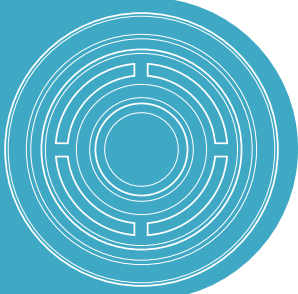


HATE CRIME

AN INSPECTION OF THE CRIMINAL
JUSTICE SYSTEM'S RESPONSE TO
HATE CRIME IN NORTHERN IRELAND

December 2017





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Laid before the Northern Ireland Assembly under Section 49(2) of the Justice (Northern Ireland) Act 2002 (as amended by paragraph 7(2) of Schedule 13 to The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010) by the Department of Justice.

December 2017





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List of abbreviations

ACC	Assistant Chief Constable
CJI	Criminal Justice Inspection Northern Ireland
CJS	Criminal Justice System
DoJ	Department of Justice
HCDG	Hate Crime Delivery Group
HO CR	Home Office Counting Rules
HSCO	Hate and Signal Crime Officer
ICOS	Integrated Court Operating System
LGB&T	Lesbian, Gay, Bisexual and Transgender
NCRS	National Crime Recording Standard
NGO	Non-Governmental Organisation
NICTS	Northern Ireland Courts and Tribunals Service
NIPB	Northern Ireland Policing Board
NIPS	Northern Ireland Prison Service
NPT	Neighbourhood Policing Teams
NSIR	National Standard for Incident Recording
PBNI	Probation Board for Northern Ireland
PPS	Public Prosecution Service for Northern Ireland
PSNI	Police Service of Northern Ireland
RoI	Republic of Ireland
T: BUC	Together: Building United Communities
UK	United Kingdom
VRAM	Vulnerability Risk Assessment Matrix
YJA	Youth Justice Agency



Chief Inspector's Foreword

At particular times in our history we have struggled to deal with difference and our troubled past has left a legacy of hurt, intolerance and mistrust which some still wrestle with. Our society is changing and we, our children and grandchildren are exposed through education and lived experiences to a world that demands greater tolerance, equality and justice. Throughout Northern Ireland we can see the contribution and benefits that migration has brought, to every facet of life: not just to our healthcare, education, agriculture, factory production, or hospitality industry.

We must never underestimate the moral responsibility that our political leadership has in articulating the vision of a Northern Ireland that celebrates and protects diversity and embraces the richness that difference can bring to our lives. Leaders must always speak in unambiguous and unequivocal terms, in supporting through actions those who are marginalised or threatened both in their homes and in public space. But words alone are not enough if they are not accompanied by clear actions that demonstrate and reinforce our societal vision.

The law is intended as a deterrent and through its application, the ultimate protection that the state can provide. Yet the recurring message

from the majority of victims of hate crime is that they simply want the intolerance to stop and perpetrators to understand the consequences of their actions and behaviours.

This report concludes that the level of hate crimes occurring in Northern Ireland remains stubbornly high, despite the progress that has been made by the criminal justice agencies. And when under reporting is considered alongside those incidents which fall below the threshold for prosecution, the situation becomes more glaring.

The lack of a consistent approach by first responders who engage with victims is also unacceptable to victims and should be addressed. I accept that this is very much work



in progress which would be aided by a review of existing legislation and the consideration of statutory offences similar to those already existing in England and Wales.

We have made a small number of strategic and operational recommendations to support the work of the criminal justice agencies and to provide effective cross-departmental governance in tackling the underlying enabling factors of hate crime. This issue demands a Whole of Government approach and should be a priority for any future Executive if this scourge is to be eliminated from our society.

This inspection was conducted by William Priestley and Stevie Wilson with considerable support from our intern from Ulster University Ka Ka Tsang. My sincere thanks to all who have contributed to their work.

Brendan McGuigan
Chief Inspector of Criminal Justice
in Northern Ireland

December 2017

Criminal Justice Inspection
Northern Ireland
a better justice system for all





Executive summary

Introduction

In Northern Ireland during 2016, there were over eight hate incidents reported to the police every single day. These equated to almost six (5.94) recorded¹ hate crimes. When population is considered, this figure is higher than the equivalent rate in England and Wales (5.47)². Hate incidents are greatly underreported so the true rate of incidents perpetrated against people because they are perceived to be different in some way is much higher.

Turning attitudes into behaviour, such as violence, based on skin colour, sexual identity, age, religion, nationality and other features used to label people is plainly wrong but not uncommon. This report looked into how hate crime in Northern Ireland was dealt with across the justice system. The statistics used to illustrate the report were those outlining hate crime reported during the 2015-16 financial year.

Findings

The prevalence and impacts of hate crime cannot be dealt with by the criminal justice system in isolation. Organisations within the system had worked together to align approaches and apply standard definitions in an effort to ensure a

seamless service to victims. The *Unite against Hate* project and the Hate Crime Delivery Group (HCDG) had been instrumental in sharing practices across and beyond the criminal justice system itself. Organisations should ensure their continued support of these groups by committing staff at the appropriate level to attend group meetings.

The Department of Justice (DoJ) approach to hate crime was contained within its Community Safety Strategy but there were no effective links to an overarching Northern Ireland Executive policy, such as 'Together: Building United Communities' (T:BUC) which would provide leadership at the highest level of government.

The legislative approach to hate crime was not directly comparable across the United Kingdom (UK). A review of hate crime legislation in Northern Ireland would establish whether changes are required. England and Wales had statutory hate crimes of assault and damage, enhanced sentencing powers and relevant public order offences. In Scotland, there was a statutory obligation for hate crime cases to be opened and recorded as such in court. Most reports of hate crime forwarded by the Police Service of Northern Ireland (PSNI) for prosecution decisions

1 Trends in Hate Motivated Incidents and Crimes recorded by the Police in Northern Ireland 2004-05 to 2015-16 Annual Bulletin published by the Police Service of Northern Ireland, 24 November 2016 available at <https://www.psni.police.uk/globalassets/inside-the-psni/our-statistics/hate-motivation-statistics/hate-motivated-incidents-and-crimes-in-northern-ireland-2004-05-to-2015-16.pdf>

2 Hate Crime England and Wales 2015 to 2016, Home Office Statistical Bulletin 11/16, published 13 October 2016 available at <https://www.gov.uk/government/statistics/hate-crime-england-and-wales-2015-to-2016>



were in the 'aggravated by hostility' category with only a small number of the statutory public order hate crimes reported.

Most criminal justice organisations had developed hate crime strategies, supported by internal governance arrangements. However, the Northern Ireland Prison Service (NIPS) and Youth Justice Agency (YJA) did not have hate crime specific strategies.

Underreporting was acknowledged by the criminal justice organisations. Systems and process improvements by the police and prosecution service, outreach work and the support of hate crime advocates meant that knowledge among vulnerable communities of how and what to report had increased. However, not all potential victims engaged with support networks and victims spoken to by Inspectors identified many incidents which went unreported. This distorted the true picture of hate incidents and potentially impacted the effectiveness of police responses.

Interpreter services were readily available and there was no suggestion that the standard of interpreters was an issue. However, investigation of hate crime required precise legal and technical language. No specific work had been undertaken with interpreter services to enhance skills specific to translating for hate crime, which added to the already high number of substantial barriers facing victims.

The quality of hate crime files forwarded by the PSNI to the Public Prosecution Service for Northern Ireland (PPS) had been recognised as an area for improvement but enhanced measures to tackle this had not been operating long enough to assess their effectiveness at the time of inspection.

Court recording of instances of enhanced sentencing had improved. However, there remained a risk that in busy Magistrates' and Youth Courts, the recording of enhanced sentences would be missed. The number of perpetrators receiving prison sentences was low.

Support for victims of hate crime, following court cases rested mainly with the voluntary and community sector. Expansion of the hate crime advocacy service to include supporting victims at this stage would provide a more holistic service which may help improve future reporting rates.

The NIPS used a generalist approach, supported by its anti-bullying policy, to deal with incidents of hate crime. This made it difficult to determine the extent of hate crime being perpetrated within the prison environment. The Probation Board for Northern Ireland (PBNI) had established a programme, *Accepting Differences*, following a pilot scheme. Numbers undertaking the programme were low, but Inspectors regarded the development as a positive one, challenging offenders' stereotypical attitudes and behaviour.

Victims' views on how offenders were dealt with were generally based on their wish for the offending behaviour to be stopped. Victims were focused on the prevention of further instances of hate crime and favoured restorative approaches, such as education on the benefits of cultural and other differences. Inspectors believe that this will only be achieved when a hate crime strategy, becomes an integral part of an overall Northern Ireland Executive social cohesion strategy, robustly led and monitored using outcome based accountability measures.



Recommendations

Strategic recommendations

1

The Department of Justice (DoJ) should as soon as possible conduct a review of the existing legislative response to hate crime to provide clarity. Any review should include consideration of the statutory aggravated offences model that already exists in England and Wales (paragraph 2.7).

2

The Northern Ireland Prison Service (NIPS) should immediately develop and implement a hate crime strategy (paragraph 2.35).

3

To provide effective cross-departmental governance in tackling the underlying, enabling factors of hate crime the DoJ should, as soon as possible, directly link its Hate Crime Strategy contained in the Community Safety Strategy to Together: Building United Communities (T:BUC) or any future Northern Ireland Executive Cohesion, Sharing and Integration policy or its equivalent. Outcome based accountability measures with which to monitor the effectiveness of these strategies should be developed, consulted on and agreed.

Operational recommendations

1

Criminal justice organisations should include in their forward planning continued and consistent involvement in the Hate Crime Delivery Group (HCDG) by having contingency arrangements in place to deal with staff turnover, and vesting hate crime responsibilities in roles rather than relying on the personal commitment of some highly motivated staff (paragraph 2.16).

2

The Police Service of Northern Ireland (PSNI) should use hate crime specific scenarios when training officers on interviewing victims and witnesses to improve their understanding of the barriers faced and how these may be overcome in pursuit of achieving best evidence (paragraph 3.24).



Recommendations

3

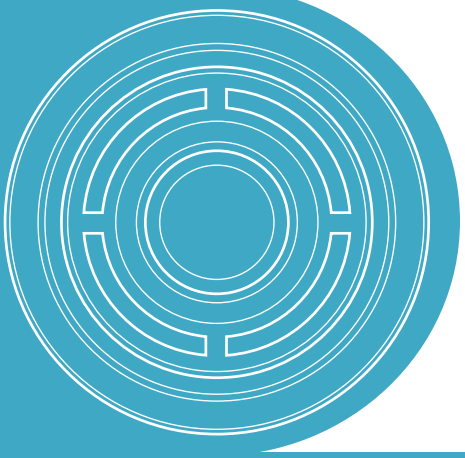
The PSNI and the PPS should continue to closely monitor hate crime file quality and work together to ensure that where evidence from victims and witnesses is available, it is collected and presented effectively (paragraph 3.31).

4

The NIPS should immediately develop policy specific to hate crime, including every aspect of prison life such as resettlement, and should implement, monitor and report on its effectiveness (paragraph 4.2).

5

The PPS should include within its published figures on hate crime, an analysis of the hate crimes reported to it by the PSNI by way of offence classification with regard to decisions issued, reasons for no prosecution and court outcome (paragraph 4.8).



Inspection Report



Introduction

- 1.1 This is the second full inspection of hate crime in Northern Ireland. Criminal Justice Inspection Northern Ireland (CJI) published the first full inspection in 2007 with a subsequent follow-up review in 2010.
- 1.2 Hate crime is not specifically defined in legal terms either in international or domestic law. However, judged by statistical data and media reports, it is axiomatic that crime involving hatred towards people judged to be different is a daily feature of Northern Ireland society. It is equally clear that incidents not amounting to criminal acts, such as insulting and disrespectful language, name calling and stereotyping, based upon perceived differences, is a significant issue for Northern Ireland society. Sectarianism has long been present in Northern Ireland society and is just one of the categories of hate crime officially recognised by the PSNI.
- 1.3 The criminal justice system itself does not recognise or categorise hate crime consistently. In law, four separate hate crime categories are recognised whilst in practice, the PSNI recognise and record six categories³. The criminal justice system (CJS) responses must be positioned to meet the challenges arising from criminal acts and their underlying, enabling behaviour.

