police in Northern Ireland: Quarterly Update to 31 March 2016*, PSNI, May 2016 and *Statistical Bulletin on Cases Involving Hate Crime 2014-15*, PPS, July 2016.



As evidenced by Table 13, the fact that there were only a small number of hate crime cases in 2015/16 in which an enhanced sentence was imposed is, in light of the thousands of hate crimes recorded by PSNI each year, disappointing.<sup>175</sup> The reason(s) is unclear (and likely to be multi-dimensional) but further work is required to identify any failings in the system. While the low rate of prosecution and even lower rate of enhanced sentencing does not mean that hate crime is not taken seriously, the Committee suggests that the matter deserves further consideration and review. The wider criminal justice system is outside the remit of the Committee but the extent that it impacts upon or is influenced by police practice will be kept under review by the Committee, for example, whether sufficient evidence is being collected by the police and the way in which cases are prepared and presented to the PPS in police crime files.

A successful prosecution depends on a number of factors including, crucially, the quality of evidence gathered during the investigation. The evidence extracted at the first point of contact with the police is fundamentally important. Victims and witnesses will be encouraged to engage fully with the case if taken seriously at the outset, treated sensitively and appreciate that the police will use their best endeavours to bring the perpetrator to account. The ability of a victim or witness to give their best evidence in court will also be affected by, for example, their fluency in English and their confidence in the process, in particular that they will be protected from recriminations during and after the process. PPS written policy provides guidance to prosecutors on how decisions as to the prosecution of hate crime are taken and the assistance which will be given to victims and witnesses.<sup>176</sup>

It is police policy to indicate hate as a motivating factor on the case file that is sent to the PPS. The PPS then applies the test for prosecution in the normal way. This is not the same test as the perception-based test used by police responding to reports of hate incidents and crime. Instead, the test to be applied by prosecutors is whether, based on the available evidence that can be adduced before the court, there is a reasonable prospect that the court will find it proved that the offence was aggravated

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<sup>175</sup> Although it should be acknowledged that the number of enhanced sentences passed has improved vastly in recent years: between March 2007 and October 2010 there were only 11 enhanced sentences imposed (Assembly Question, 8 October 2010, AQW 710/11).

<sup>176</sup> *Hate Crime Policy*, PPS, December 2010.



by hostility beyond reasonable doubt, i.e. hostility based on one of the four specified categories, namely, the victim's actual or perceived religion, race, sexual orientation or disability. PPS policy notes that the term 'motivated by hostility' is not defined and "may be difficult to prove in practice; background evidence could be important if relevant to establish motive."<sup>177</sup> It is imperative that the PSNI continues to record all types of hate incidents, even where a crime is not disclosed, as this may provide evidence necessary in a future prosecution. Hate crime often follows a number of hate incidents so evidence of those incidents may be critically important in proving hostility.

It is important to note that an offender may have more than one motive, only one of which need be prejudice, so the police should be aware of the need to ask whether prejudice or hate makes a substantial contribution to the offender's motive even if it is not the sole motive.

There are a number of triggers or indicators that should alert police officers to the potential that a crime has been motivated by prejudice. Such triggers or indicators are based on objective facts, circumstances or actions of the perpetrator that either independently, or in conjunction with other facts and circumstances, suggests that the crime was motivated by hatred. The following indicators should be understood: the victim belongs to a minority group; the offender belongs to a different group; prejudiced statements made before or after the offence (which can include material posted on the internet, graffiti, comments made to the victim or others); the perception of the victim or other witness that it is motivated by hate; circumstances of the offence, for example, an attack on a community centre for migrants may indicate the motive; circumstances of time and place for example, if the incident coincided with a holiday or date relevant to the victim group; if a number of crimes or incidents of hate had already taken place in the same location; if the location of the crime is generally known or perceived as an area associated with a particular minority group; or the absence of any other motive where the offence was committed by a member of a majority group on a member of a minority group, particularly where the offence involves violence. Hate crimes can also be committed against property. Where

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<sup>177</sup> *Ibid* para. 9.3.10.

property is associated with a particular group and is targeted for that reason, an attack on it would be classified as a hate crime. For example, nationalistic symbols on a house belonging to a person from an ethnic minority would be characterised as a hate crime sending out the message that the community is not valued or welcomed in local society.

The presence of one or more of the indicators suggests that the crime may be motivated by hate. If that is the case, police should pursue carefully an investigation into motive. Indicators provide the objective criteria by which probable motives can be discerned, but do not in themselves demonstrate that an offender's actions were motivated by hate. Importantly, they can be used to build circumstantial evidence of the motive behind the offence. A decision to 'flag' a case as a hate crime may be taken at the outset by the responding officer or at a later stage by the PPS. Recording the indicators is, therefore, relevant at the crime scene and when reviewing the evidence prior to a prosecution. Some perpetrators make a recording of the incident to post on the Internet or to show to friends. Websites hosting Internet forums are sometimes used to organise, or draw attention to hate crime. Such evidence can form part of the evidence used to establish motive. While that degree of investigative resource may not be possible in every case, certainly in more serious cases police should be aware that the perpetrator may have offended before and may have a history of recording his or her behaviour which should be investigated.

Even if the victim or another person does not report that the offence was motivated by prejudice the police need to be alert to the possibility and make sufficient enquiries of their own volition. That includes in the interviewing of the offender, for example, he or she should be asked directly what motivated them in choosing that particular victim. It goes without saying that any evidence so gathered including an admission should form part of the evidence provided to the PPS and thereafter presented in court. As the Office for Democratic Institutions and Human Rights (ODIHR) has said "Identifying where the suspect was immediately before and after the incident or the places that the suspect regularly frequents is a good starting point to finding witnesses who might have heard the suspect's admissions. Evidence of words said immediately before or after the crime will always be easier to use than those expressed long before or after the event. Even if words used further in time

from the incident are not used in the case, they can still be useful for intelligence purposes or to direct the investigation. For example, they may provide sufficient grounds to seek judicial authorization for more intrusive investigative steps, such as searching the suspect's home, place of employment and personal belongings, including cell phones and computers".<sup>178</sup> Such guidance should be incorporated into police policy and thereafter explored in training.

An issue which arose during the thematic review was the failure of the police recording system, NICHE, to link victims and offenders so that repeat victimisation was not being picked up or passed on to the PPS. An example provided was of one victim of hate crime, who had been targeted on three occasions by the same perpetrator, being dealt with as three separate cases which then fed through to the PPS as three case files in which there was no reference to the other. While improvements have been made to NICHE to enable better cross-referencing and searching according to victim and perpetrator it seems that case files are not being cross-referenced sufficiently. It is anticipated that will be addressed in the Working Together Project referred to.

PPS policy states that "prosecutors cannot be solely reliant on the police making an initial identification of hate crime for the purposes of prosecuting a case as aggravated by hostility... Prosecutors need to be vigilant to make sure that they consider the possibility of a case being aggravated by hostility."<sup>179</sup> The PPS will apply for special measures where appropriate to assist victims and witnesses of hate crime to give evidence. The prosecution does not automatically stop if the victim withdraws. PPS policy has been revised so that in cases involving the most serious offences detailed reasons are given to all victims and their families for a decision not to prosecute and PPS will offer to meet with them to discuss the decision. In other cases PPS will advise the victim or their family in general terms as to why a decision not to prosecute was taken.

A court dealing with an offence motivated by hostility may on an application being made to it by the PPS allow a witness to give evidence with the help of 'Special

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<sup>178</sup> *Prosecuting Hate Crimes: A Practical Guide*, OSCE and ODHIR, September 2014.

<sup>179</sup> *Hate Crime Policy*, PPS, December 2010, para. 9.4.1 and 9.4.2.

Measures' legislation.<sup>180</sup> Special measures are aimed at ensuring that vulnerable and intimidated victims and witnesses give their evidence as effectively as possible. Special measures include the video recording of evidence to be used at trial, cross-examination conducted via live link from a room outside the court room, screening from the defendant and aids to communication. In many cases a victim of hate crime would qualify as an intimidated witness for whom special measures can apply. Special measures legislation provides that intimidated witnesses include those whose evidence is likely to be affected because they are afraid or distressed about giving evidence". There is also provision for reporting restrictions (also known as 'no publicity orders'),<sup>181</sup> and anonymity orders.<sup>182</sup>

While the application for any special measures will be made by the prosecutor it is often based upon evidence provided by the investigating police officer or a doctor. The earlier a decision is taken to apply for special measures the more effective it is likely to be in reassuring the victims and witnesses to continue. Police officers have the advantage of having dealt with the victims and witnesses and getting to know them. They will have identified, if the correct questions have been asked and the risk assessment carried out properly, whether for example that person is frightened of the perpetrator. It is therefore important that police officers consider at the outset and thereafter keep under review whether and if so which special measures would assist. That should be communicated to the relevant prosecutor as soon as possible. While the PPS delivered joint training with the PSNI on special measures in 2012, after which some increase was noted on the number of applications for special measures, that does not appear to have continued. Special measures are not addressed adequately in the PSNI Service Procedure or training, but should be.

## **Recommendation 7**

**In PSNI Service Procedure 01/16 and thereafter in all training delivered on hate crime the range of special measures available for vulnerable and intimidated victims of and witnesses to hate crime should be explained. The importance of**

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<sup>180</sup> The Criminal Evidence (Northern Ireland) Order 1999.

<sup>181</sup> Section 46 Youth Justice & Criminal Evidence Act 1999 as implemented by the Youth Justice & Criminal Evidence Act 1999 (Commencement No 1) (NI) Order 2004.

