



**CHALLENGE
HATE CRIME**

DEAL WITH IT

REPORT 01

CRIMINAL JUSTICE RESPONSES TO
HATE CRIME IN NORTHERN IRELAND

**Criminal Justice Responses
to
Hate Crime in Northern Ireland**

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List of Acronyms

| | |
|--------|--|
| ACPO | Association of Chief Police Officers |
| CJINI | Criminal Justice Inspection Northern Ireland |
| COPFS | Crown Office and Procurator Fiscal Service |
| CPS | Crown Prosecution Service |
| MPS | Metropolitan Police Service |
| NIAC | Northern Ireland Affairs Committee |
| NICTS | Northern Ireland Court and Tribunal Service |
| NIPB | Northern Ireland Policing Board |
| OFMDFM | Office of the First Minister and Deputy First Minister |
| PBNI | Probation Board for Northern Ireland |
| PPS | Public Prosecution Service |
| PSNI | Police Service of Northern Ireland |
| YJA | Youth Justice Agency |

1. Introduction

'Hate crime' is a broad term that has been widely adopted to refer to offences committed against people and property, which are perceived to be motivated by bias, bigotry or prejudice, and in which the victim is targeted as a result of their membership or perceived membership of an ethnic, racial, religious group or because of their actual or perceived sexual orientation, gender identity or disability.

Developing an effective response to the increasing number of hate crimes has been acknowledged as a challenge for the criminal justice system in Northern Ireland over recent years. Although the 1987 Public Order Order criminalised acts intended to stir up hatred and arouse fear, this was not widely acknowledged as legislation relating to hate crime. The initial formal response to hate crime by a criminal justice agency was when the RUC began to record racist hate crimes from 1996 and then homophobic hate crimes from 2000.

Over the next few years the profile of hate crimes increased, in part through a growing number of incidents and in part through the increasing profile and advocacy of various representative groups. During this time the PSNI worked to improve their relationships with the various communities and populations who were victims of hate crime to encourage an increase in reporting of hate crimes and to build confidence in the police. The police also reviewed and adapted officer training and adopted new policies in response to the increase in hate crime. They were also involved in a variety of awareness raising and publicity initiatives in relation to this issue, including the Unite Against Hate campaign that ran between 2009 and 2011.

Other organisations and bodies, including government departments, local councils, and the Housing Executive amongst others, all became involved in work to address and confront the problem of hate crime, primarily through awareness raising, training, supporting victims and encouraging reporting by victims and through third party procedures.

Awareness raising, training, provision of support for victims and a better understanding of the nature and scale of the problem are important responses to the problem of hate crime. But there is also a need for an effective criminal justice response to criminal activity and an expectation that perpetrators will be held liable for their activities and their attitudes and behaviours will be challenged to avoid reoffending.

There is a challenge to securing convictions for people accused of a hate crime in so far as the 'hate' element may be based on the subjective perceptions of the victim or another person, whereas the criminal justice system must be based on clear evidence to prosecute successfully. This report focuses specifically on the work of government and criminal justice agencies in addressing hate crime through the criminal justice system, and specifically how the various agencies have responded to the problem of hate crime.

Criminal justice initiatives by government included the consultation on legal reform and the subsequent enactment of legislation in the form of the Criminal Justice (No 2) (Northern Ireland) Order, which came into force in September 2004 and which allowed for increased sentences for offences that were perceived to be motivated by a variety of forms of prejudice (see Appendix 1 for the relevant sections of the Order). At the same time the inquiry and report by the Northern Ireland Affairs Committee into hate crime in Northern Ireland¹ drew attention to the wider social context and identified a number of recommendations for action by government and the criminal justice agencies.

The Criminal Justice (No 2) (Northern Ireland) Order was welcomed as evidence of an official acknowledgment that hate crime was a significant problem that required a serious response. However, the Northern Ireland Affairs Committee cautioned that

1 <http://www.parliament.the-stationery-office.co.uk/pa/cm200405/cmselect/cmniaf/548/548i.pdf>

'the law will be another 'dead letter' unless the enforcement authorities, primarily the PSNI, use it vigorously' (NIAC 2005: para 102) and they recommended that 'the PSNI, the Policing Board and the NIO closely monitor the effectiveness of this new legislation' (NIAC 2005: para 101).

However, early reviews indicated that the law has not been used as extensively as might have been hoped. In 2007 the Criminal Justice Inspectorate highlighted a number of deficiencies in the way the criminal justice system was responding to hate crimes (CJINI 2007) and a follow up inspection in 2010 identified ongoing weaknesses across the system (CJINI 2010). Furthermore, the *Annual Human Rights Report* of the Northern Ireland Policing Board noted that the sanction detection rate² for hate crimes remained substantially lower than the overall detection rate for all crimes and that between March 2007 and October 2010 there had been just '11 occasions when the judge imposed an enhanced sentence under the Criminal Justice (No2) (Northern Ireland) Order 2004' (CJINI 2010: 7, PBNI 2010: 80).

The report compares the responses by the criminal justice system in Northern Ireland with the response to similar offences in England & Wales and in Scotland. Chapter 2 begins by briefly reviewing the legal context in each jurisdiction and then Chapter 3 reviews the recording of hate crimes in Northern Ireland and compares the scale of the problem as the number of incidents per head of population across the UK.