Aims of the inspection

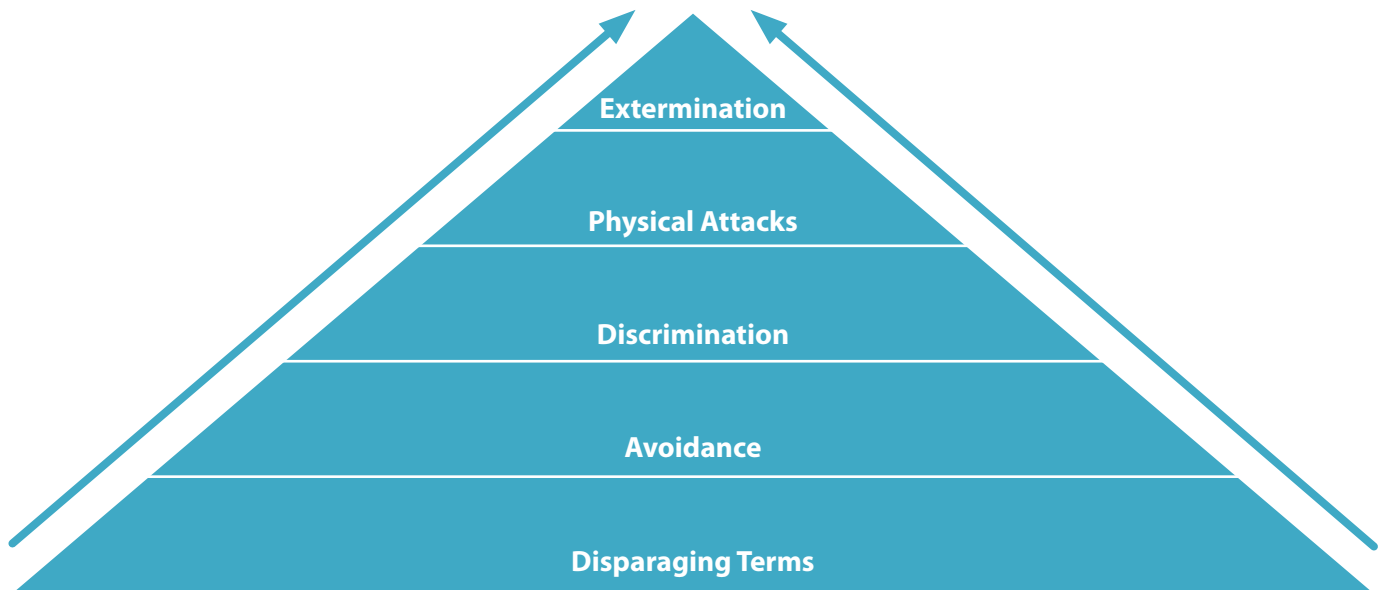
- 1.4 This inspection aimed to:
 - assess current policy, practice and procedures surrounding hate crime across the CJS;
 - examine partnership approaches to tackling hate crime;
 - evaluate and attempt to understand the motivations for hate crime in Northern Ireland;
 - where appropriate, provide comparative analysis;
 - examine the context of outcomes, with particular emphasis on the impact of current CJS practices on victims; and
 - ascertain opportunities to improve practices and support integrated approaches.

³ Legislation provides for enhanced sentencing under the characteristics of race, religion, sexual orientation and disability. The PSNI record and monitor six categories which are: racist; sectarian; faith/religious; homophobic; disability and gender identity. Please see paragraphs 2.4 and 2.5 for further details.

- 1.5 There was a wide ranging stakeholder consultation phase followed by inspection of the relevant justice sector agencies. Where possible, representative or umbrella groups were consulted. Additional stakeholders and interested parties identified during initial discussions were added as the inspection progressed. A full list of organisations consulted is set out in Appendix 2. The inspection was undertaken at the same time as a report into how the PSNI handle racial hate crime was being researched by the Northern Ireland Policing Board (NIPB). Inspectors liaised with the NIPB Human Rights Advisor who had been commissioned to report to the Board on these matters. This ensured that repetitive research together with potential increased burden on police resources was avoided. To that end some joint interviews of police officers were conducted by Inspectors and the NIPB Human Rights Advisor. The focus of the CJI inspection was on all categories of hate crime, across the criminal justice system, taking into account the work on racial hate crime being undertaken specifically with the PSNI.
- 1.6 The inspection is based on the CJI Inspection Framework, as outlined below, for each inspection that it conducts. The three main elements of the inspection framework are:
- strategy and governance;
 - delivery; and
 - outcomes.
- 1.7 CJI constants throughout each inspection are equality and fairness, together with standards and best practice. The full terms of reference for the inspection are set out in Appendix 1.
- 1.8 A draft inspection report was maintained with regard to updated figures in the period when the Northern Ireland Assembly was dissolved. CJI is required by legislation to forward its reports to the Minister/Department of Justice (DoJ) seeking permission to publish and to lay its reports before the Northern Ireland Assembly.
- 1.9 Hate based upon differences such as skin colour, sexual identity and preference, age, religion, nationality and other features used to label people, has been the subject of much academic research. It is well recognised that there is a progression of prejudicial behaviours exhibited by the dominant population towards minorities. This is illustrated in the Allport scale of prejudice as it is manifest in society⁴. The Allport scale is a useful model to illustrate and explain the underlying, enabling factors of hate crime across wider society.

4 Gordon W. Allport (1954): *The Nature of Prejudice*; Perseus Publishing, New York.

Figure 1: Allport's scale of prejudice



- 1.10 The model illustrates behaviours from the lowest level and most often occurring to those less prevalent and highest impact at the top of the pyramid. The most prevalent and lowest level behaviours are those which do not necessarily amount to criminal acts, such as the use of insults (disparaging terms), name calling and stereotyping certain groups. For example, some of the terms encountered by Roma people in Belfast and elsewhere in Northern Ireland fit squarely into this category. Inspectors were told of daily bouts of insults and name calling experienced by people who looked different or who acted differently from the 'in group' majority white population.
- 1.11 Many of the people spoken to by Inspectors during inspection fieldwork who identified with certain minority groups said that they had experienced the use of disparaging terms, hate speech, and inappropriate 'jokes', perpetrated by people who they perceived to be in the majority group. These incidents took place in cyber space, on social media as well as during physical encounters in a myriad of places including at work, while at university⁵ and on public transport. For example, people on the receiving end of such comments included those identifying as Gay, Lesbian or Bisexual, Transgender, Black, Muslim, Protestant, Catholic, Jewish, Traveller or Migrant worker. This behaviour generally fell below recordable crime, but other legislation such as harassment may have been applicable, in some circumstances. Victims told Inspectors that such reported incidents often resulted in no action being taken.

⁵ Michael, Lucy (2014) *Hate Crimes against Students: Recent Developments in Research, Policy and Practice*. In: *Responding to Hate Crime: The case for connecting policy and research*. (Eds: Chakraborti, Neil and Garland, Jon), Policy Press, Bristol, pp. 155-168.

- 1.12 Criticism of some terminology used to disparage members of minority groups in Northern Ireland had often been defended by the users themselves or in media reports as an exaggeration of 'political correctness'; or excused as spoken in jest, or not meant to be serious. There was also the existence of the 'sticks and stones' mentality as applied to name calling. There had been several recently reported examples of this approach to excusing name calling against minority people in Northern Ireland. However, whatever the intention, using disparaging terms when speaking about people who are members of minority groups can harm self-esteem, embolden others to take a similar stance towards minority groups and lead to disenfranchisement with society in general and with public authorities in particular. The emboldenment of people perceived to be in the majority group had been evident following the result of the UK-wide referendum on European Union membership with reported incidences of hate crime in England and Wales increasing in the weeks and months following it⁶. At the time of drafting this report there was no recorded evidence of a similar increase in Northern Ireland but members of minority groups were clear in speaking to Inspectors that they had experienced an increase in incidents and a rise in their anxiety levels in being identified as 'outsiders' and being subject to daily insults.
- 1.13 There was a popular assumption that people from minority communities were less likely to report crime because of their perceived negative experiences of police and other authorities in their country of origin. Many recent academic studies contested this. However, members of minority groups who feel disempowered are less likely to rely upon the authorities to help solve crime perpetrated against them or their properties, thereby impacting on the rates of reporting of hate crime⁷. Disempowerment may be the outcome of many factors, including difficulties accessing services, limited or negative exposure to authorities, continual exposure to name calling personally or vicariously through media reported articles, and direct and indirect discrimination. Rates of reporting were found to be a major issue and will be dealt with in depth in Chapter 3 but it is widely known that underreporting of hate crime is a major problem in other jurisdictions. For example, five out of six people subjected to racist hate crime in the Republic of Ireland (RoI) did not report it to An Garda Síochána⁸.
- 1.14 Inspection fieldwork found numerous instances of all but one (extermination) of the categories of prejudice described by Allport in examples provided by people who identified as part of minority groups from across Northern Ireland. It is not inevitable that there is progression up the Allport scale. However, many studies have evidenced such advancement across different societies.
- 1.15 The second stage described by the scale is 'avoidance'. This is often less overt than the 'name calling' category but the impact can be more damaging, hence its position higher up the scale. The term includes shunning people perceived to be different, boycotting their businesses, ignoring their difficulties in accessing essential services, such as medical and educational, and physically avoiding contact with them.

6 Hate Crime, England and Wales 2015-16 Statistical Bulletin 11/16 October 2016 available at

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/559319/hate-crime-1516-hosb1116.pdf

7 Davis, R.C. and Henderson, N.J. (2003) Willingness to Report Crimes: The Role of Ethnic Group Membership and Community Efficacy. *Crime and Delinquency* 49(4)

8 iReport.ie Racist Incident Reporting System <https://www.ireport.ie/>

- 1.16 Avoidance based upon xenophobia or prejudice against minority groups can lead to social exclusion and business failure. Members of minority groups spoken with during inspection fieldwork identified many instances of avoidance, being shunned and ignored when attempting to access services.
- 1.17 More damaging again is the 'discrimination' category. At this stage prejudices are given more overt effect, resulting in either direct or indirect discrimination. In either case this can have the effect of denying employment opportunities or the provision of goods and services to people based upon their membership or perceived membership of a minority group. Discrimination harms people by preventing them from achieving goals and getting equal access to education, jobs or services.
- 1.18 A common misconception amongst service deliverers interviewed during the inspection was that treating everyone in the same way protected against accusations of discrimination. There was much less appreciation that in order to ensure equal access to services organisations sometimes needed to actively treat some people differently. There was little understanding amongst service deliverers of indirect discrimination in its various forms and how to avoid subjecting people to this treatment.
- 1.19 Discrimination may also result in subtle aggression which assumes a hierarchy of power with the majority group at the top. Members of the majority group assume a reduced level of intelligence amongst people from minority groups based upon characteristics such as age, gender or race. This manifested itself during the inspection with regular reports to Inspectors of service deliverers being condescending towards members of minority groups. This situation should be no surprise when the same behaviour is commonplace amongst the society from which members of service organisations are drawn as was outlined to Inspectors by many people from minority groups during inspection fieldwork.
- 1.20 Moving higher up the scale is the category of 'physical attacks'. This is the category under which most 'hate crime' sits. These incidents include damaging peoples' property or physical assaults of various degrees, all the way up to homicide. Hate crime in Northern Ireland is not legislated for as a separate, specific offence except in public order legislation. Rather, it is dealt with as an additional factor in existing laws such as criminal damage and assault occasioning actual bodily harm although it can be applied to any criminal offence. The additional factor, 'aggravated by hostility' can be met through evidence of motivation or demonstration and can result in enhanced sentencing.
- 1.21 The top category of Allport's scale is 'extermination'. This does not refer to a single homicide but to a concerted effort to remove an entire group based upon their membership or perceived membership of a certain group. Ethnic cleansing or genocide comes under this category.
- 1.22 The scale illustrates linkages from the lowest category, highest incidence, manifestation of prejudice to the highest. Thankfully, extermination of groups of people based on their membership of a defined group is not commonplace, though it has recently occurred in Bosnia and Herzegovina, Rwanda and more recently in Syria and Iraq. Research indicates that to reach

a higher position on the scale, justified by the stereotyping of minorities, requires a groundswell of behaviours (name calling, avoidance, discrimination, physical attacks) perpetrated by members of the majority. It follows that to reach a position where hate crime is commonplace in society requires an enabling, underlying environment of name calling, avoidance and discrimination.

- 1.23 That hate crime is commonplace in Northern Ireland is borne out by the prevalence of media reports of attacks on people motivated by sectarianism, race hate, religious affiliations, disability, homophobia or the other recognised categories as well as against people categorised by age, older and younger people, who are not recognised amongst the official hate crime categories.
- 1.24 The experience of all minority groups who contributed to this inspection bears out the scale of the problem in Northern Ireland. People in each group provided many examples of each of the 'lesser' categories of the manifestation of prejudice, some, such as name calling, happening on a daily basis. Much of this went unreported and this was a major factor raised by the overwhelming majority of people whom Inspectors spoke with as part of inspection fieldwork. There was little awareness of the possible application of 'Harassment' legislation to deal with these repeat incidents amongst victims, support groups or police officers who spoke with Inspectors during fieldwork. The fact that most of the incidents went unreported by victims meant that opportunities to utilise harassment legislation were few, an example of one of the impacts of under reporting of hate incidents.
- 1.25 In many instances name calling was reported to Inspectors as being seen as actively encouraged in Northern Ireland society within a narrative that trivialised the use of respectful language as pandering to the 'political correctness' agenda. Victims of these name calling incidents told Inspectors that they often did not report them to the police for various reasons, including difficulty in accessing the system, knowledge that the incidents did not amount to a crime, and disenfranchisement.
- 1.26 Inspectors were told of attempts to report such incidents to other authority figures, including the Housing Executive, during visits to health centres or GP surgeries. A range of responses were described, including advice to report to the police or that nothing could be done until a physical assault had occurred, and dismissal as being something that was trivial. None described instances where easily understood material or information was provided, at these third party locations, which would at least provide access to means of reporting such incidents. Therefore, the groundswell of underlying prejudicial and discriminatory activity went relatively unchallenged by the justice system and by society in general.
- 1.27 The effects of underreporting and the experiences of the many members of minority groups who contributed to this inspection are detailed in Chapter 3. However, the lack of information available to people who experience high volumes of disparaging behaviour at the hands of others who perceive themselves to be in the majority illustrates in some measure the need for a holistic, society-wide approach. The approach to dealing with hate crime requires to be drawn together by an overarching Northern Ireland Executive policy which integrates criminal justice, health and social services and education strategies. This issue is further commented upon in Chapter 2.