<sup>182</sup> Section 86 Coroners and Justice Act 2009.

**the early identification of appropriate measures, which should be communicated to the PPS at the earliest opportunity, should be emphasised.**

### **Discretionary Disposals/Community Resolution**

Discretionary disposals, now known as Community Resolutions, previously were not available for hate crimes but PSNI has reconsidered this. Community Resolution may now be used as a police disposal but only for one of a specified number of crimes<sup>183</sup> with a hate motivation, a supervisor must authorise it, the risk assessment must be low, the victim must not be a repeat victim, the perpetrator must not be a repeat perpetrator and there must be no evidence of actual hostility. The base crimes for which a community resolution may be considered include: behaviour likely to cause a breach of the peace; common assault; criminal damage up to £300; and arson limited to £300 where there is no endangering of life. A Community Resolution is not a criminal conviction and is therefore not routinely disclosed through basic or standard criminal record checks. However, a record is kept of the disposal on police systems and may be disclosed where the matter is subject to an enhanced disclosure check but only if the disclosure is considered by a PSNI Assistant Chief Constable to be relevant and proportionate to the position applied for.

Community Resolution will remain subject to quality assurance and dip-sampling by the PPS. When reconsidering its approach to the use of Community Resolution for hate crimes, the PSNI consulted with stakeholders who expressed concerns about its use but appreciated the PSNI's rationale. The Committee shares those concerns but is satisfied that, subject to its use being kept under review and subjected to scrutiny, it merits a trial period.

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<sup>183</sup> Allowing an animal to wander; Attempted abstracting electricity (magnet on meter etc); Begging; Behaviour likely to cause a breach of the peace; Common assault; Criminal Damage up to £300; Drunk in a public place; Disorderly behaviour (including on licensed premises); Indecent behaviour limited to street urination; Making Off Without Payment up to £300; Obtaining a service dishonestly up to £300; Theft up to £300; Vehicle Interference; Arson up to £300 excluding endangering life; Assault, resist or obstruct police; Burglary non-dwelling; Consuming or purchasing intoxicating liquor in a place other than a private house when under 18; Dishonestly using electricity up to £300; Fireworks offences; Fraud by false representation up to £300; Harassment where course of conduct is proved and it does not involve intimate partners and the S&H DASH is standard; Indecent exposure limited to common law provided no intent to cause alarm or distress; Liquor licensing / licensed premises offences; Possession of drugs - personal use quantities guide only; Wasting police time (excluding rape allegations).

The Committee is concerned, for example, that while the perpetrator must admit the offence before a Community Resolution disposal can be considered, he or she is not required to admit to the hate element (it not being a part of the base crime) and that the hate element will not be recorded. The hate element of the offence is unlikely to be addressed. It is also possible that repeat perpetrators or victims will not be recorded as such. Furthermore, there does not appear to be training scheduled for officers who may be administering Community Resolutions but such training is important and should be delivered as soon as possible.

### **Recommendation 8**

**As soon as practically possible the PSNI should ensure that officers receive training in the use of Community Resolution for hate crimes.**

### **Victim Witness Care Unit**

In November 2012, the PSNI and PPS launched a pilot in Belfast of the Victim Witness Care Unit (VWCU). The VWCU provides a single point of contact to victims throughout the criminal justice system. It manages the support of victims and witnesses from charge through to the conclusion of court proceedings. For example, each witness who is involved in a case proceeding to court with a not guilty plea is assessed to identify their specific support requirements; there is continuous review of the needs of victims and witnesses throughout the proceedings; and there is coordination and management of communication and contact with victims and witnesses.

## PERPETRATORS

While in Great Britain and Northern Ireland significant attention has been paid to victims of hate crime, less attention has been paid to perpetrators of hate crime. If racist hate crime is to be tackled effectively so that targeted hostility ceases to affect the lives of citizens, it is important that the causes of and trends in hate crime are analysed. The identity of perpetrators is not systematically collected or available for analysis. Such collection and analysis is important if any initiatives to prevent hate crime are to be targeted and effective.

The European Union Fundamental Rights Agency (FRA) has stressed the importance of understanding perpetrators if any significant headway is to be made.<sup>184</sup> In a survey, undertaken in 2008, the FRA found that of the limited data collected, which did not address perpetrators specifically, some hate crime was perpetrated by extremist groups, but it did not count for the majority of hate incidents. For example, only 13% of Turkish victims and 12% of Roma victims of assault or threat identified perpetrators as members of right-wing extremist groups.<sup>185</sup> That survey also identified that hate crime can involve different people from various ethnic backgrounds. In other words, inter-ethnic conflict can also manifest as hate crime. This element of hate crime was not clearly understood by officers who contributed to this thematic review. One example was given, while attempting to explain the perceived difficulties with the perception test, of a hate crime recorded which “should not have been because it was between two people both from ethnic backgrounds”. That fails to recognise that hate crime is not only perpetrated by the majority group against a minority group.

As the FRA put it “the question of perpetrators is politically sensitive, but it is nevertheless essential in order to formulate effective responses. In this respect, the available evidence suggests that community relations can benefit from local level initiatives to bring together members of different minority ethnic... groups as well as in the general (non-minority) population, in order to have a frank and open

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<sup>184</sup> *Promoting Respect and Diversity Combating Intolerance and Hate: Contribution to the Annual Colloquium on Fundamental Rights*, EU Fundamental Rights Agency, 2016.

<sup>185</sup> *Ibid.*

discussion of issues of social inclusion, respect and community relations that affect their daily life.”<sup>186</sup>

Both extremist perpetrators and those not associated with extremist groups must be tackled but the approaches may differ. Firstly, however, the police must be equipped to identify it. For example, hate crime perpetrators sometimes use signs and symbols to indicate their affiliation with extremist hate groups. While some of those symbols are well known and recognised (for example the swastika) there are many other symbols that are not immediately recognised or understood. According to the Office for Democratic Institutions and Human Rights (ODIHR) these include “numerical sequences that reference letters of the alphabet or significant dates that represent hate groups; they can also consist of abstract designs or slogans that might not be obviously bias-related”. Such evidence must be sought and collected for any future prosecution. The ODIHR advises “police might need to avail themselves of expert evidence in potential hate crime cases that involve such symbols. At the earliest stage of the case, when assessing bias indicators, Internet searches and consultations with experts might help to identify a possible hate motivation”.<sup>187</sup>

As noted hate crimes are also (in fact more commonly) committed by ‘ordinary’ people without any connection to extremist organizations, even if they share their prejudices. If police assume that perpetrators of hate crimes are ‘extremists’ the hate element is easily overlooked or diminished if the alleged perpetrator is not associated with extremist groups. Closer inspection is often required, which is why the acceptance of the perception test at the outset is so critical. The victim will often know or sense a hate motivation where it may not be immediately apparent.

## **Recommendation 9**

**The PSNI should analyse hate incidents and crimes recorded over the period 1 April 2016 to 31 March 2017 to identify any trends and patterns emerging of perpetrators and thereafter consider whether its strategy of communication and prevention is sufficiently targeted.**

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<sup>186</sup> *Ibid*, page 4.

<sup>187</sup> *Prosecuting Hate Crimes: A Practical Guide*, OSCE and ODHIR, September 2014, page 50.



An example of good practice in respect of perpetrators who are young people, which the Committee heard about, is the work of the Youth Justice Service and Agencies Supporting Ethnic Communities (covering Larne, Carrickfergus and Ballymena). The partners held a session for young people involved in hate crime which explained, through a facilitator from an ethnic minority background, the facts about black and minority ethnic communities including the reality of immigration. The young people were invited to ask frank questions and speak freely about their prejudices. The work has reaped rewards with many young people who had never had real engagement with black and minority ethnic communities emerging with much more positive attitudes.

The Probation Board for Northern Ireland has undertaken awareness raising training which has had a significant impact on their ability to recognise and respond to prejudice both within its own offices and of offenders. The approach of the training is to recognise the inherent prejudice in everyone and help people to acknowledge and address it. Participants were helped to understand the extent of bias, harassment and hate within society, to recognise their own 'blind-spots', to acknowledge the discomfort that accompanies change and difference, to develop an awareness of diversity within Northern Ireland, to understand the role language can play and to learn how to confront appropriately prejudice and hate. The training addressed the impact of hate crime on victims particularly in the context of escalation from so-called low-level abuse. The result has been probation officers are better equipped to deal with the hate element of offending and offenders dealing with their own prejudice.

This ability to engage openly and safely about prejudice, including one's own, is a valuable opportunity for all people and is exactly the kind of engagement and debate that the Committee believes should also be afforded to police officers and staff in training.

### **Restorative approaches**

While the Committee's initial view of using restorative approaches for hate crime was to caution against it, believing that the seriousness of hate crime and the severity of harm caused by it meant it should be excluded, it is persuaded that some offending

is suitable for the restorative approach. Importantly, that is not to diminish the seriousness of hate crime or to signal anything other than society's rejection of it. Rather, the restorative approach can in appropriate cases support the healing of victims and challenge perpetrators' hate-motivated behaviour thereby protecting victims from repeat victimisation.