Chapter 4 reviews the number of referrals of the victims of hate crime by the police to Victim Support, while Chapter 5 moves on to consider the different detection rates for racist hate crimes in the three jurisdictions by reviewing published data. Chapter 6 reviews the work of the Public Prosecution Service in dealing with cases that have been flagged as a hate crime by the PSNI as well as reviewing prosecution levels for different forms of hate crimes in both England & Wales and in Scotland. Chapter 7 considers the ways in which hate crime cases have been dealt with in the courts, while Chapter 8 reviews the work of the Youth Justice Agency, Chapter 9 the Probation Board and Chapter 10 the work of the Prison Service in engaging with hate crime offenders.

Chapter 11 provides a brief overview of the main policy responses by government departments and statutory agencies that are designed to tackle hate crime, and highlights some of the developments that have taken place elsewhere in the UK. The final two chapters include a summary of the key findings and issues identified in the report (Chapter 12) while Chapter 13 includes a series of recommendations for the various departments and agencies which are designed to improve on existing responses to hate crime.

2. Legal Regimes

An individual accused of a hate crime may well be prosecuted and convicted of a substantive criminal offence; however in many jurisdictions the distinctive and serious nature of hate crimes has encouraged legislatures to introduce specific laws designed to address crimes involving prejudice, and which are often referred to colloquially as hate crime laws.

All three legal jurisdictions within the United Kingdom have legislation which criminalises activity that creates fear and promotes hatred, or behaviour that is perceived to be motivated by various forms of prejudice, and provides for an increase in sentences for any offence that is aggravated by hostility towards members of one of a number of defined groups.

In Northern Ireland there are two main pieces of legislation that address the issue of acts of prejudice against members of various minority communities or groups: Part

2 Sanction detections occur where the offender receives some formal sanction such as being charged or summonsed, cautioned or by having an offence taken into consideration at court. Non sanction detections occur where the offence was cleared up but where no further action is taken against an offender.

3 of the 1987 Public Order (NI) Order and Section 2 of the 2004 Criminal Justice (No 2) (Northern Ireland) Order (see Appendices 1 and 2 for the full text of the relevant sections of the law).

Part 3 of the Public Order (NI) Order 1987 criminalises 'acts intended or likely to stir up hatred or arouse fear' and specifically relates to the use of 'threatening, abusive or insulting words or behaviour' and the display of written material which is threatening, abusive or insulting. Under the Order fear and hatred was originally defined as being against a group of persons defined by reference to religious belief, colour, race, nationality (including citizenship) or ethnic or national origins. In 2004 the definition was extended to include sexual orientation and disability. The Order states it is a defence to not intend to stir up hatred or arouse fear, to not be aware that the behaviour might be perceived as threatening, abusive or insulting, or for the action to take place inside a dwelling.

Section 2 of the Criminal Justice (No 2) (Northern Ireland) Order 2004 allows judges to increase the sentence of people convicted of any offence, if their crime was proved to have been 'aggravated by hostility' towards the victim because of their membership, or presumed membership, of a racial group, religious group, sexual orientation group or because of a disability.

England & Wales and Scotland have similar legislation that allows for an increase in the level of the sentence for people convicted of criminal behaviour that is motivated by one of a number of different forms of prejudice.

Section 17 of the 1986 Public Order Act (covering England & Wales and Scotland, and which is identical to the Northern Ireland Order) created offences of stirring up racial hatred through the use of threatening, abusive or insulting words or behaviour, or if an individual displays, publishes or distributes any written material which is threatening, abusive or insulting, if the intent is to stir up racial hatred, or if racial hatred is likely to be stirred up.

In England and Wales Sections 28 to 32 of the Crime and Disorder Act, introduced in 1998, outlined a number of 'racially and religiously aggravated' offences related to assault, criminal damage, public order and harassment. The law was extended in the Criminal Justice Act 2003. Section 145 of that law made racial aggravation applicable to all offences, while Section 146 of the same Act extended the laws to include any offences aggravated by hostility to 'people of a particular sexual orientation' and towards people with a disability.

Racially aggravated offences were introduced in Scotland under Section 33 of the Crime and Disorder Act 1998, with offences motivated by religious prejudice being subsequently legislated for under Section 74 of the 2003 Criminal Justice (Scotland) Act. Finally, offences 'aggravated by prejudice' relating to disability, sexual orientation or transgender identity were introduced in the Offences (Aggravation by Prejudice) (Scotland) Act 2009 and came into force in March 2010.

The three jurisdictions have variously followed each other in legislating against acts informed or motivated by prejudice. Each jurisdiction currently recognises groups defined by race (by reference to colour, race, nationality, ethnic or national origins), religion, sexual orientation and disability as possible victims of hostility aggravated by prejudice.

In 2009 the Scottish Executive extended their legislation to also include transgender identity as a specified group that may be victims of hate crime. Scotland thus became the first part of the UK to include transgender within the hate crime legislation.

In March 2012 the UK government published *Challenge it, Report it, Stop it: The Government's Plan to Tackle Hate Crime*, which included a commitment to amend the 2003 Criminal Justice Act to allow for increased sentences where the offence is

aggravated by hostility towards transgender people.³ The document also stated that the Government would conduct a review to consider whether there is a need for new specific offences similar to racially and religiously aggravated offences that would relate to hostility on the grounds of disability, sexual orientation and transgender.

In Northern Ireland the PSNI has been collecting data on transgender hate crime since 2006-07, although there is currently no capacity for the courts to increase a sentence for offences committed against transgender people. It is important that the response to hate crime in Northern Ireland remains broadly similar to approaches in other parts of UK and therefore the Department of Justice should respond to the recent changes in relation to transphobic hate crime in Scotland and England & Wales.