Strategy and governance

Legislation

2.1 The legislative position regarding hate crime is complex and not directly comparable with similar jurisdictions in the rest of the UK, the RoI or further afield in the rest of Europe. Northern Ireland legislation which may be used to deal with crimes involving hate against recognised categories of persons include:

Overarching legislation:

- Northern Ireland Act 1998 section 75; and
- Human Rights Act 1998.

Specific statutory hate crime:

- Public Order (Northern Ireland) Order 1987 part III; (stirring up hatred or arousing fear - religious belief, sexual orientation, disability, colour, race, nationality (including citizenship) or ethnic or national origins).

Enhanced sentencing powers:

- Criminal Justice (No. 2) (Northern Ireland) Order 2004; (aggravated by hostility – race, religious belief, sexual orientation, disability).

General legislation applicable in certain circumstances:

- Protection from Harassment (Northern Ireland) Order 1997; (course of conduct) and
- Race Relations (Northern Ireland) Order 1997; (racial discrimination).

Amendments and definitions:

- Anti-Terrorism, Crime and Security Act 2001.

2.2 There is some common ground in how hate crime is dealt with in legislation across most European jurisdictions. For example, recognition of hate crime in statute as a distinct crime is not commonplace; it is more often appended to existing crimes as an additional factor for sentencing considerations or in aggravated format. It follows that under these circumstances any definitions of 'hate crime' do not have a statutory basis.

- 2.3 In England and Wales, certain offences, in aggravated circumstances, were created as substantive offences by the Crime and Disorder Act 1998: for example, racially or religiously aggravated assaults and criminal damage. These offences are in addition to provisions contained within the Criminal Justice Act 2003 which provide for enhanced sentencing for any of the five protected characteristics (disability, transgender identity, race, religion and sexual orientation)⁹. The Public Order Act 1986 offences of 'conduct that is intended or likely to stir up hatred' on grounds of race, religion and sexual orientation provide a third tier of offences which can be regarded as falling within the 'hate crime' arena.
- 2.4 The legislative situation in Northern Ireland is similar to that in England and Wales except that the provisions of the Crime and Disorder Act 1998 do not apply. Therefore, racially or religiously aggravated assaults and criminal damage do not exist as substantive offences in Northern Ireland. Enhanced sentencing is provided for under the Criminal Justice (No. 2) (Northern Ireland) Order 2004 for offences that are perpetrated based on hostility against only four characteristics; (race, religion, sexual orientation, and disability). The Public Order (Northern Ireland) Order 1987 provided for offences of stirring up hatred based on the same four categories. Enhanced sentencing did not mean an increase in the maximum sentence which can be handed down by law. It enabled the aggravated nature of any offence, and consequently, its seriousness, to be reflected in the sentence imposed within the existing legislation and sentencing guidelines. This approach relied upon the case being opened in court as being of an aggravated nature and for the sentencing judge to state that the offence was aggravated. These stipulations had not always been achieved¹⁰.
- 2.5 To enhance delivery of policing to the community the PSNI record and monitor six categories of incidents and crimes motivated by hate. They are:
- racist;
 - sectarian;
 - faith/religious (non-sectarian);
 - homophobic;
 - disability; and
 - gender identity (transphobic hate crime).¹¹

Current legislation that provides enhanced sentencing powers does not however recognise sectarian and transphobic motivated crimes.¹² This meant that where offences were recorded by the PSNI as having either of these aggravating factors the legislation which allowed for enhanced sentencing did not apply. In appropriate cases the police procedure was that sectarian motivated cases shown to have a faith/religious or other recognised category of motivation were recorded as such and the enhanced sentencing legislation may then be applicable.

9 College of Policing: Hate Crime Operational Guidance 2014, available at http://www.report-it.org.uk/files/hate_crime_operational_guidance.pdf

10 Racist Hate Crime: Human Rights and the Criminal Justice System in Northern Ireland; Northern Ireland Human Rights Commission (September 2013) available at http://www.nihrc.org/uploads/publications/103141_NIHRC_Racist_Hate_Crime_4_Combined_%282%29.pdf.

11 Perceived to be motivated by a hostility or prejudice against a person who is or who is perceived to be transgender, transsexual or transvestite.

12 Challenge Hate Crime: Deal with it, Report 1: Criminal Justice Responses to Hate Crime in Northern Ireland; Institute for Conflict Research: Neil Jarman (November 2012), available at <http://conflictresearch.org.uk/wp-content/uploads/NIACRO-Report-01-Complete-Low-Res.pdf>.

- 2.6 Legislation is dealt with further in the chapters on delivery and outcomes as to how it impacts on the reporting of hate crimes, their prosecution and any subsequent convictions. The legislative¹³ position in Northern Ireland appeared less convoluted than the three-tier approach in England and Wales. There was no requirement to include aggravation as part of the wording of the charge. Prosecutors were required to indicate to the court and defence that they considered the case to be aggravated by hostility. In the event that the aggravation was not proven, this did not automatically lead to dismissal of the substantive charge. The court was entitled to find that the offence itself (i.e. the substantive charge) occurred. In these circumstances, the court could not apply legislation to enhance sentences for offences deemed more serious by aggravated motivation.
- 2.7 In Scotland, when offences had been aggravated by hostility, the prosecution had a statutory responsibility to open them as such when they were brought before the court. The Scottish courts were obligated to record the offence in a way that showed it was aggravated. Neither of these obligations were present in Northern Ireland legislation.

Strategic Recommendation 1

The Department of Justice (DoJ) should as soon as possible conduct a review of the existing legislative response to hate crime to provide clarity. Any review should include consideration of the statutory aggravated offences model that already exists in England and Wales.

Co-ordination

- 2.8 The PSNI, in common with the PPS, endorsed by the Criminal Justice Board, defined hate crime as:

*'...any incident perceived to have been committed against any person or property on the grounds of a particular person's ethnicity, sexual orientation, gender identity, religion, political opinion or disability.'*¹⁴

This was the commonly used definition recommended by the Stephen Lawrence Inquiry.¹⁵ The application of this definition at the sharp end of the system, dealing with reporting, recording, investigating, assessing and prosecuting, is critical in defining how hate crimes progress to final disposal. The application of existing legislation during the trial stage sets the scene for later procedures implemented by the PBNI, the YJA, and the NIPS as appropriate.

13 The Criminal Justice (No. 2) (Northern Ireland) Order 2004.

14 Available at http://www.psni.police.uk/index/advice-and-legislation/advice_hate_crime.htm. Accessed 21 April 2015.

15 The Stephen Lawrence Inquiry; Report of an Inquiry by Sir William Macpherson of Cluny, February 1999, available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/277111/4262.pdf.

- 2.9 Previous CJl inspections on hate crime noted some progress in terms of partnership working and in policy and procedural development, but also highlighted areas of concern particularly with regard to coordination of effort and partnership working to provide a seamless service for victims.
- 2.10 The Northern Ireland Human Rights Commission have stated that in terms of practice surrounding race hate crime that:

*'...there is considerable room for improvement' and further that, '... taken collectively, the approach of the criminal justice agencies did not demonstrate the necessary partnership needed to ensure the outcomes required by the human rights framework..'*¹⁶

The research sponsored by the NIPB into how the PSNI tackle race hate crime examined this issue in detail. Inspectors' findings support the conclusions of that research with regard to the need for wider partnership, beyond the criminal justice agencies, in order to tackle all the elements of hate crime more effectively.

- 2.11 Coordination of the work carried out across the justice sector on hate crime rested on the implementation of parts of the DoJ Community Safety Strategy. The Strategy, attendant action plan and a Hate Crime Delivery Group (HCDG) were the mechanisms which the system relied on to provide an integrated, coordinated approach to tackling hate crime across the agencies. Tackling hate crime by supporting victims and communities and by prevention, awareness and education formed an element of building shared communities under the Community Safety Strategy. It was expected that the strategy would feed into a wider Northern Ireland Executive 'Cohesion, Sharing and Integration Policy'.
- 2.12 The *Together: Building a United Community Strategy*¹⁷ (T:BUC) outlined a vision of:

"... a united community, based on equality of opportunity, the desirability of good relations and reconciliation - one which is strengthened by its diversity, where cultural expression is celebrated and embraced and where everyone can live, learn, work and socialise together, free from prejudice, hate and intolerance."

The work of the *Unite Against Hate* campaign in coordinating the approach of organisations and stakeholders involved in combating hate crime had been re-launched and had contributed positively to better partnership work between criminal justice organisations and non-justice organisations. In pursuit of greater collaboration between agencies and to achieve better linkages of strategies such as T:BUC and the Community Safety Strategy this work needed to continue.

16 Racist Hate Crime, Northern Ireland Human Rights Commission, Belfast, September, 2013 available at http://www.nihrc.org/uploads/publications/103141_NIHRC_Racist_Hate_Crime_4_Combined_%282%29.pdf

17 Also known as T:BUC – this strategy was published by the Northern Ireland Executive in May 2013 and is available at <https://www.executiveoffice-ni.gov.uk/publications/together-building-united-community-strategy>

- 2.13 Recognition that the Community Safety Strategy should link to a Northern Ireland Executive policy acknowledged that elements of it, including hate crime, required more than a singular, criminal justice approach. The absence of a wider strategy within which to base approaches to race hate crime became apparent during the first tranche of fieldwork when the majority of stakeholders referred to the lack of a Northern Ireland Racial Equality Strategy. This, in many stakeholder's views, had caused some inertia and lack of urgency amongst service deliverers whilst sending a negative message to minority groups as to their worth.
- 2.14 Whilst criminal justice agencies rightly take the lead in dealing with hate crime, a more holistic approach will be required to deliver the societal change necessary to combat the underlying causes. The Allport scale used in Chapter 1 to help describe the factors involved in enabling hate crime recognises the underlying prejudice and discrimination across society. Linking the Hate Crime Strategy to T:BUC, or any future strategy overseen by the Northern Ireland Executive, will be essential if the underlying factors that enable these crimes are to be eradicated. Inspectors refer to this and other issues which underpin strategic recommendation 2 (see paragraph 4.18).
- 2.15 The HCDG comprised officials representing all the appropriate criminal justice agencies and key stakeholders that included Victim Support, the Housing Executive, Belfast City Council and occasionally other organisations. It was chaired by the DoJ and met roughly twice a year with minutes taken. The group monitored progress of the action plan and performance against the non-numerical targets to increase reporting of hate crime and providing support for victims. The NIPS attendance had been lower than other organisations.
- 2.16 It is important that the approach to hate crime is coordinated across and beyond the criminal justice system. The HCDG was an important forum in achieving this coordination, dealing with; tasks, projects, emerging issues and proposals. Outcomes were assessed at HCDG meetings and Inspectors regarded the group as a valuable contribution to governance and partnership. Loss of personnel in some of the participating organisations had impacted negatively on consistency of attendance. For example, the NIPS attendance had been more consistent prior to 2016 when it was ensured by a person dedicated to fulfil that role.

Operational Recommendation 1

Criminal justice organisations should include in their forward planning continued and consistent involvement in the Hate Crime Delivery Group (HCDG) by having contingency arrangements in place to deal with staff turnover, and vesting hate crime responsibilities in roles rather than relying on the personal commitment of some highly motivated staff.