Research has demonstrated that many hate crime perpetrators are not motivated by an ideology of hate but “hold what we might call superficial, or ‘low-level’, prejudices towards certain groups of people...[which are] often based on little other than fallacious stereotypes that have been perpetuated within society about a group's morality or social worthiness.”<sup>188</sup> Research now suggests that cases involving low-level prejudices may be suitable for restorative justice and prove most useful in challenging and modifying that behaviour that gave rise to it. The Leicester Centre for Hate Studies recorded that “Participants felt that a restorative justice and/or a mediation element should feature in the punishment given to hate crime offenders. Many spoke positively about the ideas behind restorative forms of justice, and in particular the capacity of restorative interventions to encourage offenders to comprehend the consequences of their actions for victims and their families. However, views on the effectiveness of this approach amongst those victims whose case had involved restorative justice and/or mediation were rather mixed. When interviewees were asked what they thought would prevent people from committing a hate crime in the future, the majority were in favour of adopting an educational approach, as opposed to a criminal justice or punitive one”.<sup>189</sup>

The Committee accepts that restorative justice may be appropriate for some hate crimes but needs to be reassured that all steps necessary are taken to protect victims from the risks posed by bringing them together with perpetrators. The Committee would be concerned at the use of restorative justice to tackle cases involving deep-seated prejudice or cases involving violence.

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<sup>188</sup> *Restorative Approaches to Working with Hate Crime Offenders*, Mark Austin Walters, 2014 (published in *Responding to Hate Crime: the case for connecting policy and research*, Neil Chakrabarti and Jon Garland, 2014).

<sup>189</sup> *The Leicester Hate Crime Project: Findings and Conclusions* Neil Chakraborti, Jon Garland & Stevie Jade-Hardy, September 2014.

## **POLICING WITH THE COMMUNITY: COMMUNITY ENGAGEMENT**

As contributors to this thematic review reminded the Committee, it is the ‘mind-set’ and approach of police officers and police staff which makes the difference to an encounter. If the police officer or member of staff approaches an individual and thereafter deals with him or her in a way which recognises particular vulnerabilities and is sensitive to that person’s needs, the encounter is a positive one which engenders trust and support. When the mind-set is right, observance of policy becomes much easier and more instinctive. In order to respond effectively to a victim of race hate crime he or she must first be treated with respect. Respect comes from understanding and familiarity. Therefore, it is incumbent on the PSNI to engage effectively with minority individuals and groups and learn from them. Engagement can never be achieved by applying a check-list of obligations but should be underpinned by a methodology which takes account of the particular vulnerabilities of the group to be engaged with. The PSNI has a number of initiatives to improve its engagement with the community.

The model of policing adopted by PSNI is ‘Policing with the Community’.<sup>190</sup> Policing with the community depends upon meaningful engagement, community consent and accountability. It requires the service to be delivered in genuine partnership with the community including, perhaps most importantly, minority and vulnerable members of the community. Engagement must be structured so as to provide an opportunity for dialogue between the police and community in which an account can be given for actions taken and a holding to account for those actions. Both the police and the community need an opportunity to explain their decisions and actions and the impact of those decisions and actions upon them. Often, a simple discussion can assist community/police relationships as both can understand the relevant facts and the reasons for certain actions. When considering community engagement it is important to remember that engagement is only productive if it is undertaken with mutual respect (which permits honest challenge and dissent) and a willingness to listen and learn.

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<sup>190</sup> In March 2011 PSNI published its *Policing with the Community 2020 Strategy*.

This is particularly important when the community to be engaged with has suffered prejudice and discrimination and comprises victims of crime who have been targeted as a result of their personal characteristics or membership of a particular group. Officers undertaking such engagement must understand the issues. To knowingly treat a person with disrespect is unacceptable and unjustifiable. To carelessly do so is perhaps more understandable (for example, if an officer is naive or under pressure) but the result is as hurtful. This can be remedied with relatively little effort: what is required is appropriate training underpinned by a clear policy position which is emphasised and monitored by supervisors and police leaders.

A number of contributors gave examples of police officers who had treated them respectfully and sensitively and were keen to acknowledge the progress that has been made however some had a more negative experience of police, both of which are referenced throughout this review.

PSNI policy, before amendment, stated that “Greater confidence, co-operation and increased reporting will be achieved if the Police Service deals effectively and professionally with hate incidents and continues to proactively build positive relationships with representatives and support organisations for minority and vulnerable groups.”<sup>191</sup> PSNI policy also stated that the Police Service “must continue to proactively establish new, and build on the existing, partnerships within groups and organisations who engage with minority and vulnerable groups, victims of hate incidents and those who work to support them, and with statutory agencies, including Community Safety and District Policing Partnerships (DPPs) [now replaced by Policing and Community Safety Partnerships], who in partnership can work to prevent hate incidents, raise awareness and support victims.”<sup>192</sup>

The Committee agrees with and endorses that position however in the revised Service Procedure that statement has been removed. Not, the Committee is sure, because the PSNI disagrees with it but in an attempt to make policy more streamlined and direct for operational officers. While the Committee understands that

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<sup>191</sup> *Police Response to Hate Incidents*, PSNI, PD 02/06, version 4, issued December 2008, section 3(1)(c).

<sup>192</sup> *Ibid.* section 4(3).

service procedures provide the core information which officers and staff must have to discharge their duties effectively the Committee believes in this area in particular that the 'core messages' need to be reinforced. While further information is provided in other documents and the PSNI intranet site provides many useful sources of information, police officers and staff operating under pressure simply do not have time to carry out their own research and 'read around' issues. More attention needs to be given to including the important messages (including in respect of engagement) in those documents that *must* be read.

Police officers must engage proactively with individuals and groups who are not traditionally represented on community stakeholder forums. The PSNI has established a number of positive initiatives for that purpose. Previously, the Committee was concerned that there were pockets of good practice that were not replicated and initiatives developed but not committed to in the longer term. Since the commencement of this thematic review however the PSNI has renewed its commitment to and focus on community engagement in the delivery of its policing with the community model. In this area in particular it has been demonstrated with enthusiasm.

The PSNI was involved in the Towards a Better Future Conference 2015, which was specifically designed to connect communities with the issue of hate crime with conference sessions taking place in community venues across Belfast. Assistant Chief Constable Martin delivered a thoughtful speech which stressed the PSNI's commitment to tackling hate crime but highlighted the need for hate crime to be tackled by partners within the criminal justice system and across society as a whole. The conference concluded with a number of agreed outcomes and recommendations. It was recognised for example that any strategy to tackle hate crime needs leadership at all levels including political, statutory, community and voluntary. The conference report stressed the need for an agreed vision with agreed outcomes, the strengthening of the accountability arrangements, the development of policy informed by real experience, stronger partnership working, improvements to communication with and developing capacity in minority ethnic communities,

breaking down barriers and promoting diversity, and a longer term strategic approach to funding work around the issues.<sup>193</sup>

In February 2016, the PSNI participated in a Leadership Academy session. The Leadership Academy was developed by the Centre for Democracy and Peace Building and the Institute of Irish Studies University of Liverpool to share knowledge and experience of conflict and conflict transformation in Northern Ireland and beyond, and its relation to dissent and risk in contemporary society. During the event ACC Martin emphasised that the response of police officers to hate crime is critical; until officers begin to identify with victims of hatred and truly appreciate the fear and isolation it can create, he believes that we will always be one step behind – policies and other measures will not resolve the problem.

The PSNI also hosted, in March 2016, a multi-agency hate crime seminar to illustrate and share practice about the range of work being done to address hate crime issues across Northern Ireland. ACC Martin said “In 2014, following a rise in the incidence of hate crime the PSNI launched a range of operational measures to deal more effectively with what is a very serious issue. Because the victims are in a minority, the impact of these crimes is much more keenly felt, can be long lasting and has a much wider resonance than just with the victim and their immediate family. Hate crime is a strategic priority for PSNI and I am extremely encouraged by the commitment of our partner agencies who work so hard with us to tackle prejudice and ignorance in our society. I truly believe that there is more confidence now for members of the public to report these incidents to police... However, we must not be complacent...there is still so much to do to confront hate crime and it is vital we continue to work closely with our partners and voluntary sector organisations. Collectively we need to send a strong message that hate crime is not acceptable, and where it occurs, seek to catch those responsible and place them before the courts.”

The event was well attended and very well received. For example, Ms Jolena Flett (Director Migrant Centre NI) said she “was encouraged by events like this that give

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<sup>193</sup> *Towards a Better Future: Conference Report 26 and 27 March 2015*, Centre for Democracy and Peace Building.

the community and the PSNI the opportunity to come together and share learning and improve services to victims”. Ms Eva Grossman (Centre for Democracy and Peace Building) said “our work would not be possible without the ongoing support from the key partners, including the PSNI. The Police Service was the main driver behind the original Unite Against Hate campaign and continues to lead the way in addressing and improving response to hate crime across NI.”

Given the perception of some victims throughout this thematic review – that there was little point in reporting hate crime because the police either could not or would not do anything – it is particularly important that police engage directly with black and minority ethnic people to explain what can be done and to demonstrate the commitment referred to by ACC Martin. While attendance at conferences and seminars is encouraging and important it is equally important, perhaps more so, that members of minority communities meet directly with police officers to discuss their issues in a safe and confidential setting.

The starting point must always be victims themselves. There is little that is more powerful or effective than the voice of a victim describing the effect of prejudice and victimisation. PSNI officers and staff have very limited opportunities to hear directly from victims of hate crime. While PoliceNet (the PSNI intranet site) contains helpful video posts of victims, which should continue, it is removed from the direct experience and empathy gained from meeting face to face. Such meetings however can be traumatic for victims asked to describe their personal journeys and risk re-traumatising victims. Therefore, it must be handled sensitively and under the guidance of those who work with victims.