Recommendation: The Department of Justice should amend the 2004 Criminal Justice (No 2) (NI) Order to include hostility towards transgender people as an aggravating factor for any crime.

3. Hate Crime in Northern Ireland

In recent years there has been considerable effort made to encourage the reporting of 'hate crimes' by victims and to improve the police recording of such reports. The police began publishing figures for racist incidents in 1996 and for homophobic incidents in 2000. The recording of sectarian, religious and disability incidents began after the Criminal Justice (No 2) (NI) Order was passed in 2004 and the recording of transphobic incidents began in 2006-07, although it is not a defined category within the law and therefore not subject to a possible increase in sentence.

Initially the police published aggregated data on 'hate crimes', a single annual figure for racist and homophobic incidents. Beginning with the annual statistical report of 2004-2005 the PSNI has published a separate figure for incidents and crimes under the overall title of 'hate incidents and crimes'. The larger figure for the number of incidents tends to be the headline figure that is widely cited for the scale of 'hate crime'. In this report we use the general term 'hate crime' to refer to the overall category of hate motivated incidents and crimes, but then differentiate between specific sub-categories of incidents and crimes as appropriate.

The presence of two related but distinct terms 'hate crime' and 'hate incident' raises some questions about the difference and boundary between the two, and specifically what types of activity are included within the notion of a 'hate incident', rather than being classified as a 'hate crime'.

Recommendation: The PSNI should provide some clear guidance about the types and ranges of activity that is included within the term 'hate incident' and the boundaries between 'hate crime' and 'hate incident'.

Police Data on Hate Crime

This section begins by reviewing police data on all six categories of hate crime and questions what those figures may tell us about the scale of the problem. It continues by looking at possible gaps in the police data and considers other forms of data that might shine further light on the nature and scale of the problem. Finally, we review data on hate crime elsewhere in the UK to consider how far the problem of hate crime in Northern Ireland is comparable to the experience elsewhere.

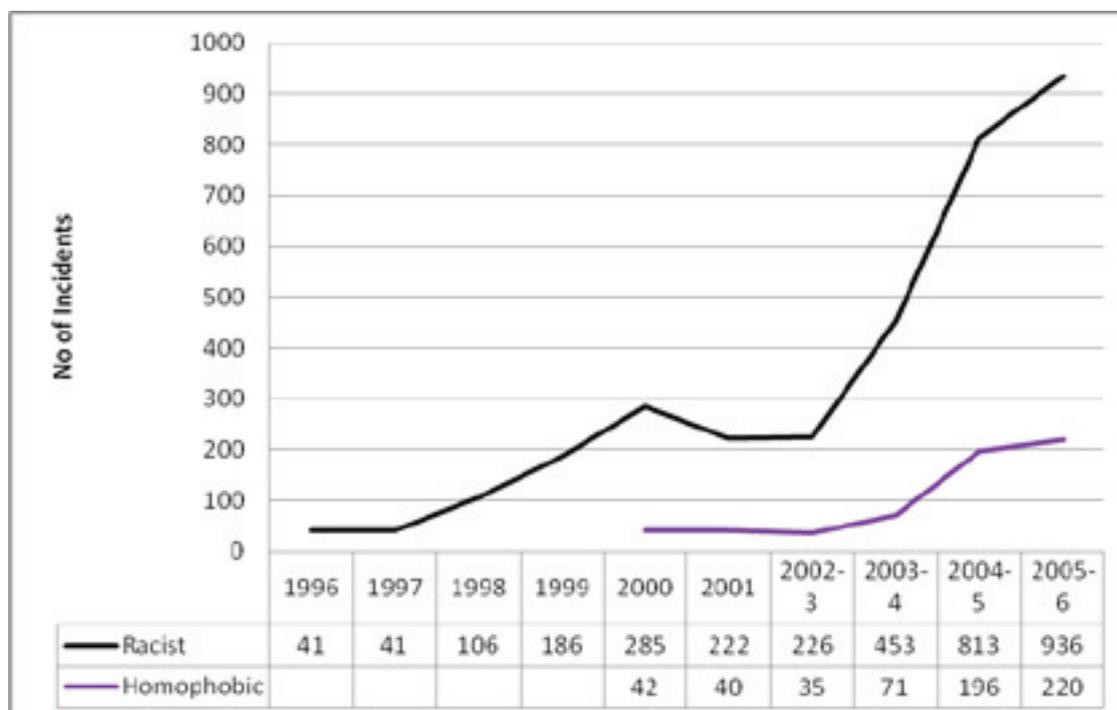
The police figures for racist and homophobic incidents show a similar pattern. A small number of incidents were reported for the first few years after the police began recording such incidents, but then numbers started to increase, presumably as people

³ <http://www.parliament.uk/deposits/depositedpapers/2012/DEP2012-0473.pdf> at page 21.

began to be aware that the police were interested in people reporting hate crimes and as the police recording process became more systematic.

The figures show a fairly dramatic, if uneven, increase in annual hate crime figures, with racist incidents nearly quadrupling between 2001 and 2005, while homophobic incidents rose nearly six-fold over the same period.