Governance

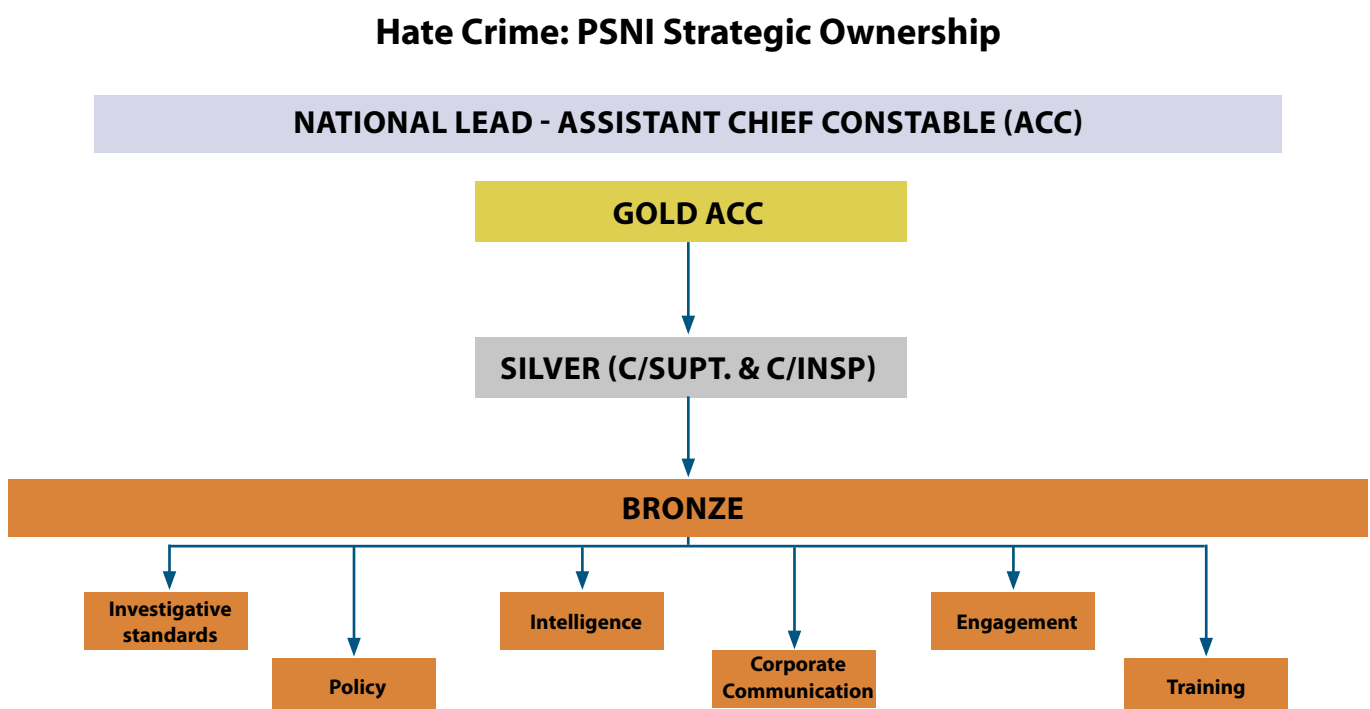
- 2.17 Most of the organisations represented at the HCDG had adopted their own internal governance arrangements to enable them to report activities and outcomes to the forum in a structured and cohesive way. In dealing with the impact of personnel changes this had been an effective approach for the PBNI and the PSNI.
- 2.18 The PBNI had established a number of internal groups to enhance service delivery to clients who had been identified as perpetrators of hate crime or who were assessed as displaying prejudicial or discriminatory traits. An internal hate crime delivery group had been formed in 2014 to develop an intervention to address hate motivated offending. The *Accepting Differences* programme was thus developed based on an existing programme in London but adjusting it for the Northern Ireland context where sectarian motivated hate crime remained the most prevalent. This programme is commented on further in Chapter 3.
- 2.19 The PBNI had also established a Hate Crime Practitioners Group which met twice yearly and included representatives from the YJA as well as the PBNI HCDG. The groups, at tactical and strategic levels, assessed progress of action plans, actions arising from the HCDG, and application of the PBNI hate crime policy. The hate crime lead from the PBNI was in receipt of information arising from all the internal groups before attending the HCDG. This internal governance arrangement ensured the integrity of information taken by the PBNI to present to the external forum.
- 2.20 The PBNI hate crime policy had been revised and implemented in April 2015. This was due for review in 2019. The policy was comprehensive and used recognised definitions, including the Criminal Justice Board approved definition of hate crime. The PBNI had also produced practice guidance on hate crime in support of staff training.
- 2.21 The approach of the PSNI was governed under the Northern Ireland Policing Plan 2014-17 which had set outcomes, measures and indicators specific to hate crime as detailed in Table 1 as well as stating an intention to improve service to, and encourage increased reporting by, vulnerable groups, including victims of hate crime.

Table 1: Northern Ireland Policing Plan 2014-17 references to hate crime

Outcome	Indicator	Measure
Reduced crime and Anti-social behaviour	Level of crime with particular emphasis on: <ul style="list-style-type: none"> Hate Crime 	<ul style="list-style-type: none"> An increase of 3% points in outcome rates for Sectarian Hate Crime. An increase of 5% points in outcome rates for Homophobic Hate Crime. An increase of 1% point in the outcome rate for Racist Hate Crime.

- 2.22 The PSNI had revised its Hate Crime service procedure in January 2016. This was done in conjunction with several structural changes aligning the governance of hate crime across the organisation with the established Gold, Silver and Bronze operational command structure. A PSNI Assistant Chief Constable (ACC) was the National lead for Hate Crime. Within the PSNI, centrally, the hate crime 'Gold' lead was an ACC, supported, at 'Silver' level, by a Chief Superintendent and Chief Inspector based in Belfast. At 'Bronze' level, lead officers for six functions had been appointed and locally each district had a hate crime champion. Figure 2 illustrates the governance structure in place at the time of fieldwork.

Figure 2: Hate Crime Governance in the PSNI



Fieldwork indicated that the governance structures had operated as intended, giving hate crime incidents status and a structure within which supervision could be exercised.

- 2.23 The revision of the Hate Crime service procedure was explained to Inspectors as being necessary for several reasons, including making it less bureaucratic for officers and service users, to qualify the perception of those reporting hate crimes as a third party, and to introduce levels of priority through a Vulnerability Risk Assessment Matrix (VRAM).
- 2.24 The revision impacted upon the Stephen Lawrence definition of a hate crime by applying a test to the perception of people who reported hate crimes, not as victims, but as third parties. The test excluded people whose perception of the crime being hate motivated was:

'not based upon 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'¹⁸.

The impact of the revision and the introduction of risk assessment are further examined in Chapter 3, but the approach broadly adhered to guidance issued by the College of Policing in England and Wales¹⁹.

- 2.25 The Hate Crime service procedure was disseminated by email supported by links to PoliceNet²⁰ and a supplementary DVD. However, the procedure was implemented before any relevant training was available. During fieldwork it became clear that in the early stages of implementation most officers spoken with had not assimilated the impact of the revisions. Only lead Hate and Signal Crime officers (HSCO) and District trainers had at that stage received any form of briefing. During later fieldwork and subsequent interviews with officers as part of separate inspection work, knowledge and understanding of the changes were more evident.
- 2.26 The correct implementation of police procedure sets the scene for the later handling of crimes by other criminal justice agencies and impacts upon community engagement and reporting rates. Gaps in knowledge and training related to the policing of hate crime risked inconsistent approaches potentially undermining victims' confidence, especially those who were unfamiliar with the criminal justice system and its processes. To facilitate a clear pathway into the criminal justice system and to enable victims to navigate it required officers who understood what hate crime was, its impact, and how the service had stated it would deal with it. Inspectors accept that communicating every procedural change across the service by way of formal training and briefing would be time consuming and expensive. If there are to be any future substantial changes to hate crime procedure a formal communication plan providing opportunities for police officers to clarify their understanding of it should be developed and implemented.
- 2.27 The PPS had adopted the Stephen Lawrence definition of hate crime as endorsed by the Criminal Justice Board. This meant that the interface between the PSNI and the PPS as regards recognition of what should constitute a hate crime should have been clear. However, the PPS operated within statutory legislation, which recognised only four categories of hate crime. The PSNI recorded six categories of hate crime and forwarded reports on that basis, for consideration of prosecution, to the PPS.

18 PSNI Service Procedure 01/2016

19 College of Policing (2014) Hate Crime; Operational Guidance available at http://www.reportit.org.uk/files/hate_crime_operational_guidance.pdf

20 PSNI intranet

- 2.28 The PPS had developed and implemented a Hate Crime policy. This document set out the various definitions of categories of hate crime and included sectarian hate crime within the religious category. The document was comprehensive and supported lawyers in their application of the prosecutors' code in these particular cases. The document was available on the PPS website but several community support groups told Inspectors that it was not easy to find. Inspectors themselves had found the policy by using the website search facility, not by clicking on clear links. This aspect of communication of the PPS hate crime policy could be improved.
- 2.29 Governance of hate crime within the PPS was achieved through an appointed lead officer, overseen by an Assistant Director. The lead officer had attended the HCDG which enabled current issues to be considered by the PPS when dealing with hate crime. The PPS is an important contributor to the HCDG, ensuring that issues emerging from reporting and recording through to final disposal are properly raised and understood by all stakeholders.
- 2.30 The NIPS relied on its Violence Reduction and Anti-bullying policy to deal with perceived hate incidents within prison establishments. Consequently there was little categorisation of hate incidents which tended to get lost in the generalist approach taken. Officers displayed an awareness of hate crime, and a pragmatic approach to those people serving enhanced sentences; such as being aware of expressed prejudices and discriminatory behaviour at prison reception. However, there was no specific approach, nor were there specific interventions aimed at rehabilitating perpetrators other than existing generalist ones, of which hate as a motivating factor may be one element.
- 2.31 The YJA assessment procedure enabled practitioners to highlight any issues of hate motivation for crimes committed by young people and interventions, such as youth conferences, could be tailored accordingly. For example, involving input from relevant minority support groups where appropriate.
- 2.32 The Northern Ireland Courts and Tribunals Service (NICTS) did not have a strategic function with regard to dealing with hate crime other than to ensure that the legislative provisions were applied and that people attending court were afforded the necessary support. PSNI minority liaison officers operated in all court districts and had established good links with organisations representing groups who had experienced hate crime.

- 2.33 Attrition of cases had been recognised by the Northern Ireland Courts and Tribunals Service (NICTS) as an issue and a revision of the Causeway²¹ hub and its interaction with the Integrated Court Operating System (ICOS) in 2011 had enabled the attachment of an indicator to the case which was then transferred onto the court order book. However, court clerks were dependent on prosecutors mentioning the hate element on opening the case, and on judges specifying whether any sentence had been enhanced. In busy courts, even when sentences had been enhanced, the NICTS recognised that there was still a risk that the outcome would not be recorded as such.

Conclusions

- 2.34 Those agencies with the most exposure to dealing with people who had suffered hate crime had established effective governance arrangements to ensure that reports were appropriately dealt with. In particular, the PBNI and PSNI systems were comprehensive, whilst the PPS policy had provided clarity for prosecutors. During fieldwork with the PSNI, it was evident to Inspectors that the revised arrangements had not been in operation for a sufficient period of time to judge whether they were operating as planned. Trend data will be essential to make that judgement and to further develop policy and strategy when any internal PSNI review takes place and if CJI return to conduct a follow-up inspection.
- 2.35 The NIPS had not developed a specific policy and strategy setting out organisational approaches to tackling hate crime. Given the fact that all the justice agencies attend the HCDG in pursuit of better partnership work in this area, Inspectors believe it would be beneficial if every participating organisation were to set out a specific hate crime strategy. This would further enhance the valuable contribution of the HCDG to the coordination work of agencies in combating hate crime.

Strategic Recommendation 2

The Northern Ireland Prison Service (NIPS) should immediately develop and implement a hate crime strategy.

- 2.36 The HCDG had set out an action plan based on the work of participating organisations. This included taking forward initiatives to improve reporting rates for hate incidents and providing additional support for victims through a Hate Crime Advocacy Service. Initiatives in England and Wales had been escalated to governmental level with the publication in 2016 of the *Action against Hate*²² plan. This included plans to introduce amended legislation to include transgender as a category of hate crime and to involve relevant departments such as education in dealing with the underlying factors.

21 Causeway is the shared IT system established to allow for the exchange of information between the various justice agencies including the PPS, the PSNI and the NICTS.

22 Action against Hate: The UK Government's Plan for tackling hate crime available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/543679/Action_Against_Hate_-_UK_Government_s_Plan_to_Tackle_Hate_Crime_2016.pdf

- 2.37 Inspectors believe that a similar level of governmental involvement at Northern Ireland Executive level is required to deal effectively with hate crime. A DoJ initiative in May 2016 highlighting disability hate crime had attracted cross-departmental support. However, to tackle the underlying enabling factors of hate crime will require initiatives that are led by Government, not just supported by it. In Northern Ireland there is no co-ordinated hate crime action plan similar to the *Action against Hate* plan in England and Wales. The first two strategic recommendations of this report, dealing with legislative reform and linking strategy to a wider, Northern Ireland Executive policy are aimed at involving wider government in issues that cannot be left to the criminal justice system on its own.



Delivery

Introduction

- 3.1 Delivery with regard to dealing with hate crimes starts with the police. The interface between victims of hate crimes, witnesses, perpetrators and police personnel is the determining factor in how the crimes and incidents are dealt with by the rest of the criminal justice system and beyond. Inspectors tracked reported hate crimes through police, prosecution service, probation and youth justice systems to obtain an overview of how cases progress, are reported, investigated, decided upon and finally disposed of. Inspectors also spoke with victims of hate crimes as well as one person convicted of a hate motivated crime. This enabled Inspectors to assimilate an overview of how systems were working as well as gaining insight into the experiences of victims and that of one perpetrator.