In a recent Canadian research project which dealt with hate crime against the Lesbian, Gay, Bisexual, Trans and Queer<sup>194</sup> (LGBTQ) community, it was found that the impact of video posts was heightened when they were accompanied by lessons.<sup>195</sup> Those face to face lessons enable trainers to help people identify the potential impact of hate crime, to discuss how individual actions have an effect on

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<sup>194</sup> The research looked at all victims under the umbrella LGBTQ however the PSNI and Policing Board have committed to addressing Trans victims separately to recognise that theirs is an issue of gender rather than sexual orientation.

<sup>195</sup> *Courage in the Face of Hate*, Dr Barbara Perry and Egale Canada, 2012.

the wider community, communicate the power of language both as a means of victimising and of addressing that victimisation and assist in the development of strategies to challenge prejudice. Subsequently, it was found that the participation of police officers in the project had a powerful effect on victims who believed the police were their allies. The same benefits are likely to be felt by officers and staff for racist hate crime.

On 29 July 2016, the PSNI launched the first of a series of four videos to highlight hate crime and encourage reporting from victims and members of the public who may have information which could assist officers with hate crime investigations. The first two videos covered homophobic hate crime and disability hate crime. On 10 October 2016 the third video in the series was released and it relates to race hate crime. In the video a victim tells the personal impact of how racial hate crime and discrimination has had a shattering and distressing impact on her life. The message is designed to encourage people to think about the impact hate crime incidents have on the victim and the long lasting physiological and emotional damage it can cause. Superintendent Paula Hilman, in launching the campaign, said she “hopes the campaign will help encourage not just victims but the wider community to report incidents of hate crime to PSNI... We very much recognise that hate crime is still significantly under reported therefore we need to ensure victims have the confidence to report these incidents.”

Superintendent Hilman continued “We hope that by sharing the voices of victims explaining their very personal experience of how they are emotionally affected by hatred and discrimination - that we will encourage people to think about the human impact of these wholly unjustified and unacceptable attacks. There is absolutely no place in Northern Ireland for intimidation or threats and there is a collective responsibility on all parts of society to protect our most vulnerable communities. We would encourage everyone to report any concerns or suspicious activity to the police. We need this information from communities to support arrests and make subsequent prosecutions and put an end to all forms of hate crime. It is wrong on all levels and the PSNI will do everything it can to ensure that everyone can live free from prejudice, fear and discrimination. We all have a role to play to challenge



attitudes of prejudice and hatred and to build confidence and trust to help increase reporting of these unacceptable attacks to ensure results are delivered.”<sup>196</sup>

The PSNI has been involved together with partners in the development of the Good Practice Plus Project and ensuing National Action Plans.<sup>197</sup> The Actions Plans consider separately urban and rural areas. Within that, specific actions have been agreed to create more effective partnerships. That is important because during this thematic review the Committee was told of the lack of awareness of support and services for victims of hate crime in rural areas. In particular, it was reported that officers in rural areas were less aware of the Hate Crime Advocacy Service. A positive initiative was also reported however involving PSNI and three local councils, which was aimed at reassuring, by increased police presence, minority ethnic owners and staff of takeaway food restaurants who had been targeted.

The PSNI also attends the Department of Justice Hate Crime Delivery Group which consists of statutory agencies with a shared interest in reducing hate crime in Northern Ireland.<sup>198</sup> The Department of Justice has responsibility for government policy and chairs the delivery group on which the PSNI plays a central role. The DOJ’s Community Safety Strategy 2012-2017 contains a commitment to tackling all forms of hate crime and the harm it causes through prevention, education, awareness, and support for victims.<sup>199</sup> The strategy emphasises the various commitments of government and statutory agencies to achieve the stated outcomes by enhanced partnership working. Progress of action plans through the delivery group will enable greater partnership working across government in association with the community and voluntary sector and, it is hoped, will tackle hate crime and the environment within which it may otherwise flourish.

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<sup>196</sup> <https://www.psni.police.uk/news/Latest-News/290716>

<sup>197</sup> <http://goodpracticeplus.squarespace.com/>

<sup>198</sup> Membership of the group includes the PSNI, the PPS, the Northern Ireland Courts and Tribunals Service, the Northern Ireland Prison Service, the Probation Board, Victim Support, the Youth Justice Agency, the Health and Social Care Board, the Executive Office, the Northern Ireland Housing Executive, the Policing Board and Policing and Community Safety Partnerships.

<sup>199</sup> *Building Safe, Shared and Confident Communities. A Community Safety Strategy for Northern Ireland 2012-2017*, Department of Justice, July 2012.

That is extremely positive and demonstrates the real efforts being made to reach the victims of hate crime but also the wider community. Furthermore, it reminds officers and police staff of the importance attached to hate crime by the PSNI. While throughout this review there are recommendations aimed at improving the service available to victims of hate crime the positive work that has been done by the PSNI must not be lost. As one contributor put it “the PSNI have come a long way and a lot of credit is due to them. Even though it is the negative stories that hit the press, the majority of officers are in fact very good”. However, it was also suggested that “PSNI can be reactive at times to media attention and not give other incidents the same attention”. This can be unhelpful in two respects: if one crime is seen to receive undue attention it can lead to the local community thinking that some victims receive a more favourable service; and, it may mean that other offences are missed.

There are a number of locally based groups which can offer assistance to the PSNI in reaching Black and Minority Ethnic communities. For example, the Agencies Supporting Ethnic Communities (ASEC) formerly known as the Ballymena Inter-Agency Support Group (BIAESG), which was established in 2008, brings together the statutory, private and voluntary sectors to share good practice and identify new opportunities for supporting minority communities. The ASEC now covers the geographical areas of Larne, Carrickfergus and Ballymena and has been working with the PSNI on tackling hate crime. In another example, Black & Minority Ethnic communities from across Derry/Londonderry and Strabane came together under the new Foyle Race Equality Forum. The Foyle Race Equality Forum was established to promote inclusivity of all people from Black and Minority Ethnic communities across the North West. The Forum intends to provide support and assistance for communities to engage with statutory agencies and elected representatives and to help statutory agencies and elected representatives to understand the needs of those communities. That is a forum which presents an opportunity for the PSNI to engage, at least at that local level.

It remains the case that a number of victims consulted during this thematic review were still not receiving a service that instilled confidence in the police and the wider criminal justice system. They identified a number of barriers which can be summarised as follows. When a victim wishes to report a hate incident or crime to

the police he or she may have difficulty communicating with the police due to language barriers. There is a translation service available but sometimes it is not offered to the victim who feels they need to 'make do.' It was said "So long as you can speak a little English officers don't seem to want to wait for the translation service to become available". Others said that officers sometimes resort to using members of the family or the community to translate but that can be uncomfortable and inhibiting. Officers should be reminded of the need to use translation and interpretation services unless it is absolutely clear that the victim does not need them. Victims must be able to both understand and express the nuances of the incident, which can be difficult even when English is the first language. Translation and interpretation services should be offered; officers should not wait for the victim to ask for them.

Reporting a crime, particularly one as personal as hate crime, requires fortitude and resilience even for fluent English speakers but to communicate the impact of the crime and ensuing fear in a second language is so much more difficult. That is compounded if officers either do not ask enough questions to tease out the evidence or try to persuade the victim that it was not a crime motivated or aggravated by hostility. An example given by a number of victims was of an officer simply asking the victim if he or she "believed it was a hate crime". Those victims explained that if one doesn't know what comprises a hate crime it is impossible to make that assessment – they rely on the police to identify it. Many victims did not understand the term 'hate crime', what types of crime can be considered hate crimes or where to go for support. While the PSNI has invested in a hate crime awareness campaign and has published a handbook for victims,<sup>200</sup> it would seem that is not reaching all of those to whom it is targeted. The Committee suggests that the literature needs to be published in a number of languages and disseminated at locations such as community centres, support groups, health providers, public transport, places of worship and work places.

Similar observations have been made in England. For example, the Leicester Centre for Hate Studies which conducted a comprehensive survey of hate crime victims

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<sup>200</sup> *Helping Victims of Hate Crime*, PSNI. The handbook is a useful resource which provides information and guidance on hate crime, reporting, keeping safe and the relevant support services.

recorded that many victims did not believe the police recorded the hate element of the crime. The report states, “Three-quarters of respondents felt that the police had recorded their most recent experience of hate crime after they reported it (72%). This finding is concerning as it means that nearly a third of respondents who had reported a hate crime to the police did not feel that the police had recorded it as such (28%). Also of concern is the fact that fewer than half of respondents thought that the police had investigated their most recent incident (43%). In a fifth of cases the police had given the victim practical support (20%) or emotional support (18%). In just one-sixth of cases did respondents think that the police had arrested someone (16%)”.<sup>201</sup> There is no corresponding research relevant to Northern Ireland so it is impossible to discern whether those figures correlate but the findings chime with what was reported during this thematic review.

If police officers are reluctant to identify and record the hate element of a crime unless pressed to do so by the victim, many cases will be missed. Victims, particularly migrants, felt they needed to be better informed about hate crime, the process of reporting it and the help that is available. It seems to the Committee that a number of agencies could coordinate to provide information to victims for example by supporting or delivering training to community groups.

### **Recommendation 10**

**The PSNI should explore with partners how to better engage with victims and potential victims of hate crime so that they are better informed of the services they are entitled to receive from the police and other agencies. The Policing Board can facilitate those discussions but in any event the PSNI should report to the Performance Committee within 12 months of the publication of this thematic review on the outcome of those discussions.**

Victims also mentioned a tendency of some officers to immediately enquire about the victim’s immigration status and appear more interested in that than taking a record of the crime being reported. A contributor to the thematic review explained “if a person’s status is under review at the time he is a victim of crime he will be confused

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<sup>201</sup> *The Leicester Hate Crime Project: Findings and Conclusions* Neil Chakraborti, Jon Garland & Stevie Jade-Hardy, September 2014, page 68.

and fearful about revealing that so will give up on the report”. It was not possible to assess how widespread this was but if officers are in any doubt about powers and duties in respect of immigration offences that must be addressed by training. Even if it is appropriate to question a victim about immigration status that should never precede the taking of the report of hate crime.