Figure 1: Racist and homophobic incidents recorded between 1996 and 2005⁴



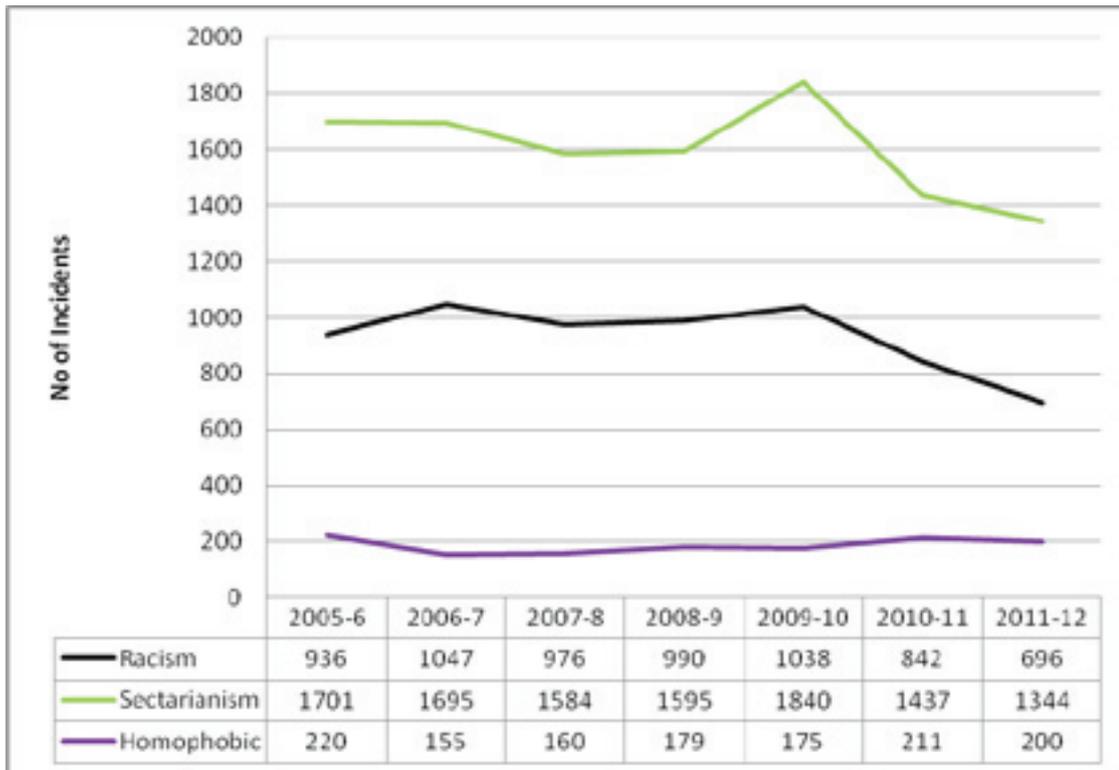
However, since 2005-6 the figures show a very different pattern, as can be seen in Figures 2 and 3 below. The data has been presented in two charts due to the much greater numbers of recorded racist and sectarian incidents than other forms of hate crime. Figure 2 thus includes the data for racist and sectarian incidents, while Figure 3 includes the data for religious, disability and transphobic hate incidents. Data for homophobic incidents is included in both charts as a point of comparison.

Figure 2 illustrates that figures for racist incidents peaked at 1,047 in 2006-7, declined for two years and rose again to 1,038 incidents in 2009-10 before declining to 696 incidents in 2011-12, the lowest annual figure since 2003-4.

The police began recording sectarian incidents from late in 2004. The annual figures peaked in 2009-10 at 1,840 incidents but have also declined in the last two years to a total of 1,344 incidents in 2011-12. Figures for homophobic incidents have varied from 220 incidents in 2005 to a low of 155 incidents the following year. Since then they have remained within these two parameters.

4 Figures from 1996 to 2001 from Jarman and Monaghan (2004) page 28. Figures from 2002-3 onwards from PSNI annual statistical reports.