- 3.2 It is widely accepted that there was serious under-reporting of hate crime across the United Kingdom (UK). Inspection fieldwork verified this consistently in interviews with people who had experienced hate incidents and hate crimes but had not reported the events to the police. The incidents covered a wide spectrum of seriousness and contexts, including hate speech perpetrated on-line in social media forums as cyber enabled crime²³. Whilst this report was being conducted the London Mayor's Office and Metropolitan Police had recognised under-reporting of on-line hate crime as an issue²⁴. It had instigated an on-line hate crime hub aimed at improving the police response to internet abuse by gathering intelligence and testing new investigative methods. Under-reporting in Northern Ireland had resulted in continued suffering within communities. Some victims told Inspectors that they were isolated in their homes, often sitting in the dark to make it look as if they were not in, because of the physical, verbal and mental abuse inflicted by 'haters'. This experience was repeated by many people during interviews with Inspectors, part of a large number of hate motivated incidents shared by victims of hate.

23 Cyber Crime: An Inspection of how the Criminal Justice System deals with Cyber Crime in Northern Ireland, CJI, June 2017 available at www.cjini.org.

24 Home Office Police Innovation Fund further details available at <https://www.london.gov.uk/what-we-do/mayors-office-policing-and-crime-mopac/governance-and-decision-making/mopac-decisions-206>.

- 3.3 The issue of under-reporting was recognised by the National Police Chiefs Council which stated that:

"It is vital that we close the gap of under-reporting"

The Lawrence report, in recognising the impact of hate crimes and incidents on individuals and on the community recommended that:

*"Both must be reported, recorded and investigated with equal commitment."*²⁵

- 3.4 At no point within the Lawrence Inquiry report findings is the onus to 'report' placed solely on the shoulders of victims of hate crime. The Lawrence report acknowledged that perceptions of victims and others were crucial to ensure that victims and the community received the full protection of the law and the criminal justice system.
- 3.5 It was also confirmed by inspection fieldwork that victims faced a myriad of challenges when reporting incidents to the PSNI. Victims were often not aware of the legal interpretation of a hate crime/incident. For them, it was a simple matter of reporting what had happened in the anticipation that the police could prevent it happening again. Where the victim did not raise the issue of hate motivation, the perception test, *"by any other person,"* rested with others, such as witnesses, advocates and the PSNI. In the absence of others taking the responsibility to report their perception that the motivation was one of 'hate,' there is potential for continued underreporting.
- 3.6 As stated in Chapter 2, the range of people able to report hate motivation on behalf of others had been narrowed by the adoption of the restrictions on third-party reporting advocated by the College of Policing. At the time of inspection fieldwork this change had just been implemented and any impact was unknown. This will require careful evaluation to establish whether there has been a negative impact on reporting rates.
- 3.7 Many of the instances recounted to Inspectors by victims of hate crimes were, by their nature, not strictly verifiable. However, there was no reason to doubt their experiences and in the spirit of the Stephen Lawrence Inquiry, victims' perceptions were accepted by Inspectors. Victims spoke very positively about the input of Neighbourhood Police Teams (NPT) in building trust, enhancing knowledge of reporting systems and in providing support to minority groups and their representative organisations. However, more recently, victims told Inspectors that input by NPT had diminished and officers who had established valuable relationships had moved on. Vulnerable communities and their groups had been trying to rebuild relationships with local policing teams with limited success but recognised that this was important in maintaining accessibility to reporting frameworks.

25 The Stephen Lawrence Inquiry; Report of an Inquiry by Sir William Macpherson of Cluny, February 1999, available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/277111/4262.pdf.

- 3.8 Victims and groups representing minority communities stressed the positive work of the PSNI in recent years to build trust. However, they also recognised that work to remove barriers to reporting hate crime needed to be sustained. A few, unverifiable incidents were recounted to Inspectors of police behaviour which acted against the PSNI's overall work to build trust and encourage reporting. These appeared to be isolated examples involving individual officers exercising powers in situations which left the potential victims of hate incidents feeling as if they were to blame. Nevertheless, the incidents and later sharing of them within close knit communities had impacted negatively in maintaining trust with the PSNI.

The hate crime journey: reporting and recording

- 3.9 Victims of hate crimes and incidents identified the method of reporting as a problem. Factors such as language, unfamiliarity with the system, previous experiences, disenfranchisement, realisation that certain behaviours did not amount to a crime, and fear of reprisals or victimisation were all raised with Inspectors. As previously stated, the PSNI had adopted the Stephen Lawrence Inquiry definition of hate crime. Senior PSNI staff stated that in pursuit of service delivery it had further developed the definition in line with the 'Hate Crime Operational Guidance'²⁶ published by the College of Policing²⁷ issued in May 2014. This had narrowed the range of possible third party hate crime reporting as outlined in Chapter 2.
- 3.10 Potential victims' knowledge of systems of reporting had been enhanced by work undertaken by community support groups, often sustained either directly or indirectly by the PSNI, the NIPB, Policing and Community Safety Partnerships (PCSPs), the Hate Crime Advocacy Service and Non-Governmental Organisations (NGOs). Financing of community support groups and other initiatives did not form part of the remit of this inspection but Inspectors found that it was drawn from a wide base, including the police budget, the DoJ and the Housing Executive. A full list of groups consulted during the inspection and providing these services can be found in Appendix 2.
- 3.11 Victims indicated that the work undertaken by support groups was invaluable in improving their access to, and understanding of, the reporting systems. Translation services were identified by victims as being vital in enabling reporting of incidents and crimes and the Hate Crime Advocates Service was widely known and trusted by the victims that Inspectors spoke with during fieldwork.
- 3.12 Despite the work of advocates, community support groups and agencies, underreporting of hate crime remained a substantial problem. Not all victims engaged with the support networks and every group of victims spoken to by Inspectors identified many incidents which had not been reported. Generally, these reflected the high volume, 'low level' incidents identified in the Allport scale. It is therefore imperative that work continues to encourage reporting of incidents to begin to tackle the underlying, enabling factors of hate crime.

²⁶ College of Policing (2014) Hate Crime Operational Guidance available http://www.reportit.org.uk/files/hate_crime_operational_guidance.pdf.

²⁷ The creation of a new policing professional body was announced by the Home Secretary in December 2011.

What is recorded?

- 3.13 Whilst the College of Policing guidance provided separate definitions for each category of Hate Incident and Hate Crime, the PSNI merged these into single definitions as described in Table 2.
- 3.14 PSNI policy²⁸ required both hate crimes and hate incidents to be recorded. The PSNI *User Guide to Police Recorded Crime Statistics in Northern Ireland*²⁹ provided explanations of the difference between incidents and crimes for recording purposes. Crime recording was governed by the National Crime Recording Standard (NCRS) and the Home Office Counting Rules (HOCR). All incidents reported to the PSNI were required to be recorded in accordance with the National Standard for Incident Recording (NSIR). This approach to recording was within the spirit of the Stephen Lawrence Report recommendation regarding, “*crimes and non-crimes in policing terms*”.

Table 2: Definitions used by the PSNI

A Hate Crime/Hate Incident is:	
Racist	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.
Religious	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 religion or perceived religion.
Homophobia	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 sexual orientation or perceived sexual orientation.
Disability	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 disability or perceived disability.
Transphobia	Any non-crime incident/criminal offence which is perceived, by the victim or any other person, to be motivated by a hostility or prejudice against a person who is transgender or perceived to be transgender.
Sectarianism	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 religious denomination or political opinion or perceived religious denomination or political opinion.

28 [PSNI Service Procedure - Hate Crime/Incidents - Dated 1 January 2016](#)

29 PSNI User guide to police recorded crime statistics in Northern Ireland last updated March 2016 - https://www.psnipolice.uk/globalassets/inside-the-psni/our-statistics/domestic-abuse-statistics/user_guide.pdf

- 3.15 Data held by the PSNI categorised both hate motivated incidents and hate crimes separately. Hate incidents and hate crimes included a range of events in line with the definitions in Table 2. Statistics for 2015-16 indicated that there were over eight hate incidents (including crimes) across the six recorded categories, reported each day to the PSNI³⁰. A more detailed examination of the statistics is presented in Chapter 4, however, since 2006-07 when all six categories began to be recorded by the PSNI, overall hate incident figures had fluctuated markedly. The highest annual number recorded was 3,419 (over nine per day) in 2014-15 whilst the lowest was 2,285 (over six per day) in 2011-12.
- 3.16 Whilst not strictly comparable due to legislative differences, England and Wales had a total of 62,518 hate crimes reported in 2015-16, which equated to 171 per day. The estimated population of England and Wales in 2015-16 (57,885,413) was over 31 times that of Northern Ireland (1,851,621). Taking only recorded hate crimes in Northern Ireland in the same period, these totalled 2,169 or 5.94 per day. Factoring the population difference into the 2015-16 hate crime figures for Northern Ireland gives an equivalent rate of over 185 per day, higher than the 171 recorded in England and Wales even taking into account legislative or demographic differences.
- 3.17 In order for a crime to be correctly categorised and recorded³¹ in Northern Ireland as a 'hate crime', a two tier test applied:
- the criminal offence must be on the list of 'Notifiable Offences'³² set out and governed by the NCRS and HOOCR; and
 - the offence must be one that was aggravated by hostility.
- 3.18 In addition to the recording of hate crime described above, the PSNI also recorded 'hate incidents'. This was not a requirement under national standards but senior PSNI staff told Inspectors this was done to ensure that incidents (being non-notifiable) that were aggravated by hostility were captured within available data. Incidents must be recorded by the PSNI in compliance with the National Standard for Incident Recording (NSIR)³³. This standard approach across the UK ensured that all incidents, whether crime or non-crime, were recorded by police in a consistent and accurate manner. Although such incidents were recorded they were not notifiable crimes. They therefore were not included in the main PSNI recorded crime dataset forming part of national data. However, this data impacted directly on the prioritisation of calls for service through use of crime pattern analysis and measuring trends. High rates of underreporting therefore distorted the true picture of hate incidents and potentially impacted the effectiveness of police responses. Dealing with underreporting was recognised in the policing plan targets for hate crime presented in Table 1.

30 PSNI: Trends in Hate Motivated Incidents and Crimes Recorded by the Police in Northern Ireland 2004/05 to 2015/16 Annual Bulletin published 24 November 2016 available at <https://www.psni.police.uk/globalassets/inside-the-psni/our-statistics/hate-motivation-statistics/hate-motivated-incidents-and-crimes-in-northern-ireland-2004-05-to-2015-16.pdf>.

31 Crime recording is governed by the National Crime Recording Standard (NCRS) and the Home Office Counting Rules (HOOCR). All incidents reported to the PSNI are also required to be recorded in accordance with the National Standard for Incident Recording (NSIR).

32 PSNI User Guide to Police Recorded Crime Statistics in Northern Ireland, Appendix 1, Last updated March 2016 available at https://www.psni.police.uk/globalassets/inside-the-psni/our-statistics/domestic-abuse-statistics/user_guide.pdf.

33 NSIR - <https://www.gov.uk/government/publications/the-national-standard-for-incident-recording-nsir-counting-rules>.

The hate crime journey: investigation

- 3.19 As outlined in Chapter 2 the Criminal Justice (No. 2) (Northern Ireland) Order 2004 introduced legislation to increase penalties for offences 'aggravated by hostility'. Hostility was not defined, but the legislation pointed to a definition of 'hatred' contained in article 8 of the Public Order (Northern Ireland) Order 1987. Use of the public order legislation to deal with hate crime was uncommon. Figures published by the PSNI³⁴ indicated that public order offences made up only 1% of sectarian hate crimes in 2015-16 and less than 1% of all hate crime. This appears at odds with the experiences related to Inspectors by victims, who reported incidents which appeared to fit within the definition of the public order offences of stirring up hatred. It also seems at odds with the figures supplied by the PPS and discussed in Chapter 4. However, legislation did not set out any evidential elements required to prove an act of hatred. There was therefore no clear legal definition in Northern Ireland to assist case building in this regard. The review of legislation recommended by Inspectors should consider including within it any revised legislation, clear definitions of hate and hostility.
- 3.20 The standard of case files tracked by Inspectors through the system was on a par with those examined during other Inspections³⁵. Weaknesses were evident in the strength of evidence included on files for onward transmission to the PPS. However, there were specific weaknesses pertaining to the hate crime files in that evidence to prove 'hatred' or 'hostility' was sometimes lacking. The focus of the files appeared to be on presenting the 'perception' of the victim. Whilst it can be argued that detailed presentation of the victim's perception would go some way to providing evidence of hatred or hostility, the standard for recommending prosecution for a hate offence 'aggravated by hostility' was often not reached. A more detailed examination of the impact of this issue on prosecution decisions is set out below.
- 3.21 The PSNI had identified the quality of hate crime files as an issue and had appointed a Detective Inspector to oversee those files and make improvements to the system. This had been a positive development although there had been no input for this role into the development of the service procedure and the standards themselves had no specific mention of the relatively new hate crime service procedure. Monitoring was achieved by dip sampling case files and this had produced several areas for development. Hate and Signal Crime Officers had been given the role of looking into the investigation of hate crime but initially had not been equipped to do so. These officers had later received training similar to a Detective Constable's course. A 10% increase of funding of the Hate Crime Advocates Scheme by the PSNI had also been implemented along with structured, quarterly reporting as a result of gaps identified. There had been liaison with the PPS regarding the standard and format of hate crime files and a revised case submission form was being developed to ensure the hate crime tag remained with the file throughout the process.