A very significant barrier to reporting hate crime was, according to a number of contributors, the fear of reprisals and the perceived inability of the police to protect the victim after the report. It is critically important that a victim, particularly one who has been targeted personally, can feel safe to report and in fact receive protection after a report. To simply advise the victim, as some reported, to leave the area is not sufficient. Officers must share information with colleagues and proactively check the intelligence and other records to assess risk and consider what steps can be taken to mitigate it. The risk assessment process is detailed above at page 68 but it appears to stop short of this more holistic approach, which is required. Greater effort is also needed to work more effectively with partners such as the Northern Ireland Housing Executive to ensure that vulnerable victims who report crime are protected and if that means moving out of an area that there are quick and effective mechanisms in place to achieve that.<sup>202</sup>

In September 2015, the Housing Executive launched its Hate Harassment Toolkit which aimed to raise awareness of the issue but also to provide information to those experiencing hate harassment on the range of help that is available. During the thematic review however it was not clear that many officers or members of the community were aware of the Toolkit. It is a useful resource which should receive a wider audience and should be widely accessible to police officers and the community.

The recognition and recording of hate crime is a key element of effective policing of hate crime. An increase in the reporting of hate crime should be encouraged and any increase in the incidence of reported hate crime should be welcomed. As one police officer put it “If victims don’t have confidence to report the figures will never increase

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<sup>202</sup> Page 77 of this thematic review and Recommendation 2 refers.

but if the figures never increase you will never get the resources and efforts to deal with hate crime”. Improvements in community confidence should result in an increase in the reporting of hate crime. That, however, can result in the perception that the incidence of hate crime is increasing. That conundrum should not be permitted to influence efforts to increase reporting. In any event, it is believed by many international commentators that initial increases in reporting are likely to stabilise over time, with the result that in the longer term a more precise picture of any decrease in the incidence of hate crime can be captured.<sup>203</sup>

The Committee appreciates that PSNI cannot tackle all of the issues alone and that it works alongside partner agencies, for example the Department of Justice has a Hate Crime Delivery Group to consider the overall criminal justice approach to tackling hate crime. Individual agencies are also considering and refreshing their approach. The Policing Board, through its Performance Committee and Partnership Committee, will continue to monitor and liaise with interested parties in relation to the police response to hate crime. During the course of this thematic review the Policing Board was represented on various forums on which police and other agencies/stakeholders sit, including the Department of Justice Hate Crime Delivery Group, a Disability Hate Crime Steering Group, a Trans Forum, a LGB&T Consultative Forum and a PSNI/Policing Board Strategic Consultation Forum.<sup>204</sup> The Human Rights Advisor to the Policing Board has attended a number of those meetings.

## **Advocacy Service**

A number of contributors to this thematic review referred positively to the improved service enjoyed by victims as a result of the provision of specialist Hate Crime Advocates. The PSNI alongside the DOJ funds a specialist regional advocacy service for victims of hate crime, in partnership with Victim Support NI. Since

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<sup>203</sup> See for example *Responding to Hate Crime: the Case for Connecting Policy and Research*, 2015, Policy Press, edited by Neil Chakraborti and Jon Garland, page 201.

<sup>204</sup> The Policing Board / PSNI Strategic Consultation Forum consists of representatives from the disability, youth, older persons, Lesbian Gay Bisexual, Transgender, minority ethnic and women’s sectors. The Group was established in 2013 to assist the Policing Board and the police in achieving a better policing experience for all, including by identifying and providing advice and expertise at a strategic level on cross cutting issues of interest to the diverse communities the various members represent.

November 2015, all victims of crime are referred automatically by the PSNI to Victim Support NI which then makes contact with each victim to offer support. That support can either be accepted or refused. Victims may also contact Victim Support NI directly. Thereafter, Hate Crime Advocates can report any hate incidents or crimes to the police if the victim consents and make contact with the investigating officer. Throughout an ensuing investigation the Advocates assist the victim in his or her contact with the police and can engage with the Housing Executive for example if required.

The Advocates are employees of specialist service providers such as the Migrant Centre NI, whose Advocates are bi-lingual. Because the Advocates are employed by and therefore associated with independent specialist organisations which already have links within communities they can maintain connections between the operational and strategic needs of victims of hate crime and the wider community (both the minority and majority communities). The Advocates bring a wealth of experience which transcends solely criminal justice to include amongst other things housing, health, counselling, financial management and education. The Advocates report regularly to the PSNI including by way of an annual report. Reports identify good and bad practice, provide victim feedback, collect statistics on hate crime, including by postcode of incidents, make recommendations and transcribe case studies. It is clear from those reports that victims value the service greatly and that it assists the PSNI in delivering its service. One officer described this as providing a degree of ‘quality control’ for hate crime investigations, which was welcomed.

Feedback and data gathered by the Advocates is important as it reveals gaps in service provision from the perspective of victims and enables the police to assess their effectiveness. The EU Fundamental Rights Agency has stressed that data collection should wherever possible be “supplemented by victimisation surveys that encompass hate crime to shed light on the nature and extent of non-reported crimes; the experiences of victims of crime with law enforcement; reasons for non-reporting; and rights awareness among victims of hate crime.”<sup>205</sup> If only administrative data was collected and analysed the true picture is never captured. Victimisation surveys

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<sup>205</sup> *Making Hate Crime Visible in the European Union: Acknowledging Victims’ Rights*, EU Fundamental Rights Agency, 2012, page 11.

are not currently undertaken to any great extent in Northern Ireland but could quite easily be implemented through the Hate Crime Advocates and other community groups. For example as part of this thematic review a Polish community group compiled and collected feedback by online survey, which provided invaluable insight into the issues affecting the Polish community.

The Advocacy Service not only enhances the service provided to victims of hate crime, it forges links with the PSNI and fosters good relations which can be built upon for the benefit of all. One contributor noted “Victim Support NI have built up a very positive relationship with the police particularly through the Advocacy Service”. In a two year project supported by the EU Fundamental Rights and Citizenship Programme, the model of Advocacy Services was identified as an area of best practice.<sup>206</sup>

The Service however would be improved by the application of additional resources and secured funding streams. Currently, Advocates are funded year to year learning only towards the end of a financial year whether they will continue, which does not support long-term planning. The Committee therefore encourages those organisations funding and participating in the Advocacy Service to reconsider the strategic long-term focus applied to the service. This is particularly important in the absence of a black and minority ethnic Independent Advisory Group (IAG). The Advocacy Service provides an enhanced service over and above that provided by IAGs (which are found in many police services across Great Britain) and should be expanded.

## **Communicating with the media**

The PSNI understands well how the media can impact both positively and negatively on the public’s perception of policing. That is the case in respect of hate crime and prejudice more generally. First and foremost, the police will be concerned with protecting the victim and his or her privacy, with ensuring the integrity of an investigation and respecting the alleged perpetrator’s right to a fair trial, but

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<sup>206</sup> *Good Practice Plus Project Toolkit*, September 2016, c/o NICEM.



communicating with and through the media can be helpful in recovering evidence and signalling the seriousness with which police treat hate crime. Communicating with the media must be undertaken carefully and sensitively. For example, police must avoid too quickly denying the hate element of a crime before all of the evidence is gathered and assessed. Victims and their communities may be left with the impression that the investigation is already doomed to fail and that the police have not investigated fully or fairly. Similarly, too early an attribution of hate motivation in the media may result in unrealistically high expectations followed by disappointment or suspicion if a case does not proceed to court on that basis.

Furthermore, the police must ensure that they do not communicate with the media and the public in a manner that risks perpetuating hostility or prejudice towards members of minority groups. For example, the European Commission against Racism and Intolerance (ECRI) recommends that “police should not reveal to the media or to the public information on the race, colour, language, religion, nationality or national or ethnic origin of the alleged perpetrator of an offence. The police should only be allowed to disclose this type of information when such disclosure is strictly necessary and serves a legitimate purpose, such as in case of a wanted notice. Especially when making public statistical information, the police should be careful not to contribute to spreading and perpetuating myths linking crime and ethnic origin or linking the increase in immigration with an increase in crime. The police should ensure that they release objective information, in a way that is respectful of a diverse society and conducive to promoting equality.”<sup>207</sup>

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<sup>207</sup> *General Policy Recommendation No. 11 on combating racism and racial discrimination in policing*, European Commission against Racism and Intolerance (ECRI), June 2007.

## PREVENTING HATE CRIME

Human rights laws require states and public authorities to refrain from violating individuals' rights but they also oblige them to prevent people violating the rights of others, in particular the rights protected by Article 2 (the right to life), Article 3 (the right to be free from torture, inhuman and degrading treatment) and Article 8 (respect for family and the home which includes the right to personal integrity). In other words, the state and the police must take steps at a policy, legislative and operational level, to enhance community safety for the benefit of victims and potential victims of hate crime.<sup>208</sup> The Organisation for Security and Cooperation in Europe (OSCE) has made recommendations, some of which are directed at police. For example, it stresses that the police should, in identifying and reducing tension, "play a proactive role in developing a relationship with minorities."<sup>209</sup> The OSCE recommends that tensions should be monitored, which should include monitoring the nature and seriousness of incidents and intelligence gathered from the community, all of which requires engagement with and the building of confidence in minority communities.