Figure 2: Racist, homophobic and sectarian incidents, 2005-6 to 2011-12



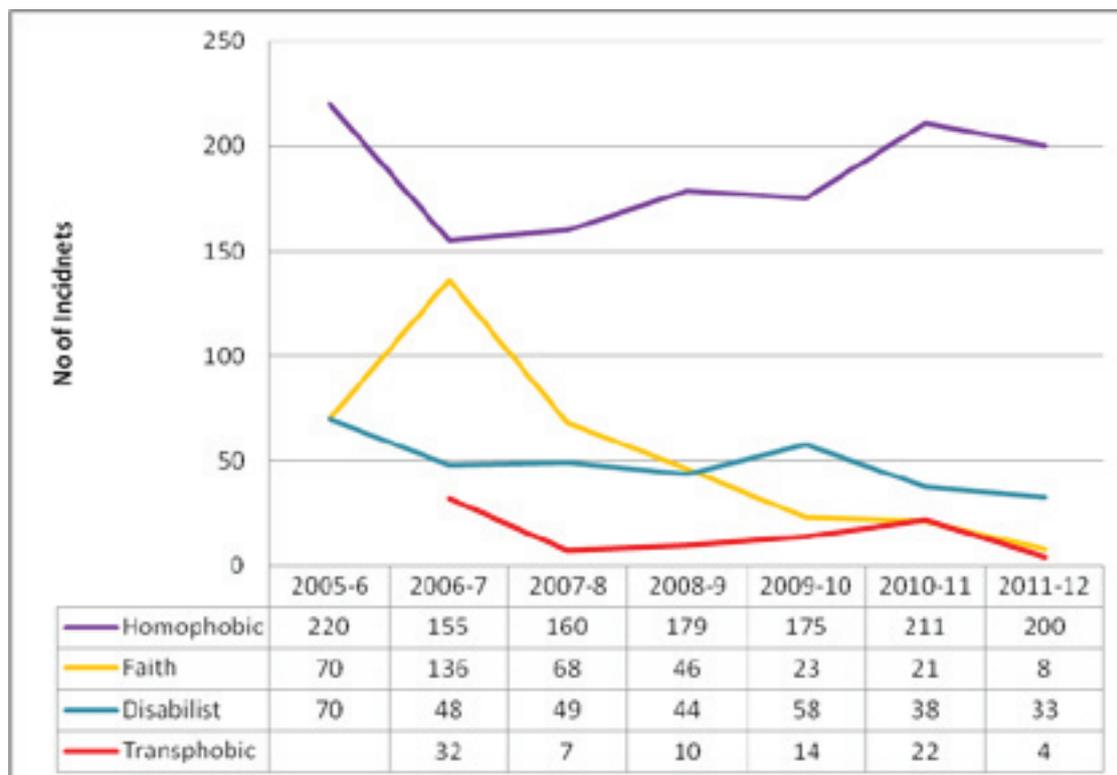
Somewhat more erratic patterns can be seen with regard to the other four categories of hate incident (Figure 3). Recorded faith hate incidents declined from 136 incidents in 2006-7 to just eight in 2011-12; transphobic incidents declined from a high of 32 in 2006-7, the first year of recording, to just four incidents in 2011-12; disability hate incidents have shown less of a decline but decreased from 58 in 2009-10 to just 33 incidents in 2011-12. Homophobic incidents have remained more stable than the others, although there has been an uneven annual fluctuation over the seven year period.

Much of the focus of when discussing the issue of 'hate crime' has been on the more widely acknowledged problems of racism, homophobia and sectarianism, and only limited attention has been given to the problems of faith, disability and transphobic hate incidents and crime in Northern Ireland. The low numbers of such recorded incidents may appear to suggest that they only occur in very small numbers, but they may also reflect the limited awareness of the problem or a continued reluctance to report such crimes to another party.⁵

Recommendation: The Department of Justice and the PSNI should work together to review why the figures for religious, disability and transphobic hate crime remain so low and whether these reflect the scale of the problem or reflect a lack of awareness of the issue or a lack of confidence in the criminal justice system.

⁵ See Vincent et al (2009) on disability hate crime; McBride (2010) on transphobic hate crime.

Figure 3: Homophobic, faith, disability and transphobic incidents, 2005-6 to 2011-12



The issue of limited awareness of disability hate crime raised by the ICR report was noted in the Policing Board’s *Human Rights Annual Report* for 2009, while the lack of PSNI action on the recommendations contained in the ICR report was noted in the subsequent *Human Rights Annual Report* for 2010.⁶ More generally the UK government has highlighted the need to have a more systematic approach to problems of hate crime and bullying of people with a disability as a result of research carried out by the Equality and Human Rights Commission.⁷

Recommendation: The Northern Ireland Policing Board should review progress that the PSNI has made in implementing the recommendations in the ICR report on disability hate crime and the recommendations relating to this contained in their Human Rights Annual Reports.

Recommendation: The Department of Justice should undertake a broad review of how different groups and agencies are addressing the problem of hate crime and harassment of disabled people and should develop a more co-ordinated approach to raising awareness of the issue of disability hate crime and developing a more effective response.

Explaining the Decline

Racism, homophobia and sectarianism have all received widespread publicity over recent years and have frequently been cited as indicators of widespread levels of prejudice and intolerance in Northern Ireland.⁸ Normally a decline in recorded hate crime rates would be considered to be a positive development and perhaps an

6 http://www.nipolicingboard.org.uk/final_pdf_-_human_rights_annual_report_2010.pdf pages 82-83.

7 <http://www.homeoffice.gov.uk/publications/crime/hate-crime-action-plan/action-plan?view=Binary> and see also http://www.equalityhumanrights.com/uploaded_files/disabilityfi/ehrc_hidden_in_plain_sight_3.pdf

8 See Borooh and Mangan (2007), and Jarman (2009) and (2010).

indicator of a growth of tolerance and respect for difference, and it may well be the case that hate crime rates have declined in Northern Ireland over the past few years. But if this is the case then it would be important to explore why the rates of hate crime have declined. For example, is it due to:

- The quality of police work?
- The influence of hate crime campaigns such as Unite Against Hate?
- Public condemnation of hate crime by politicians or in the media?
- Other social policy or activities?
- Or are hate crimes following the wider pattern of a decline in overall crime rates?⁹

On the other hand it is acknowledged that hate crimes are widely under-reported.¹⁰ The police have previously acknowledged that an increase in recorded hate crime did not necessarily mean an increase in experienced hate crime, but rather it could reflect a growing confidence that the police and thus the reporting of incidents that previously went unreported, and the wider criminal justice system were taking hate crime seriously.

In Northern Ireland the PSNI has acknowledged that the growth in recorded hate crimes may in part be due to an increase in incidents and offences, but it may also reflect a growing recognition that hate crime is not to be tolerated nor be regarded as a 'normal' aspect of life for members of different minority communities; or it may be evidence of an improvement in relationships between the police and the various minority communities.