34 PSNI: Trends in Hate Motivated Incidents and Crimes Recorded by the Police in Northern Ireland 2004/05 to 2015/16 Annual Bulletin published 24 November 2016 at <https://www.psnipolice.uk/globalassets/inside-the-psni/our-statistics/hate-motivation-statistics/hate-motivated-incidents-and-crimes-in-northern-ireland-2004-05-to-2015-16.pdf>.

35 An inspection of the quality and timeliness of police files (incorporating disclosure) submitted to the PPS, CJJ, November 2015 available at www.cjini.org.

- 3.22 Linking hate crime investigation with available intelligence was identified as an area for development. Strategically, this was being achieved with reports to the PSNI Gold group (Figure 2) dealing with information relating to the overall hate crime picture, links to other crime and the context within specific areas or categories of hate. However, there was recognition that as hate crime was a strategic priority, the links between the intelligence picture and hate crime needed to be improved at tactical level to enable better informed investigations. Some victims raised with Inspectors their belief that attacks in some areas, particularly loyalist, were linked to paramilitary activity. Inspectors were not in a position to verify this but better internal links in the PSNI between intelligence and hate crime trends would help to clarify this picture. The PSNI was clear that based on current intelligence it was not evident that hate crime incidents were being directed as part of paramilitary activity in any areas. Operationally, the use of community tension indicators as a method of identifying future trends in hate crime had become part of the everyday norms of policing in Districts.
- 3.23 Officers conducting investigations told Inspectors that they were often reliant on translators to convey the accurate meaning of questions and answers in pursuit of evidence. There was no suggestion that the standard of interpreters was an issue. However, investigation in the criminal justice arena is a specialist skill requiring precise legal and technical language. Inspectors spoke with people who had performed the role of interpreter and they had been clear that their skills in providing a service for criminal justice matters had improved with experience. No specific work had been undertaken with interpreter services with regard to enhancing skills specific to translating specifically for criminal justice matters or for hate crime. Whilst Inspectors understand that it would not be feasible to provide interpreters who always had excellent understanding of criminal justice and hate crime and their associated legal and technical language, this issue does add to the already high number of substantial barriers facing victims when reporting hate crime for investigation.
- 3.24 Police interviews with victims and witnesses already followed a structured process³⁶ which improved the chances of obtaining all relevant evidence.

Operational Recommendation 2

The PSNI should use hate crime specific scenarios when training officers on interviewing victims and witnesses to improve their understanding of the barriers faced and how these may be overcome in pursuit of achieving best evidence.

³⁶ Ministry of Justice (2011) Achieving Best Evidence in Criminal Proceedings: Guidance on interviewing victims and witnesses, and guidance on using special measures, available at <http://www.justice.gov.uk/downloads/legislation/bills-acts/circulars/achieving-best-evidence-circular-2011-03.pdf>

The hate crime journey: prosecution

- 3.25 The PPS operates as an independent organisation, deciding on whether to prosecute, case by case, on the basis of files of evidence submitted to it. Whilst it had developed a specific hate crime policy this was with regard to adopting a common definition of hate crime in tandem with other criminal justice agencies³⁷ and working to promote diversity awareness and good relations.
- 3.26 Prosecution decisions were made based on evidence files provided by the PSNI. These files were forwarded to the PPS following the conclusion of any investigative process. PPS policy³⁸ ensured that prosecutors remained vigilant to any possibility of a case being aggravated by hostility. This included asking the PSNI to obtain further information. Nonetheless, the prosecutors were dependent on the information and evidence passed to them by the PSNI in the first instance in order to inform their consequent actions and decisions. This meant that decisions had sometimes been constrained by lack of evidence regarding the 'hate' or 'hostility' element of any offence reported. As previously explained, legislation did not clearly set out elements to prove acts of hatred and clear evidence to inform a prosecution decision was often lacking.
- 3.27 The PSNI recorded hate crime based on perception. It investigated to obtain evidence which either supported that perception or undermined it. The PPS applied an 'Aggravated by Hostility' test for prosecutors.
- 3.28 The fact that the PSNI recorded six categories of hate crime whilst legislation recognised only four was not of major significance. If the hate element of the crime was with regard to gender identity (transphobia), the PPS could only make a prosecutorial decision based on the existing legislation. For example, an offence of criminal damage to property with evidence of hostility based on hate of transgender identity may only be prosecuted at court for the offence of criminal damage. Sentencing guidelines already require an assessment of the seriousness of offences to be taken into account. There is no specific legislation allowing for enhanced sentencing for this type of hate crime. If the case passed the evidential and public interest tests applied by the PPS, it would be forwarded for prosecution for the offence of criminal damage. Any subsequent conviction would remain a hate crime for official recording purposes, but could not attract enhanced sentencing. In this particular case, conviction of an offender would be for the offence of criminal damage alone.

37 As recommended by CJI in 'Hate Crime in Northern Ireland' January 2007 available at www.cjini.org.

38 PPS Hate Crime Policy available at <http://www.ppsni.gov.uk/Branches/PPSNI/PPSNI/Files/Documents/Victims/Victims%20and%20Witness/PPS%20Hate%20Crime%20Policy.pdf>.

3.29 PPS statistical bulletins³⁹ reported on the cases forwarded to it by the PSNI separately from those considered by prosecutors to have involved hate crime aggravated by hostility, to differentiate between the different concepts of perception based reporting and evidential based decision making. In any case, it was not possible to track each and every case forwarded to the PPS by the PSNI in any particular year and determine the exact rate of prosecutions. A more detailed breakdown of figures is set out in Chapter 4. However, using the published figures for 2015-16 the following main points emerge:

- decisions were issued for 764 persons in cases involving hate crime;
- the evidential test was met for 57% of the persons for whom decisions were issued compared with 59% in 2014-15; and
- of the remaining 326 decisions, 99% did not pass the evidential test, and 1% did not pass the public interest test.

These figures bear out the issues raised regarding lack of evidence to support those hate crime cases forwarded to the PPS by the PSNI in that in 43% of decisions issued the file had failed the evidence test.

3.30 The figures for all cases in which decisions were issued during the same period indicated that the evidential test was met for 70% of the persons for whom a decision was issued. The evidential test failure rate of 30% in all cases compares unfavourably with a rate of 43% for hate crime cases forwarded to the PPS by the PSNI.

3.31 The measures taken by the PSNI to raise the quality of hate crime case files forwarded to the PPS for decision had not been in operation for a sufficient period of time to determine whether they were working as planned. The PPS and PSNI had also been working together to deliver training to officers on the gathering and presentation of evidence in hate crime files. Any future similar initiatives should be evaluated for their effectiveness and in order to identify where this training could be developed further.

Operational Recommendation 3

The PSNI and the PPS should continue to closely monitor hate crime file quality and work together to ensure that where evidence from victims and witnesses is available, it is collected and presented effectively.

³⁹ PPS Statistical Bulletin: Cases Involving Hate Crime 2015-16 1 April 2015 to 31 March 2016 available at <http://www.ppsni.gov.uk/Branches/PPSNI/PPSNI/Files/Documents/Stats%20and%20Research/Statistical%20Bulletin%20on%20Cases%20Involving%20Hate%20Crime%202015-16.pdf>.

The hate crime journey: conviction

- 3.32 Detailed statistics on convictions are presented in Chapter 4. However, issues raised with Inspectors during fieldwork included whether upon conviction enhanced sentencing was being clearly recorded by the NICTS. As mentioned in Chapter 2, the clerks were dependent on prosecutors mentioning the hate element on opening the case, and on judges specifying whether any sentence had been enhanced. During busy courts, the NICTS also recognised that there was a risk that the application of enhanced sentencing could be missed. The recorded figures for enhanced sentencing compared with the number of convictions for offences aggravated by hostility indicates that this may remain an issue (see Chapter 4).
- 3.33 The majority of victims spoken with by Inspectors said that enhanced sentencing was not the focus of their attention. Most stated that their intentions in reporting hate crime were to have it stopped and to prevent it from happening to them again. Most also stated that they would prefer to see perpetrators receive some sort of restorative input, involving, for example, education on racial and cultural differences and how these can positively enhance societies.
- 3.34 Only one person convicted of a hate crime spoke with Inspectors. This person had received educational input based on restorative practices under the *Accepting Differences* programme delivered by the PBNI. Generally, the perpetrator expressed a positive opinion about the value and effect of the programme. However, the perpetrator did still consider a conviction for hate crime in this particular case to be harsh, perhaps reflecting the negative connotations associated with such convictions.
- 3.35 Defence lawyers spoken to by Inspectors stated that a conviction with a hate crime tag was regarded by their clients as something to be avoided. They stated that their clients were very clear in discussions that they wanted their lawyer to persuade the court that the crime committed was not motivated by hate. In the lawyers' experiences they stated that alcohol was one of the main contributing factors to crimes involving hate, especially where there were violence and assaults involved.

Hate crime advocacy

- 3.36 Throughout the process of reporting, recording, providing statements, receiving updates, presenting evidence at court and final disposal of the case, support was available for some hate crime victims using the advocacy service. The service supported victims of Racist, Lesbian, Gay, Bisexual and Transgender (LGBT) and Disability hate crime. Victims spoken with by Inspectors said that the advocates had ensured they were supported throughout a difficult process. Some victims stated that they would have abandoned their complaints had the advocacy service not provided support.

- 3.37 The advocates were placed in three support groups; The Rainbow Project for LGBT; Leonard Cheshire for Disability; and the Belfast Migrant Centre for racial hate crime. The advocate groups were independent of the criminal justice system, although funded by the PSNI. A co-ordinator was funded by the DoJ. There was no advocate to provide support for religious hate crime. Inspectors understand the difficulties in Northern Ireland with the bulk of hate crimes being recorded as sectarian, and faith/religious hate crimes being consistently low. However, as religious diversity increases, provision of a dedicated religious hate crime advocate should be considered. Consideration should also be given to the source of funding for advocates. There is a risk that in the climate of diminishing budgets competing police priorities may result in loss or reduction of the advocacy service. The advocates provide services which impact much wider than criminal justice. There is potential for the service to be widened to deliver support to victims of hate incidents as well as those which enter the system for prosecution. Widening of the role of the hate crime advocates could only be achieved by substantially increased funding as part of a wider Executive-led strategy aimed at achieving community cohesion.
- 3.38 Advocates provided victims of hate crime better access to, and understanding of, the processes of reporting, recording and investigation. They also provided support for victims giving evidence at court. These are vital services given the barriers experienced by victims when trying to access criminal justice in unfamiliar contexts. Victims mentioned to Inspectors the provision of updates on progress of cases and explanations of court outcomes as being especially important. Advocates saw the management of expectations of victims of hate crime as an essential part of their role in keeping victims engaged with the system and building confidence within the victims' communities to improve reporting rates. The work of advocates should continue to be evaluated with regard to its effectiveness and to further develop the service offered to victims of hate crime. The evaluation should include an assessment of whether the provision of a dedicated religious hate crime advocate is required.

Conclusions

- 3.39 The focus of the PSNI and PPS had been on providing mechanisms by which the reporting, recording, investigation and prosecution of hate crimes would be more easily understood and accessed by victims. There had been substantial progress made with the introduction of common definitions, hate crime advocacy services and outreach and partnership work of both organisations. The NICTS had also worked towards making court outcomes clearer to record.
- 3.40 Barriers to the progress of hate crime through the systems remained. These were apparent at every stage in the process, from reporting through to court outcomes. System barriers had been subject to extensive revision which had been a positive step. However, it was at the point of contact between victims and witnesses and the first responders where problems continued to arise. These interactions often hinged on the knowledge, understanding and attitude of the first police officer or call handler to make contact with victims.

- 3.41 Training on the implementation of the revised PSNI hate crime procedure was focused on HSCOs and District trainers with plans to disseminate training through the District structures. The training contained elements of attitudes and behaviour, values and the impact of hate crime, but it was unclear if these important elements would be transferred to the training delivered by district trainers using interactive and facilitative methods. Training in values, attitude, behaviour and on the impact of hate crime delivered using didactic methods is much less effective than using more experiential based training. There were no plans to include call handlers in the training and case building specifically for hate crime cases did not form part of the lesson plans. At the time of fieldwork this training was also not being delivered to student officers, the rationale being that they would receive it during District training sessions following a period of operational experience. It was unclear how complete coverage for all officers and public facing staff would be achieved.
- 3.42 The majority of problems reported to Inspectors by victims of hate crime during fieldwork related to the interaction with individual officers when reporting incidents. Mostly positive experiences were contrasted with some poor responses which displayed a lack of understanding and empathy. These poor experiences had the potential to adversely affect reporting rates and later interaction between victims and the PSNI. Systems had been revised and had provided processes and procedures which if followed by officers, would generally reduce the barriers faced by victims of hate crime when reporting incidents. However, the individual interaction between officers and victims was critical in ensuring that all available information was obtained in an empathetic way to enable later decision making to be fully informed and to ensure continued involvement of the victim. A full training needs analysis with regard to hate crime would identify the training required to provide officers and staff with the essential skills needed to deal more effectively with victims and would help target role-specific training.