The OSCE observes "it is often supposed that the responsibility of the police with regard to ethnic conflict is limited to responding to actual incidents of conflict: to restoring order and to bringing to justice those in breach of the law. This view fails to appreciate the importance of the role of police at earlier stages in the potential development of such conflict, and also in the de-escalation of tensions between ethnic groups once public order has been restored. Of course, the police do not have exclusive responsibility for the prevention of such conflict and for taking remedial action, but in co-operation with other public authorities and with representatives of civic society they can play a crucial role."<sup>210</sup>

Much of the focus to date has been on identifying the complexities of hate crime in particular identifying the true nature and extent of it while addressing the impact it

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<sup>208</sup> See for example, *Opuz v. Turkey*, App. No. 33401/02, ECHR 2009 and *E.S. and others v. Slovakia*, App. No. 8227/04, ECHR 2009.

<sup>209</sup> *Recommendations on Policing in Multi-Ethnic Societies*, OSCE, February 2006, Recommendation 21.

<sup>210</sup> *Recommendations on Policing in Multi-Ethnic Societies*, OSCE, February 2006, page 29.

has on minority communities. Less focus perhaps has been directed towards identifying the causes of hate crime, addressing the prejudice that fuels hate crime or to developing police practice that is sensitive and responsive to the particular needs of different victims. As research has demonstrated, there is no single type of hate crime so police must develop a sophisticated understanding so that they can better prevent it. It is known that “some of the most common types of hate crime involve: 1. Incidents that occur during an ongoing local conflict (for example, between neighbours) that has escalated over time; 2. Incidents that form part of a targeted campaign of abuse directed against certain individuals within a neighbourhood; or 3. Incidents that occur in public spaces and are perpetrated by individuals who feel somehow aggrieved by the victim – sometimes occurring during commercial transactions or on public transport”.<sup>211</sup> Police must analyse such patterns in their local areas. Unless and until hate crime and prejudice is understood resources targeted to addressing it will always fall short. Those resources must be targeted both at supporting victims and preventing future victimisation.

The PSNI has carried out research and has monitored hate crime across Northern Ireland to identify ‘hot spots’ and links with significant places and/or events. It is recognised that reported hate crime is concentrated in urban areas (but not necessarily in areas of high density of black and minority ethnic people) particularly where social deprivation levels are high and there are spikes at certain times of the year and around certain events. The Committee believes that race hate crime will not be addressed unless and until all agencies are able and willing to acknowledge and discuss the issues including the reported threat from paramilitary groups targeting minority ethnic communities. The phenomenon of paramilitary groups targeting minority ethnic communities has been evidenced but no joint strategy appears to have been developed to tackle it. The PSNI in partnership with other criminal justice agencies must include paramilitary racist violence in any strategy to tackle hate crime.

A good understanding of the problem profile of hate crime is essential if the police are to take any meaningful steps at preventing harm through hate crime. The PSNI

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<sup>211</sup> *Causes and Motivations of Hate Crime: Research Report 201*, Equality and Human Rights Commission, July 2016.

should, across Northern Ireland and within local policing areas, maintain a calendar of key dates and events and, through its enhanced engagement with minority communities, identify tensions and potential signal incidents. This will also enable local commanders to identify the level of hate crime within local areas and thereafter consider what additional resources are needed to tackle it. The PSNI monitors local media, social media, hate-promoting websites and political debates/decisions to ensure that police are aware of emerging risks but the Committee is not convinced that this is done routinely or with sufficient focus. A number of contributors to this thematic review put it this way - there are lots of random projects and initiatives but they pop up and disappear again just when they are making progress.

For a number of years the PSNI dedicated an officer to work closely with Belfast City Council (BCC) to prevent and respond to hate crime. That officer was located within BCC offices and, in the view of the BCC, provided an enormously helpful point of contact and resource for those working together to combat hate crime. In particular, he played a pivotal role in relation to tension monitoring which fed into all strands of the BCC's work. In November 2014, that officer was returned to other duties. The BCC has since noticed that various officers who attend tension monitoring groups are less connected to the issues and are unable to bring sufficient local knowledge or authority to make a real impact. That is disappointing and a missed opportunity. Tension monitoring is a key aspect of preventing crime and is required to ensure that protective steps can be taken to keep people safe.

### **Recommendation 11**

**The PSNI should develop and maintain a problem profile for hate crime across Northern Ireland which should be reviewed and monitored within local areas by local commanders. That problem profile should include key dates and events which may indicate the potential for signal incidents and should be developed in partnership with local communities.**

Every local policing team has a number of Citizenship and Safety Education (CASE) officers who are trained to deliver educational talks in primary and secondary schools. Hate crime is included within those talks with the aim to help children and young people to understand the impact of hate crime and recognise behaviour that is

criminal or otherwise unacceptable. The Committee appreciates the PSNI's efforts and recognises its commitment to playing a central role in preventing hate crime and the causes of hate crime. Funding pressures continue however so the Committee encourages the PSNI and its partners to consider how to fund and make better use of the CASE programme.

## TRAINING

Through training, police officers are taught the fundamental principles of human rights law, the complex way in which competing rights interact, how rights can be balanced, protected and respected when carrying out operational duties and the circumstances in which individual rights can be limited lawfully. That cannot be delivered by a discrete lesson although such a lesson is an important precursor to all other operational training. Rather, human rights principles, where relevant, must be integrated into all aspects of training so they are instinctively applied in all operational scenarios. Equality is one of the most fundamental of all human rights and can be said to be a cornerstone of human rights compliance. Accordingly, the principles of equality and fairness should be integrated into all aspects of police training.

The EU Victims' Directive requires that "Member States shall ensure that officials likely to come into contact with victims, such as police officers and court staff, receive both general and specialist training to a level appropriate to their contact with victims to increase their awareness of the needs of victims and to enable them to deal with victims in an impartial, respectful and professional manner... In accordance with the duties involved, and the nature and level of contact the practitioner has with victims, training shall aim to enable the practitioner to recognise victims and to treat them in a respectful, professional and non-discriminatory manner".<sup>212</sup> As stated in previous Human Rights Annual Reports and thematic reviews conducted by the Policing Board, training in human rights must be delivered so that all officers and police staff have a good understanding of general principles but also for human rights to be woven throughout all training materials and lessons so that the practical application of rights to operational scenarios can be explained and developed. That means that careful attention must be paid to introductory lessons for student officers and new staff but also that District training is reviewed regularly to ensure that human rights are an integral part of the training.

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<sup>212</sup> Article 25(1) *Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime*, European Parliament and the Council of the European Union, October 2012.

Hate crime training should equip officers to investigate hate incidents and crime effectively but also to understand the basis, context and special attributes of hate crime, ensure they are knowledgeable of the law relating to hate crime, contribute to crime prevention, encourage public cooperation with and respect for the police, build constructive ties with marginalised communities and ensure that in practice police protect and promote human rights and equality. Training is more likely to be effective if it is interactive and motivational. It should not be limited to technical skill and knowledge but should demonstrate the adverse impact that hate crime has on society, address cultural differences and stereotypes and impress upon officers and staff the need to address hate crime specifically. Therefore, trainers must be selected because of their commitment to and expertise in the various complex aspects of hate crime; following a pre-scripted lesson plan simply will not suffice. Furthermore, consultation with community representatives is a crucial element of training. They can offer intelligence and information on the nature of hate crime and are important partners in delivering the police response to it.

In November 2014, District Policing Command established a new command structure for training, with designated officers assigned to particular areas. The structure mirrors the Gold, Silver, Bronze command structure familiar in operational policing. A Bronze lead was identified with suitable expertise. The Bronze lead for training reviewed the police response to hate crime and developed the Hate and Signal Crime Training Strategy to ensure that training is appropriate and sufficient to improve that response across the PSNI. In essence, training encompasses three main areas: (i) the Student Officer Training Programme (SOTP) is the initial training provided to all new officers at Police College; (ii) Crime Training is specialist training for officers dealing with more serious crimes or dealing with vulnerable victims. All Hate and Signal Crime Officers receive Crime Training; (iii) District Training is the training delivered to officers of all ranks within District according to training needs identified by that District.

All student officers (at Garnerville Police College) receive Equality and Diversity training and Hate Crime training as part of the Student Officer Training Programme (SOTP). Both are relatively basic and intended to provide an overview of the issues. There is also however additional training delivered on an ad hoc basis through the

‘Community Partners’ training sessions. Partners such as Victim Support NI, NICEM and the Polish Society attend one-off events to talk to student officers about the issues and to make connections that can be developed once students take up their operational duties. The input however is limited necessarily– falling at an early stage in the course and often in the midst of examinations – which means that the value of it is diluted. The Policing Board’s Human Rights Advisor attended sessions at Police College and was impressed by the sessions but advised that they could be better used. For example, it would be helpful if the sessions were delivered at the end of training before the students take up their posts across Northern Ireland and if more time is given to really explore the issues and ask questions.

Probationary Officers receive additional training prior to confirmation in rank, which includes a Hydra Exercise on hate crime.<sup>213</sup>

Once confirmed in rank, most officers will receive additional training in District according to local training needs, as assessed by the District Commander. Training varies from District to District and from officer to officer. That is perhaps as it should be to reflect the fact that local training needs may differ and some officers require more training in one area than another. However, certain training is so fundamental to the delivery of a human rights complaint service that all officers should be compelled to attend. The Committee considers that equality and diversity training and training on hate crime is fundamental to the work of police officers police staff and should be compulsory. That means that any officer who did not receive relevant training at Police College should attend training as soon as reasonable practicable. Thereafter, refresher training should be built in to the training package delivered over the course of a person’s career at suitable intervals. A defined training strategy with clear objectives can only be implemented effectively following a thorough training needs analysis. A thorough training needs analysis should be carried out and thereafter relevant training should be delivered to those officers who need it.