This in turn raises the question of whether the decline in recorded hate crime reflects an actual decline in experienced hate crime, or whether it reflects a decrease in confidence in the police and the wider criminal justice system. The decline in recorded hate crime may reflect a growing unwillingness to report incidents to the police if not enough is done or perceived to be done once a report has been made.

For example, the recent decision by the PSNI to dispense with the dedicated Hate Incident Minority Liaison Officers and transfer such responsibilities to Neighbourhood Policing Teams to has been poorly received by some civil society organisations. This is in part due to the fact that the decision was taken without any consultation and in part because both the decision and the lack of consultation suggests that the police are downgrading the priority given to hate crime and relations with minority community support groups.

The recent *Hate Crime Policy* published by the Public Prosecution Service in December 2010¹¹ offers a list of reasons why hate crimes might be under-reported to police. These are:

1. Previous experience of or lack of confidence in police or the criminal justice system;
2. Perception that police and criminal justice agencies are not interested and will not take action;
3. Perception about how the police and criminal justice agencies will respond;
4. Fear of breach of privacy and becoming exposed to further incidents;
5. Lack of knowledge of reporting systems;
6. Language difficulties;

9 http://www.psni.police.uk/police_recorded_crime_in_northern_ireland_1998-99_to_2010-11.pdf

10 <http://www.homeoffice.gov.uk/crime/hate-crime/>

11 <http://www.ppsni.gov.uk/SiteDocuments/PPS%20Press%20Office/PPSNI%20HATE.pdf>

7. Personal circumstances e.g. immigration status; and
8. Perception that it is acceptable to treat members of the affected groups in this way.

The first five of these eight reasons for the under-reporting of hate crime relate to people's perceptions or knowledge of the criminal justice system and the key agencies, and the PPS policy document goes on to acknowledge that:

The response from the criminal justice agencies to these concerns must be to raise public confidence in how effectively these crimes are investigated and prosecuted (PPS 2010: 13).

One of the core themes of this report is to consider how effective the criminal justice system has been in investigating and prosecuting hate crime offences over recent years and in particular since the introduction of the legislation in 2004. Much of the following analysis will reflect on how the various key agencies have responded to the data on hate crimes over the past eight years. This in turn may inform our understanding of whether recorded hate crime has declined due to the positive work of the criminal justice system or whether people have stopped reporting hate crimes due to a perceived lack of effective response by the PSNI and other agencies.

Unreported Hate Crime

In Northern Ireland there is a general assumption that police data on hate crimes is a broadly accurate reflection of the problem, albeit whilst acknowledging that there is a widespread under-reporting of hate crimes. However, there has been no attempt to more widely estimate the true scale and extent of experienced hate crimes.

A recent Home Office publication attempted to assess the scale of experienced hate crime in England and Wales by analysing data from the British Crime Survey (Smith et al 2012). This suggested that there were around 260,000 incidents of the five categories of hate crime a year in 2009-10 and 2010-11. In contrast, for the calendar year 2010 the police had recorded 48,127 hate crimes. This suggests that recorded hate crime amounts to just over 18% of experienced hate crime.

There has been no comparable analysis done for Northern Ireland. However, it is not unreasonable to assume that at a large proportion of hate crimes goes unrecorded by the police in Northern Ireland.

However, the police are not the only body which might be expected to gather information on hate crime. Other research has highlighted that people experience problems of hate crime in a variety of contexts and institutional settings, and from where few reports appear to reach the police.

- A survey of LGB people's experience of hate crime by The Rainbow Project (2009) revealed that 39% of 1,143 respondents had experienced a hate crime in the previous three years, and that 64% of homophobic incidents were not reported to the police.¹² More recent reports by The Rainbow Project highlighted the problem of homophobic bullying in schools¹³ and the experiences of LGB people in the workplace.¹⁴
- Research by ICR into racism within the health sector (2006) found that 46% of minority ethnic staff had experienced some form of racism. The report recommended the creation of an accessible means of reporting and recording

12 http://www.rainbow-project.org/assets/publications/through_our_eyes.pdf

13 <http://www.rainbow-project.org/assets/publications/left%20out%20of%20the%20equation%20may%202012.pdf>

14 http://www.rainbow-project.org/assets/publications/TOE_mcd.pdf

racist harassment and bullying.¹⁵ We requested information from the DHSSPS on progress on this matter, but did not receive any response.

- A study by Trademark (2012) of sectarianism in the workplace found that 13% of over 2,500 staff at one large private sector employer had personal experience of racism, sexism, ageism or sectarianism.¹⁶
- A report on the BBC noted that nearly 88,000 racist incidents had been recorded in schools in England, Scotland and Wales in the four years between 2007 and 2011.¹⁷ The Department of Education does not gather data on hate crimes in schools in Northern Ireland. However, research commissioned by DENI suggested that bullying of minority ethnic children because of their ethnicity, and of children with a disability as result of their disability, may be an issue that needs to be investigated more deeply.¹⁸
- The Northern Ireland Housing Executive has recorded a growing number of cases where hate crime is a factor in their tenants seeking rehousing due to intimidation, from 108 people in 2006-7 to 197 in 2009-10.¹⁹ Such cases are not automatically reported to the PSNI.

These reports all highlight that problems of hate crime are being experienced in a variety of settings; however the police records reveal some evident gaps in the data. A breakdown of the locations of 3,193 hate crimes recorded by the police over a two-year period from April 2010 to March 2012 indicated that only 17 took place in educational establishments and just five occurred in medical locations. It is not clear from the data how many occurred within a workplace.