Outcomes

The hate crime journey: post conviction

- 4.1 Beyond conviction the emphasis shifted to perpetrators and how they were dealt with whilst support for the victims of hate crime rested mainly with the voluntary and community sector, when it was available. Most victims told Inspectors that statutory support was absent from this phase of their journey through the criminal justice system and that they obtained assistance, in the main, from community groups. There may be potential for the expansion of the hate crime advocacy service suggested by Inspectors in Chapter 3 to include supporting victims after their journey through the criminal justice process. Support for people who have experienced hate crime should form part of the wider societal response which is required if the enabling factors of hate crime are to be eradicated. These issues will need to be dealt with in the wider, Executive strategy recommended by Inspectors.
- 4.2 Numbers of people being sent to prison for hate crime offences were very small and there was no specific focus on dealing with these perpetrators in prison. The NIPS policy was broad based and hate crime was dealt with under the more general heading of bullying. It was therefore impossible to determine whether incidents of hate crime were continuing within prisons, and if they were, how they were being dealt with.

Operational Recommendation 4

The NIPS should immediately develop policy specific to hate crime, including every aspect of prison life such as resettlement, and should implement, monitor and report on its effectiveness.

- 4.3 The PBNI assessments identified prejudicial attitudes in people convicted of hate crime offences but also picked up these traits in cases when hate may have been a factor but where the evidence was not strong enough to secure conviction for that element of the offence. Although the number of perpetrators was small, probation officers had received cultural competency training which had received positive feedback.
- 4.4 The PBNI *Accepting Differences* programme referred to in Chapter 2 had been piloted in two areas and then rolled out across Northern Ireland. The programme had been designed to

challenge attitudes, prejudices and behaviour. At the time of fieldwork there were only five people who had been on the programme and only one was spoken with by Inspectors. Evaluation of the effectiveness of the programme was ongoing. The one person on the programme spoken to by Inspectors was generally positive about the interventions but cited alcohol as a major factor in the offence being committed. Alcohol dependency formed part of the interventions experienced by this perpetrator. The efficiency of the programme in view of the small numbers of people being placed on probation for hate crime offences could be questioned. However, as an initiative in response to the underlying enabling factors of hate crime, Inspectors viewed it as a positive development.

The hate crime journey: what the figures say

- 4.5 Published statistics illustrated the small numbers of alleged perpetrators of hate crime receiving prison sentences or being placed on probation compared with the overall number of incidents recorded by the PSNI. Table 3 reflects to a large extent the different approaches of the PSNI (perception based recording) and the PPS (evidential based decision making) referred to in Chapter 2. It should also be noted that the cases forwarded to the PPS for consideration may have involved more than one alleged perpetrator, therefore numbers of decisions issued may exceed the number of cases forwarded by the PSNI. Even taking into account the effects of the perception versus evidential tests and the fact that more than one prosecutorial decision may be recorded against any individual within a case, the numbers of convictions over the past two years compared with total incidents, files forwarded and decisions issued indicated a high attrition rate. As previously stated the reasons for decisions not to prosecute were mostly due to failure to meet the evidential standard. This and associated issues were dealt with in Chapter 3.

Table 3: Police reported incidents and outcomes

Year	Total incidents	Files to PPS	Decisions issued	Prosecute / diversion (persons)	No prosecution (persons)	Magistrates' / Youth Court convictions	Crown Court convictions
2014-15	3,419	570	807	474	333	258	34
2015-16	3,108	573	764	438	326	260	10

- 4.6 The 573 files forwarded by the PSNI to the PPS in 2015-16 were broken down by motivation (the six categories applied by the PSNI) and offence classification. The figures are reproduced in Table 4. The figures for public order files forwarded to the PPS by the PSNI made up around 17% of the total. This appeared to be at odds with the figures reported by the PSNI and mentioned in Chapter 3.

Table 4: Files reported to the PPS by the PSNI (offence classification) 2015-16⁴⁰

		Offence Classification ¹				Number of files
Year	Motivation ²	Violence against the person	Public order	Criminal damage	All other offence groups	All Offence Classifications
		Number	Number	Number	Number	Number
2015-16	Race	139	34	18	24	215
	Sectarian	87	44	18	30	179
	Homophobic / Transphobic	48	4	7	4	63
	Faith / Religion	36	8	9	15	68
	Disability	12	0	1	2	15
	Multiple Motivations	21	5	3	4	33
	All Files	343	95	56	79	573

Notes: Offence classification refers to those standardised across the criminal justice organisations in Northern Ireland. Files are categorised on the basis of the 'primary' offence which is generally the most serious offence. Motivation refers to the six categories recorded by the PSNI.

- 4.7 The PPS analysis of decisions issued for public order offences (Articles 9, 20 and 11 Public Order (Northern Ireland) Order 1987) indicated that in 2015 a total of 11 decisions had been issued. These broke down into three for indictable prosecution, one summary and seven no prosecution. Trend figures specifically relating to these public order hate crimes are illustrated in Table 5. The total figures are consistently low except for a very low total of seven during 2013.

Table 5: Public Order Hate Crimes 2010-16 (Sept)

	Indictable Prosecution	Summary Prosecution	No prosecution	Total
2010		2	9	11
2011		5	8	13
2012		5	9	14
2013		4	2	6
2014		4	7	11
2015	3	1	7	11
2016 (end of Sept)		4	3	7
Total	3	25	45	73

- 4.8 The published PPS analysis of the figures did not include a breakdown by offence type for decisions issued, reasons for no prosecution or court outcome. The inclusion of this analysis as part of the published PPS figures would be a useful indicator in determining the usage rates of existing legislation in dealing with hate crime and would inform any later review of legislation.

⁴⁰ PPS Statistical Bulletin: Cases Involving Hate Crime 2015-16 1 April 2015 to 31 March 2016, page 10, available at <http://www.ppsni.gov.uk/Branches/PPSNI/PPSNI/Files/Documents/Stats%20and%20Research/Statistical%20Bulletin%20on%20Cases%20Involving%20Hate%20Crime%202015-16.pdf>

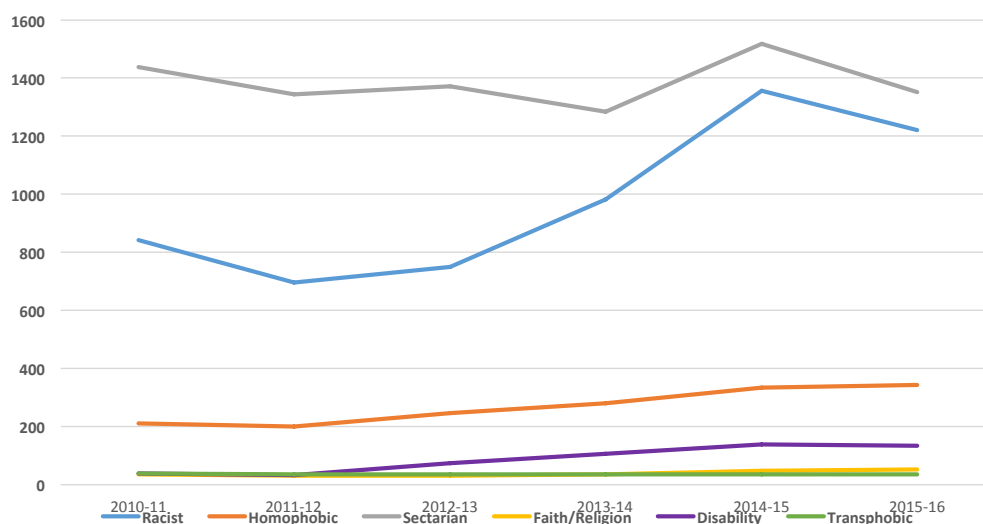
Operational Recommendation 5

The PPS should include within its published figures on hate crime, an analysis of the hate crimes reported to it by the PSNI by way of offence classification with regard to decisions issued, reasons for no prosecution and court outcome.

The hate crime journey: trends since 2010

- 4.9 This inspection was a snapshot of existing conditions during fieldwork and has had the benefit of updated statistics regarding hate crime during 2016. The trends in hate incidents since the last published CJI follow-up review into hate crime in 2010⁴¹ indicate a fluctuating picture. Figure 3 illustrates these trends with regard to the six categories recorded by the PSNI.

Figure 3: Trends in recorded hate incidents by category



- 4.10 The highest number of hate incidents recorded are consistently categorised as sectarian. This is closely followed by racist incidents. Lower levels of reported incidents are indicated for homophobic, disability, faith/religion and transphobic. However, the true figures for all of these categories are likely to be much higher due to several factors already outlined, in addition to reduced visibility, especially with less obvious categories of disability involving people across the spectrum of learning difficulty.

⁴¹ Hate Crime: A follow-up inspection of the management of hate crime by the criminal justice system in Northern Ireland, CJI, July 2010 available at www.cjini.org

Hate crime 'aggravated by hostility'

- 4.11 As mentioned in Chapter 3, the PPS had split their reporting of hate crime into those incidents reported to them by the PSNI using the perception test, and those considered by prosecutors to have involved a hate crime aggravated by hostility (provided for by the Criminal Justice (No. 2) (Northern Ireland) Order 2004). This had been a useful method of examining the usage and effectiveness of this particular legislation which recognised only four categories of hate crime (race, religion, disability and sexual orientation). The figures for 2015-16 are reproduced in Table 6.
- 4.12 The PPS issued decisions with respect to 516 persons in cases considered to have involved hate crime 'aggravated by hostility'. A total of 70% were issued with a decision for prosecution (314) or for diversion from the courts (46). No prosecutions were issued in 156 decisions (30%) with 97% of those being due to not meeting the evidential test.

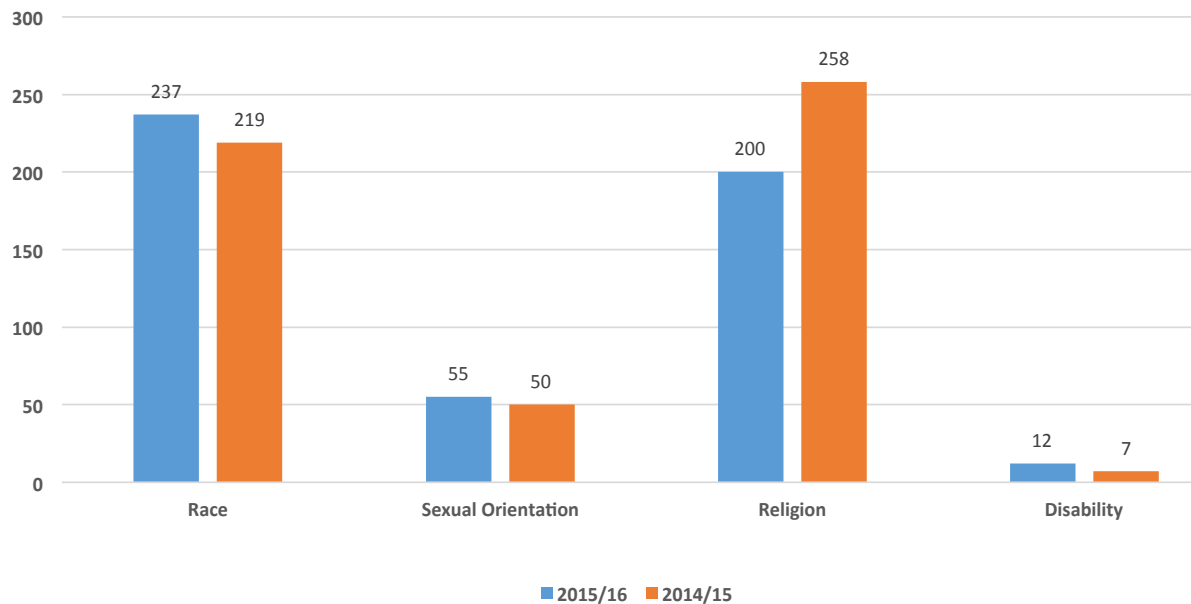
Table 6: Aggravated by hostility: prosecutorial decisions 2015-16⁴²

		Number of persons (decisions issued)				
		Type of Decision				
		Indictable prosecution	Summary prosecution	Diversion	No Prosecution	All Decisions Issued
Year	Aggravation Classification	Number	Number	Number	Number	Number
2015-16	Race	7	137	17	76	237
	Sexual Orientation	2	31	4	18	55
	Religion	10	115	24	51	200
	Disability	0	2	1	9	12
	Multiple Motivations	1	9	0	2	12
	All decisions	20	294	46	156	516

- 4.13 Comparing the figures for the offences 'aggravated by hostility' over the most recent two-year period (Figure 4) illustrated that the most prevalent categories were 'Race' and 'Religion'. 'Sexual orientation' was running at around a quarter to one-fifth of that rate whilst 'Disability' was around one twentieth of the rate of 'Race' and 'Religious' incidents.