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<sup>213</sup> The Hydra System is a training method that monitors leadership and decision making within real-time incidents. Students are observed during the training exercise following which there is a plenary session. Students are expected to deal with sensitive human rights issues which they must resolve while explaining their rationale for their decisions.



Some training has been delivered to operational officers in partnership with relevant stakeholders. For example, in November 2013 the Northern Ireland Human Rights Commission (NIHRC) and other partners delivered presentations to Hate and Signal Crime Officers across Northern Ireland. In March 2014, the NIHRC and the PPS delivered presentations to approximately 60 response officers. Hate Crime Advocates covering rural stations were invited to attend those stations to provide training to local officers. They reported the success of the training and welcomed the opportunity to build relationships with local officers. However, Advocates emphasised the importance of officers meeting face to face with victims of hate crime to listen and understand the impact that racial abuse can have on a victim. It was suggested that low level incidents where a crime was not identified were sometimes dismissed with the significance of the abuse being missed by officers.

Such training, which is extremely valuable and delivered by experts in the field, contributes significantly to officers' understanding of the law and practice in responding to hate crime and should be continued. It is particularly important, for all of the reasons set out in this review, that the PSNI collectively understands hate crime and develops a culture of acceptance of the legitimacy of hate crime as a special category of offending. Training which is face to face and which permits questions and challenge is the only way to ensure improvement. E-learning is, quite simply, inadequate in that respect. While it may be a useful vehicle for providing pre-lesson technical knowledge it does not provide trainees with an opportunity to explore their own attitude to hate crime. Training delivered by external partners does provide that opportunity and is a perfect opportunity for those responding to hate crime to hear from others.

There are video presentations on all hate crimes which are developed with the assistance of external partners and input from victims of hate crime. Revised training has also been delivered to Call Management Centres and Station Enquiry Assistants.

Operational officers have received hate crime training within District. The Human Rights Advisor to the Policing Board observed a Hate Crime Training seminar within one District. It was delivered to approximately 30 police officers over a half hour

session and covered: status of new migrants; myths about migrants; contemporary academic theory on prejudice; the role of the police in protecting people; barriers to reporting hate crime; PSNI operational procedure including the risk assessment process; and the Hate Incident Practical Action Scheme (HIPA). While the training was delivered by committed knowledgeable trainers, the brevity of the session meant that there was limited time to go into detail about any element and no time for discussion or interaction. Given the complexities of hate crime and the continuing confusion over and rejection of the perception test by some officers more time needs to be devoted to training and those receiving it must be given the opportunity to ask questions. The European Commission against Racism and Intolerance (ECRI) has observed that training should include “training on cultural and religious pluralism and activities aimed at promoting interaction and respect among colleagues of different backgrounds. The training mentioned above should be as practical as possible, for instance through enacting situations and interaction with members of minority groups.”<sup>214</sup>

## **Recommendation 12**

**Face to face hate crime training should be developed with partners, which enables in-depth consideration of the many complex issues surrounding hate crime and permits exploration and debate.**

Of particular concern to the Committee is a reduction in non-operational training and management training over the past two years as a consequence of savings requirements and in year budget reductions. Following a review in 2015 the PSNI removed from its training programme all training that was not mandatory. The PSNI recognises that is not sustainable. HMIC found in its 2016 inspection of PSNI’s efficiency and effectiveness that “there is a risk that training development will not keep pace with the skills and knowledge required within the workforce to prepare officers and staff for the future”.<sup>215</sup> Training has also been identified in the Policing Board’s Human Rights Annual Report and in this thematic review of race hate crime as an area of concern. This is a serious shortcoming when read together with the

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<sup>214</sup> *General Policy Recommendation No. 11 on combating racism and racial discrimination in policing*, European Commission against Racism and Intolerance (ECRI), June 2007.

<sup>215</sup> *PEEL: Police Efficiency. An inspection of the PSNI 1 – 5 February 2016*, HMIC, August 2016, page 29.

assessment of HMIC of the PSNI's ability to identify vulnerability (as to which see above at page 85).<sup>216</sup> Training will be reviewed further in the coming months.

When the PSNI Service Procedure was revised it was implemented in advance of training, which was a missed opportunity and meant that officers felt ill-equipped to apply the new procedures. While training has now been delivered to officers within their Districts, it is certainly apparent throughout this thematic review that more work is required to equip officers and staff dealing with hate crime to identify the hate element of the crime, to accept the legitimacy of hate crime as a special category of offending, to understand the various legal powers and provisions relevant to hate crime and to understand the reason for the adoption of the perception test. Therefore, the Committee wishes to receive an analysis from the PSNI on the hate crime training delivered in Districts, to include an assessment of the effectiveness of the training.

### **Recommendation 13**

**The PSNI should review the hate crime training delivered in 2016 and assess the effectiveness of that training including whether the lessons were delivered to the right officers in sufficient detail. The PSNI should satisfy itself that the training has delivered the outcomes intended and thereafter report to the Performance Committee on its findings.**

### **Recommendation 14**

**Hate crime training should continue to include specifically cultural diversity training, but that aspect of the training should be refreshed with the assistance of external experts to address cultural sensitivities and should include racism awareness.**

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<sup>216</sup> *PEEL: Police Effectiveness (Vulnerability). An inspection of the PSNI 1 – 5 February 2016*, HMIC, August 2016.

## RECRUITMENT

The OSCE has made a number of recommendations on policing in multi-ethnic communities including on the role of recruitment and representation. It states "the composition of the police – at local, regional and national levels and including senior as well as junior ranks, and also civilian personnel – should reflect the diversity of the population. The public image of the police as an ethnically representative body needs to be actively promoted. Statistical targets should be set for increasing the representativeness of the police, and monitoring of the ethnic composition of the police should be introduced in order to measure progress. Initiatives to increase recruitment of underrepresented minorities will need to be introduced. These should include special measures to encourage applicants and to assist them to achieve the required standards, together with actions to remove any direct or indirect discriminatory barriers. Measures will also need to be introduced to ensure that police officers from a minority background are accepted and treated equally inside the police organization, which should provide a neutral working environment, and have equal opportunities for progression in their careers".<sup>217</sup>

The Policing Board has a statutory obligation to keep itself informed of the extent to which the membership of the police and police staff is representative of the community in Northern Ireland. It must assess the effectiveness of measures taken to secure that membership is representative.<sup>218</sup> Much of that oversight has focused on the percentage of Catholic and Protestant officers in PSNI. That is significant for a number of reasons but the community in Northern Ireland is defined by much more than religion. People from minority ethnic groups are a valuable and significant part of the community. They are tax-payers (or entitled to benefits), voters, law-abiders (and law-breakers), victims and witnesses and supporters or dissenters of the police service. They should not be seen as a group whose issues and challenges relate solely to their race but as fully participating members of society equally entitled to access all services in equal measure and with equal outcomes. As emphasised throughout this review, however, treating people equally may mean adopting special measures for minority groups to enable them to achieve equality. The PSNI strives to

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<sup>217</sup> *Recommendations on Policing in Multi-Ethnic Societies*, OSCE, February 2006.

<sup>218</sup> Sections 3(c)(v) and (d)(i) Police (Northern Ireland) Act 2000.

increase the number of officers from minority communities but has had limited success.

PSNI is an Equal Opportunities Employer. It maintains a focus on achieving compositional change within the organisation to ensure that the workforce is, at all grades and ranks, reflective of society. The PSNI Equality, Diversity and Good Relations Strategy 2012 – 2017 seeks to ensure that equality, diversity and good relations are mainstreamed into all PSNI practices and procedures. It contains performance indicators which measure whether PSNI is seen to be ‘fair’ in delivering policing to all sections of society by having appropriate employment and working practices; and whether PSNI is seen to have an engaged workforce reflective of the society it services at all grades, ranks, and in specialist posts/locations. The Strategy lists a number of associated objectives, for example, “to develop a recruitment outreach strategy which encourages applications from underrepresented backgrounds to the Service” and “to have a retention strategy, specifically focused on officers and staff from underrepresented backgrounds within the Service and within specialist posts/locations.”<sup>219</sup> The Policing Board monitors the implementation of this Strategy as does PSNI’s Strategic Diversity Steering Group.<sup>220</sup>

PSNI conducts equality monitoring of all nine section 75 categories<sup>221</sup> as an integral part of the recruitment process for police officers and staff. Additionally, in 2010, it initiated a project to increase the section 75 data held for existing employees. While legal protections exist to protect persons from discrimination on the grounds of race in the workplace, more than law is required. It is therefore important that PSNI makes it clear that it welcomes applications from all suitable qualified persons, regardless of their race. During this thematic review, a number of contributors observed that there were very few officers from a black or minority ethnic background in the PSNI. They emphasised the importance of seeing their police

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<sup>219</sup> *Equality, Diversity and Good Relations Strategy 2012-2017*, PSNI.

<sup>220</sup> PSNI’s Strategic Diversity Steering Group is chaired by the Deputy Chief Constable and has representatives from all the Departments and Districts at the senior level as well as Members of the Policing Board as observers.