In fact 2,148 of the 3,193 recorded hate crimes took place in the single general category 'other', which includes a dwelling, moving vehicle, public open space and travel. In a further 663 cases the location where the hate crime took place was not specified.

This brief review suggests both that there is a need for a more co-ordinated and systematic gathering of data on hate crimes and that there could be a more effective recording of data for those incidents that are recorded.

Furthermore, if hate crime is to be considered both as a serious problem and one that needs to be addressed with serious intent, then it needs to be acknowledged as a general problem for all government departments and statutory agencies, rather than being the sole responsibility of the Department of Justice, the PSNI and other criminal justice agencies.

Recommendation: In order to improve the analysis of the nature of the problem of hate crime and potential gaps in the information gathering, the PSNI should review their data collection on hate crime incidents and should provide a clearer breakdown of the location of all incidents. This should include mapping, identifying and quantifying hate crimes in a more detailed manner, thus ensuring that a broad range of information is available to ensure a clearer picture of the problem in all sections of Northern Ireland society.

Recommendation: The Department of Justice should work with (in the first instance) the Departments of Education, Employment and Learning, and Health, Social Services and Public Safety to develop a strategy for comprehensive recording of hate crimes and incidents. Each department

15 <http://www.conflictresearch.org.uk/Resources/Documents/DHSS%20-%20Racism%20Report%20published.pdf>

16 <http://www.trademarkbelfast.com/downloads/sect.pdf>

17 <http://www.bbc.co.uk/news/education-18155255>

18 http://www.deni.gov.uk/no_56_report_final_2011.pdf

19 http://www.ofmdfmi.gov.uk/good_relations_indicators_-_2010_update-4.xls

should publish data on hate crimes on an annual basis. These, and potentially other departments, should also publish their policy(s) and practice for addressing the issue of hate crime.

Hate Crime in Northern Ireland in Comparison

The PSNI figures for hate crime reveal that 2009 was, to date, the high point for recorded racist and sectarian incidents. In addition, during the spring and summer of 2009 the media highlighted a number of high profile hate crime cases. These included attacks on Poles living in south Belfast following trouble at a Northern Ireland versus Poland football match, a sectarian murder in Coleraine, and the intimidation of Roma families in south Belfast. These incidents in turn led to outbursts of hyperbolic rhetoric about Belfast and/or Northern Ireland being the race hate capital of Europe.

However, while there is a significant number of recorded hate crimes in Northern Ireland each year, there has been little attempt to compare the figures published by the PSNI with data from elsewhere.

The table below sets out data for the number of racist incidents in England, Scotland, Wales and Northern Ireland for 2009-10 (the latest year for which figures are available for all countries) and calculates this in relation to the total population of each country as the number of incidents per 10,000 population (Table 1).

Table 1: Racist Incidents in the UK

| | Racist incidents 2009-10 | Rate per 10,000 |
|------------------|-------------------------------------|----------------------------|
| England | 52,426 | 10.04 |
| Scotland | 4,945 | 9.51 |
| Wales | 2,630 | 8.74 |
| Northern Ireland | 1,038 | 5.77 |

This suggests that there are proportionally fewer racist incidents per head of population in Northern Ireland than in England, Scotland or Wales.

More recently ACPO has begun publishing annual data on six categories of hate crimes (race, faith, sexual orientation, trans, disability and anti-Semitic) that have been recorded by each of the 44 police forces in England, Wales and Northern Ireland.²⁰ The data indicates that the PSNI ranked 22nd of 44 forces in terms of the number of recorded racist hate crimes, 9th in relation to both faith and sexual orientation hate crimes, 20th in relation to trans hate crimes and 11th in the number of disability hate crime. Overall Northern Ireland ranked 17th out of 44 in relation to the total number of hate crimes recorded.

While most hate crimes were recorded by police in large urban areas such as London, Greater Manchester and West Midlands, many smaller forces such as Hampshire, Surrey, West Mercia and Nottinghamshire recorded larger numbers of the six categories of hate crimes than the PSNI.

Data on hate crimes in Scotland is not included in the ACPO figures but information published by the Scottish Government shows that a number of police forces recorded either absolutely or proportionately more racist hate crime than the PSNI.²¹ Strathclyde police recorded 2,321 racist incidents in 2009-10 for a population of 2.3 million people, the Lothian and Border police recorded 1,143 in a population of just

20 http://www.report-it.org.uk/files/acpo_hate_crime_data_for_2010.pdf

21 <http://www.scotland.gov.uk/Resource/Doc/362634/0122710.pdf>

under 1 million, while Grampian police recorded 624 racist incidents in a population of 526,000.

The data thus indicates that while Northern Ireland does have a persistent and unacceptable problem with racism and other forms of hate crime, it is far from a unique situation. In fact the level of most hate crimes in Northern Ireland remains proportionately low compared to other parts of the UK.

One major difference of course is the absence of sectarian hate crimes in England and Wales, while around 50% of recorded hate crime in Northern Ireland is sectarian in nature. This makes the overall pattern of hate crime distinctive from other parts of the UK. Even in the case of those areas of Scotland, such as Strathclyde, where sectarian hate crime is a problem, the context is different due to the history of conflict in Northern Ireland and the continued presence of active paramilitary organisations.²² While the impact of the conflict and paramilitarism may appear evident in relationship to sectarian hate crime, their impact on other forms of hate crime, and on the state's responses to forms of hate crime, is not so clear cut.