42 PPS Statistical Bulletin: Cases Involving Hate Crime 2015-16 1 April 2015 to 31 March 2016, page 11 available at <http://www.ppsni.gov.uk/Branches/PPSNI/PPSNI/Files/Documents/Stats%20and%20Research/Statistical%20Bulletin%20on%20Cases%20Involving%20Hate%20Crime%202015-16.pdf>

Figure 4: Aggravated by hostility: two-year trend in prosecutorial decisions (2014-15 and 2015-16)



- 4.14 There had been suggestions of a hierarchy of hate incidents with sectarian and racist at the top and disability at the bottom based on societal and authority knowledge of the issues. However, much more analysis would be required to establish the true level of incidents experienced by each of the categories currently recorded as differential access to reporting mechanisms and other services may also impact on the reporting rates.

Hate crime aggravated by hostility: Crown Court outcomes

- 4.15 Court outcomes in 2015-16 for those offences involving hate which were considered by prosecutors to be aggravated by hostility are illustrated in Tables 7 and 8. This indicated that in the Crown Court, the conviction rate for all categories was just under 78%. Three out of four of the defendants tried for cases classified as being based on religion were acquitted. The issue of recording enhanced sentences was mentioned in Chapter 3. During this period in the Crown Court, one defendant out of 14 convicted (7.1%) was recorded by the NICTS as receiving an increased sentence.

Table 7: Crown Court outcomes for ‘aggravated by hostility’ defendants 2015-16⁴³

Number of persons (defendants)

Year	Aggravation Classification	Outcome				Conviction Rate
		Convicted of at least one offence	Acquitted	Other	All defendants	
		Number	Number	Number	Number	%
2015-16	Race	3	0	0	3	
	Sexual Orientation	7	0	0	7	
	Religion	4	3	1	8	
	Disability	0	0	0	0	
	Multiple Motivations	0	0	0	0	
	All defendants	14	3	1	18	77.80%

Hate crime aggravated by hostility: Magistrates and Youth Court outcomes

4.16 In the Magistrates’ and Youth Courts, the overall conviction rate for cases classed as ‘aggravated by hostility’ was just over 74%. All three disability cases brought before these courts resulted in conviction. One of the eight cases classified as having multiple motivations had an outcome described as ‘other’. This may include; where a defendant has died; where all charges were withdrawn; where persons were bound over for not having shown cause; where persons were bound over where charge is withdrawn; or an application of a diversionary outcome is made. A total of 88 of the 244 defendants convicted at Magistrates’ or Youth Courts were recorded by the NICTS as having received enhanced sentences due to the aggravated nature of the offences. This equates to 36% of persons convicted.

Table 8: Magistrates and Youth Courts outcomes for ‘aggravated by hostility’ defendants 2015-16⁴⁴

Number of persons (defendants)

Year	Aggravation Classification	Outcome				Conviction Rate
		Convicted of at least one offence	Acquitted	Other	All defendants	
		Number	Number	Number	Number	%
2015-16	Race	104	16	26	146	
	Sexual Orientation	18	5	6	29	
	Religion	111	9	22	142	
	Disability	3	0	0	3	
	Multiple Motivations	8	0	1	9	
	All defendants	244	30	55	329	74.2%

43 PPS Statistical Bulletin: Cases Involving Hate Crime 2015-16, 1 April 2015 to 31 March 2016, page 20 available at <http://www.ppsni.gov.uk/Branches/PPSNI/PPSNI/Files/Documents/Stats%20and%20Research/Statistical%20Bulletin%20on%20Cases%20Involving%20Hate%20Crime%202015-16.pdf>

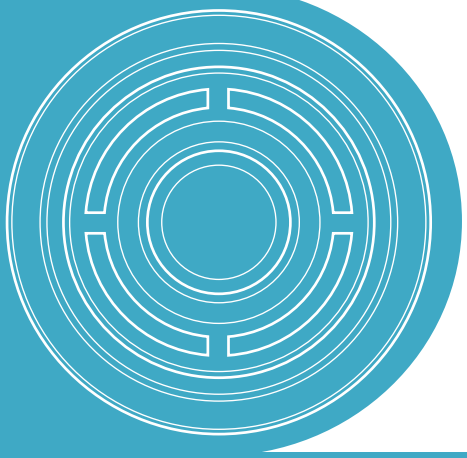
44 Ibid, page 21

Conclusions

- 4.17 Victims of hate incidents and crimes who spoke with Inspectors did not regard outcomes in stark terms such as convictions, prison sentences or diversions from court. The majority of victims stated to Inspectors that the best outcome for them was the prevention of the often daily abuse they had suffered by obtaining in some way, realisation by the perpetrators of the impact of their actions. Victims understood that achieving these outcomes may require prison sentences. However, they also suggested education and other restorative practices as a way of achieving what they regarded as a better and more sustainable outcome. Inspectors believe that this will only be achieved when a hate crime strategy becomes an integral part of an overall Northern Ireland Executive social cohesion strategy robustly led and monitored using outcome based accountability measures.
- 4.18 One of the main themes which emerged from the Inspection was a need for better integration of strategy, not just involving criminal justice agencies and the DoJ, but the wider Northern Ireland Executive.

Strategic Recommendation 3

To provide effective cross-departmental governance in tackling the underlying, enabling factors of hate crime the DoJ should, as soon as possible, directly link its Hate Crime Strategy contained in the Community Safety Strategy to T:BUC or any future Northern Ireland Executive Cohesion, Sharing and Integration policy or its equivalent. Outcome based accountability measures with which to monitor the effectiveness of these strategies should be developed, consulted on and agreed.



Appendices



Appendix 1: Terms of reference

An inspection of the Criminal Justice System's response to Hate Crime in Northern Ireland

Introduction

Hate crime is not defined in legal terms either in international or domestic law. However, the PSNI define hate crime as, '*...any incident perceived to have been committed against any person or property on the grounds of a particular person's ethnicity, sexual orientation, gender identity, religion, political opinion or disability.*'⁴⁵ This is the commonly used definition recommended by the Stephen Lawrence inquiry.⁴⁶

Where and when it does occur, hate crime is a pernicious wrong with wide personal and social consequences. Criminal Justice Inspection (CJI) proposes to undertake a thematic inspection into the Criminal Justice System's response to Hate Crime Northern Ireland.

This is the second full inspection of hate crime in Northern Ireland. CJI published the first full inspection in 2007 with a subsequent follow-up review in 2010.

Context

Data held by the Police Service of Northern Ireland records both hate motivated incidents and hate crimes separately. Hate incidents and hate crimes include a range of issues in line with the definition above. However, some recorded incidents may not be classified as a crime. Statistics for 2013-14 and the calendar year 2014 indicate that there were close to four sectarian, three race motivated and one homophobic hate incidents each day reported to the PSNI.⁴⁷ Race hate incidents between 2011-12 and 2013-14 have shown an increase of 29% and homophobic incidents 28%.

Previous CJI inspections on hate crime noted some progress in terms of partnership working and in policy and procedural development, but also highlighted areas of concern.

The Northern Ireland Human Rights Commission have stated that in terms of practice surrounding race hate crime that, '*...there is considerable room for improvement*' and further that, '*...the approach of the criminal justice agencies did not demonstrate the necessary partnership needed to ensure required by the human rights framework.*'⁴⁸

Judged by recent statistical data and media attention, it is axiomatic that the problem of hate crime is a daily feature of Northern Ireland society. It is equally clear that hate crime is a significant issue for Northern Ireland society and the criminal justice system responses must be in a position to meet the challenges arising

45 Available at <https://www.psni.police.uk/crime/hate-crime/disability-related-hate-crime2/> accessed 21 April 2015.

46 The Stephen Lawrence Inquiry Report of an Inquiry by Sir William Macpherson of Cluny, February 1999.

47 PSNI, Incidents and Crimes with a Hate Motivation Recorded by the Police in Northern Ireland: Quarterly Update to 31 December 2014, Published 26 February 2015.

48 Racist Hate Crime, Northern Ireland Human Rights Commission, Belfast, September, 2013,

Aims of the inspection

The inspection will endeavour to:

- assess current policy, practice and procedures surrounding hate crime across the CJS;
- examine partnership approaches to tackling hate crime;
- evaluate and attempt to understand the motivations for hate crime in N.I.;
- where appropriate, provide comparative analysis;
- examine the context of outcomes, with particular emphasis on the impact of current CJS practices on victims; and
- ascertain opportunities to improve practices and support integrated approaches.

Methodology

The following methodology is proposed.

The inspection will focus on assessing the performance of the criminal justice agencies with regard to hate crime. It will take a two stage approach looking firstly at the issues for stakeholders and followed by consultation with the primary statutory and justice sector agencies.

The inspection will also be based on the CJI Inspection Framework, as outlined below, for each inspection that it conducts. The three main elements of the inspection framework are:

- strategy and governance;
- delivery; and
- outcomes.

CJI constants throughout each inspection are equality and fairness, together with standards and best practice.

Delivery

Stakeholder consultation

All primary stakeholder groups will be consulted as part of the fieldwork for this inspection. Where possible, representative or umbrella groups will be consulted. An example of the groups to be consulted is provided in the following table. This is not a definitive list and additional stakeholders and interested parties identified during initial discussions will be added as the inspection progresses.



<ul style="list-style-type: none"> • An Munia Tober Travelers’ Centre 	<ul style="list-style-type: none"> • Islamic Centre
<ul style="list-style-type: none"> • Baha’i Community of the UK 	<ul style="list-style-type: none"> • Leonard Cheshire Disability
<ul style="list-style-type: none"> • BME Network 	<ul style="list-style-type: none"> • Mencap
<ul style="list-style-type: none"> • Cara-Friend 	<ul style="list-style-type: none"> • NICRAS
<ul style="list-style-type: none"> • Chinese Welfare Association 	<ul style="list-style-type: none"> • NICEM
<ul style="list-style-type: none"> • Community Relations Council 	<ul style="list-style-type: none"> • Belfast (NI) Jewish Community
<ul style="list-style-type: none"> • Equality Commission for Northern Ireland 	<ul style="list-style-type: none"> • Rainbow Project
<ul style="list-style-type: none"> • Indian Community Centre 	<ul style="list-style-type: none"> • Age NI

Interviews will be conducted with stakeholders to give an insight into the responses to hate crime and gain an understanding of what works well and where there are policy and or procedural inequalities.

Agency fieldwork and consultation

Stakeholder interviews will be followed by a series of engagements with statutory agencies across the criminal justice system designed to meet the inspection aims. This will include, but is not limited to:

- the Police Service of Northern Ireland (PSNI);
- the Public Prosecution Service Northern Ireland (PPS);
- the Youth Justice Agency (YJA);
- the Northern Ireland Courts and Tribunals Service (NICTS);
- the Northern Ireland Prison Service (NIPS); and
- the Probation Board Northern Ireland (PBNI).

Research and Review

Desktop research will be conducted into the practice surrounding hate crime together with a review of available materials relating the area of hate crime and hate crime statistics.

Agencies policies and procedures will be researched and reviewed as part of strategy and governance.

Fieldwork

Fieldwork is scheduled to commence in September 2015. Details of the fieldwork will be agreed with statutory agencies appointed representatives. Engagement with stakeholders will precede this.

Feedback and writing

Following completion of the fieldwork and analysis of data, a draft report will be shared with the relevant stakeholders for factual accuracy check. On publication the Chief Inspector of Criminal Justice will invite relevant stakeholders to complete an action plan to address any recommendations arising. This may be published as part of the final report.

The final report will be shared, under embargo, in advance of the publication date with the inspected agencies.

Inspection publication and closure

The broad outline of publication delivery will be as follows:


- the final report is scheduled to be completed by Spring 2016;
- report sent to Minister for permission to publish;
- when permission received report finalised for publication;
- press release prepared and shared with agency;
- publication date agreed and report issued; and
- wider communication identified and communication plan completed.



Appendix 2: List of organisations consulted

- Affirm NI
- African and Caribbean Support Organisation NI
- Ballymena Inter-Ethnic Forum
- Belfast Islamic Centre
- Belfast Jewish Community Centre
- Belfast Migrant Centre
- Black and Minority Ethnic Women's Network
- Chinese Welfare Association
- Committee on the Administration of Justice (CAJ)
- Community Relations Council
- Community Safety Unit DOJ
- Counselling All Nations Services (CANS)
- Equality Commission for Northern Ireland
- Foyle Interface Forum
- Indian Community Centre
- Leonard Chesire Disability
- Local Government District - Belfast (Super Council) GRO
- Local Government District - Derry & Strabane (Super Council) GRO
- Local Government District - Mid Ulster (Super Council) GRO
- Lower Ormeau Residents Action Group - LORAG
- Mencap
- NI Council for Ethnic Minorities (NICEM)
- NI Human Rights Commission
- NICRAS - Northern Ireland Community of Refugees and Asylum Seekers
- North West BME forum
- North West Migrants Forum - NWMF
- Polish Community Centre Cooltura
- Rainbow Project Belfast
- Rainbow/HERE NI/Gender Jam NI/Sail
- Romanian Roma Community Association
- South Belfast Round Table on Racism
- The Centre for Democracy and Peace Building - UAH Advisory Board Meeting
- Victim Support Northern Ireland





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