<sup>221</sup> Section 75 of the Northern Ireland Act 1998 places a statutory obligation on public authorities in carrying out their various functions relating to Northern Ireland, to have due regard to the need to promote equality of opportunity between persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation; between men and women generally; between persons with a disability and persons without; and between persons with dependants and persons without.

service as reflective of, at least including, ‘people more like them.’ Not only would it demonstrate that the PSNI welcomes diversity but it would reassure them that the organisation has an internal source of advice and guidance on issues that may affect them.

The PSNI is actively considering how it may encourage people from diverse backgrounds to apply to join the service such as salaried work placements, apprenticeships and youth volunteer programmes but the Committee is not persuaded that there is a long term strategy or sufficient consistency in maintaining contacts with minority ethnic groups. To encourage applications, the PSNI needs to build trust and confidence in communities by tailoring and thereafter targeting its engagement with minority ethnic communities. Officers from minority ethnic groups meeting with communities also provide a visible demonstration of the PSNI’s commitment and should generate interest from those communities in policing as a career. Targeted engagement requires cultural sensitivity which itself depends upon cultural awareness; that starts at the beginning of a career at the Police College and should be maintained throughout a career. Better use could be made of police officers from minority ethnic groups and external stakeholders to advise the PSNI.

The European Commission against Racism and Intolerance (ECRI) has considered recruitment and suggests “Different types of measures can be taken in order to recruit members of minority groups into the police. These include positive measures such as: (i) to advertise and carry out other promotion work aimed at encouraging applications for jobs within the police from members of minority groups; (ii) to provide members of minority groups who do not possess the necessary skills to pass police exams with such skills, through preparatory courses; (iii) to identify and remove practices that directly or indirectly discriminate against members of minority groups (e.g. non-discrimination training of those responsible for recruitment, review of selection criteria, etc.); (iv) to set targets for recruitment of members of minority groups and monitor attainment of these targets.”<sup>222</sup> The ECRI recognises that measures that facilitate the recruitment of members of minority groups into the police should not consist of lowering professional standards.

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<sup>222</sup> *General Policy Recommendation No. 11 on combating racism and racial discrimination in policing*, European Commission against Racism and Intolerance (ECRI), June 2007.

It can be noted that the Race Relations (Northern Ireland) Order 1997 enables acts which would otherwise be unlawful to afford persons of a particular racial group access to facilities or services to meet the special needs of persons of that group in regard to their education, training or welfare, or any ancillary benefits.<sup>223</sup>

The 1997 Order also permits acts done to afford only persons of a particular racial group access to facilities for training which would “help to fit them for that work” or to encourage only persons of a particular racial group to take advantage of opportunities for doing that work, where it reasonably appears that at any time within the 12 months immediately preceding it there were no persons of that group among those doing that work in Northern Ireland or the proportion of persons of that group among those doing that work in Northern Ireland was small in comparison with the proportion of persons of that group among the population of Northern Ireland. Furthermore where, in relation to particular work, it reasonably appears that although the condition is not met for the whole of Northern Ireland it is met for an area within Northern Ireland, it is lawful to afford persons who are of the racial group in question, and who appear likely to take up that work in that area, access to facilities for training which would help to make them fit them for that work or to encourage persons of that group to take advantage of opportunities in the area for doing that work.<sup>224</sup>

In its Equality, Diversity and Good Relations Strategy 2012-2017 the PSNI commits to “continue to meet our legal obligations in relation to all other equality legislation and where opportune will exercise affirmative actions to address underrepresentation issues”.<sup>225</sup> Specific actions include “delivery of programmes to encourage greater applications from underrepresented groups whose first language is not English”.<sup>226</sup> While the commitment is clear, further work is required to make that a reality. Contributors to this thematic review referred to the application process itself presenting barriers such as language. The PSNI is actively considering how it can reach marginalised and underrepresented communities and will report to the Policing Board in due course. The PSNI should consider what training or preparation

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<sup>223</sup> Article 35 Race Relations (NI) Order 1997.

<sup>224</sup> Article 37 Race Relations (NI) Order 1997.

<sup>225</sup> *Equality, Diversity and Good Relations Strategy 2012-2017*, PSNI.

<sup>226</sup> *Ibid.*

might be offered to applicants to make them fit for the work, for example, language and competency training. Previously such training was provided but as a result of resource pressures the PSNI was unable to continue to provide it. The Committee wishes to encourage the PSNI to reintroduce such training.

Furthermore, it seems to the Committee that insufficient attention has been paid to developing internal mechanisms to support black and minority ethnic officers and staff, nor has there been sufficient consideration as to how to assist the staff association and Police Federation to understand and represent officers and staff from black and minority ethnic communities. That is despite the commitment made in the PSNI Equality Diversity and Good Relations Strategy 2012-2017 Implementation Plan. The PSNI should while developing its outreach strategy address both elements of recruitment: the attraction of applications; and the treatment of officers and staff once recruited.



## **CONCLUSION**

During the course of this thematic review the Committee realised that a range of measures, many of which are outside the remit or control of the police, are required to counter hate, intolerance and the offending behaviour that results from it. Those measures include legislation, awareness raising (including acknowledging and recognising without question the existence and impact of hate crime on victims and also on social cohesion), confrontation of racism and intolerance in public discourse, the successful social inclusion of minority groups, an increase in public trust in the police and criminal justice partners, improvements in the reporting, recording and investigation of hate crime, improvements in case file preparation, effective operational training for the police and other criminal justice partners and engagement which permits frank dialogue between and within communities.

Ultimately, suggestions and recommendations in this thematic review will only make an impact upon the prevention and detection of hate crime if they are implemented as part of an overall strategy involving the police, other criminal justice agencies and civil society. Hate crime is not caused by policing and will not be combated by policing alone. The police however are central to any proposed strategy and must do all that can be done to combat hate crime and remove the conditions in which it can flourish. Therefore despite occasional criticism in this review, the Committee wishes to recognise the efforts of police and support them to make the further improvement that is necessary. The Committee intends, with the PSNI, to redouble efforts to ensure that victims of hate crime are protected and receive the quality of service to which they are entitled. No victim should ever be deterred from reporting because he or she thinks it is not worth it.

**ALYSON KILPATRICK BL**  
**HUMAN RIGHTS ADVISOR TO THE POLICING BOARD**  
**FOR AND ON BEHALF OF THE PERFORMANCE COMMITTEE**

## **RECOMMENDATIONS**

### **Recommendation 1 (p28)**

**The PSNI should liaise with the Department of Justice to consider a ‘case flow through system’ mechanism for tracking hate crime prosecutions.**

### **Recommendation 2 (p77)**

**The PSNI should consider how it engages with the Northern Ireland Housing Executive to enable early intervention on behalf of victims of hate crime for whom the advice is to move from the home. Thereafter, the PSNI should report to the Performance Committee within 6 months of the publication of this thematic review.**

### **Recommendation 3 (p80)**

**The PSNI should forthwith review the understanding of officers with regard to the perception test for hate incidents and crimes. Thereafter, the PSNI should take all necessary steps to ensure that officers accept without question the perception of the victim or any other relevant person that the incident or crime was aggravated by hostility.**

### **Recommendation 4 (p83)**

**The PSNI should include within Service Procedure 01/16 an obligation on relevant officers to contact victims of hate crime regularly and in any event on the happening of prescribed events so as to ensure compliance with the EU Victims’ Directive and Northern Ireland Victim Charter.**

### **Recommendation 5 (p86)**

**While addressing the technology gap identified by HMIC in the data capture of risk assessment forms for domestic abuse the PSNI should include risk assessment forms for hate crime.**

### **Recommendation 6 (p92)**

**As part of the Working Together project the PSNI should include the recording and flagging of hate crime on case files.**

#### **Recommendation 7 (p101)**

**In PSNI Service Procedure 01/16 and thereafter in all training delivered on hate crime, the range of special measures available for vulnerable and intimidated victims of and witnesses to hate crime should be explained. The importance of the early identification of appropriate measures, which should be communicated to the PPS at the earliest opportunity, should be emphasised.**

#### **Recommendation 8 (p103)**

**As soon as practically possible the PSNI should ensure that officers receive training in the use of Community Resolution for hate crimes.**

#### **Recommendation 9 (105)**

**The PSNI should analyse hate incidents and crimes recorded over the period 1 April 2016 to 31 March 2017 to identify any trends and patterns emerging of perpetrators and thereafter consider whether its strategy of communication and prevention is sufficiently targeted.**

#### **Recommendation 10 (p117)**

**The PSNI should explore with partners how to better engage with victims and potential victims of hate crime so that they are better informed of the services they are entitled to receive from the police and other agencies. The Policing Board can facilitate those discussions but in any event the PSNI should report to the Performance Committee within 12 months of the publication of this thematic review on the outcome of those discussions.**

#### **Recommendation 11 (p125)**

**The PSNI should develop and maintain a problem profile for hate crime across Northern Ireland which should be reviewed and monitored within local areas by local commanders. That problem profile should include key dates and events which may indicate the potential for signal incidents and should be developed in partnership with local communities,**

**Recommendation 12 (p131)**

**Face to face hate crime training should be developed with partners, which enables in-depth consideration of the many complex issues surrounding hate crime and permits exploration and debate.**

**Recommendation 13 (p132)**

**The PSNI should review the hate crime training delivered in 2016 and assess the effectiveness of that training including whether the lessons were delivered to the right officers in sufficient detail. The PSNI should satisfy itself that the training has delivered the outcomes intended and thereafter report to the Performance Committee on its findings.**

**Recommendation 14 (p132)**

**Hate crime training should continue to include specifically cultural diversity training, but that aspect of the training should be refreshed with the assistance of external experts to address cultural sensitivities and should include racism awareness.**

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## Document Title

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Thematic Review of Policing Race Hate Crime

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