4. Support for the Victims of Hate Crime

When any victim reports a crime to the PSNI the police officer is required to ask people to confirm that they are happy for their details to be passed on to Victim Support Northern Ireland, an independent charity that provides free, confidential support and practical help for victims of any type of crime, including assistance with applications for criminal injury compensation and advice and support to witnesses. The victim has a right to opt out of this process, in which case the police do not pass on their details.

On average one in three victims of crime agrees to be referred to Victim Support. In 2010-11 Victim Support Northern Ireland received a total of 38,253 referrals. They estimate that some 95% of these usually come from the PSNI, with the remainder being self-referrals or referrals from other agencies.

When Victim Support receive the referral from the PSNI they write to each victim and offer them the opportunity to talk to a trained volunteer, where they may receive emotional and practical support as well as advice, and they may also be signposted to other agencies for further support.

In 2011-12 Victim Support received 43 referrals from victims of sectarian hate crime. Ten were from victims of racist hate crime, eight from victims of homophobic hate crime and two from victims of disability hate crime. Table 2 sets out the number of referrals for each of the four categories of hate crime as a percentage of the total number of such crimes recorded by the PSNI.

Table 2: Percentage of Victims of Hate Crimes referred to Victim Support, 2011-12

| | Total Crimes Recorded | Referrals to Victim Support | Referrals as % of victims |
|------------|-----------------------|-----------------------------|---------------------------|
| Sectarian | 885 | 43 | 4.9 |
| Racist | 458 | 10 | 2.1 |
| Homophobic | 120 | 8 | 6.7 |
| Disability | 15 | 2 | 13.0 |
| Total | 1,478 | 63 | 4.2 |

²² See <http://www.scotland.gov.uk/Resource/Doc/362943/0122956.pdf> and <http://www.copfs.gov.uk/sites/default/files/Hate%20Crime%20-%20publication%20-%20final%20published%2017%20May%202012.pdf>

The table shows that just 4.2% of victims of the four categories of hate crime were referred to Victim Support, with the range across the four categories being 13% of victims of disability hate crime but just 2.1% of victims of racist crimes being referred.

Further data from Victim Support (Table 3) indicated that the figures for 2011-12 were broadly in line with previous years. Over a six year period there have been just 318 referrals of victims of hate crime to Victim Support. There is no evidence of any victim of religious hate crime or transphobic hate crime being referred to Victim Support in the past six years.

Table 3: Number of Victims of Hate Crime Referred to Victim Support, 2006-12

| | Sectarian | Racist | Homophobic | Disability | Total |
|---------|-----------|--------|------------|------------|-------|
| 2006-07 | 41 | 37 | 3 | 0 | 81 |
| 2007-08 | 11 | 9 | 7 | 1 | 28 |
| 2008-09 | 31 | 4 | 3 | 0 | 38 |
| 2009-10 | 21 | 13 | 5 | 0 | 39 |
| 2010-11 | 31 | 32 | 5 | 1 | 69 |
| 2011-12 | 43 | 10 | 8 | 2 | 63 |
| Total | 178 | 105 | 31 | 4 | 318 |

The figure of 318 hate crime victims being referred to Victim Support accounts for just 1.9% of the 16,825 people²³ who have reported hate crimes to the police in the past six years and stands in stark contrast to the average figure of one in three victims of all types of crime being referred to Victim Support.

The difference in the number of referrals from victims of hate crime compared to all crime victims indicates that there is a clear need to explore why so few victims of hate crime are currently being referred to Victim Support. A number of factors may account for the limited number of referrals of victims of hate crime to Victim Support by the PSNI.

1. There may be a technical or other factor that is limiting the number of referrals that are clearly identified or flagged as a hate crime when passed to Victim Support.
2. Victims of hate crimes may be less likely than the victims of other types of crime to wish to have their information passed to Victim Support, perhaps because they are not aware of the organisation, of the support it can offer or some other factor.
3. Police officers may not be raising the issue of the option for a referral to Victim Support as systematically or clearly to victims of hate crime as they may to the victims of other crimes.
4. Language factors may reduce the victims' understanding of the issue of referral to Victim Support and increase the likelihood of refusal.
5. Cultural factors and or trust in state agencies may reduce interest or willingness to be referred by the police to another body that may be perceived to be part of the criminal justice system.

The low level of referrals of victims of hate crime to Victim Support is a serious concern. Research has highlighted the serious impact that hate crime can have on a victim, their family and their wider community and there is a need to better

²³ The PSNI note that this figure, which is an aggregate of all recorded hate incidents, may include some double counting where a crime includes more than one form of hate motivation.

understand why so few victims of hate crime are availing of the support services that are on offer.

We understand that the PSNI and Victim Support have acknowledged the low numbers of victims of hate crime that have been referred to Victim Support in recent years and have been working to ensure that all victims of hate crime are made aware of the services available from Victim Support. It will be important to monitor the situation to ensure that the changes that have been made do translate to an increased number of referrals.

Recommendation: There is a need for some considerable improvement in the figures for the number of victims of hate crime that are referred to Victim Support. The PSNI and Victim Support should work together to monitor the revised procedures for supporting victims of hate crime, and identify any weaknesses in practice and gaps in services to victims of hate crime.

Recommendation: Victim Support should improve its engagement with relevant support groups servicing the various constituencies victimised through hate crime.

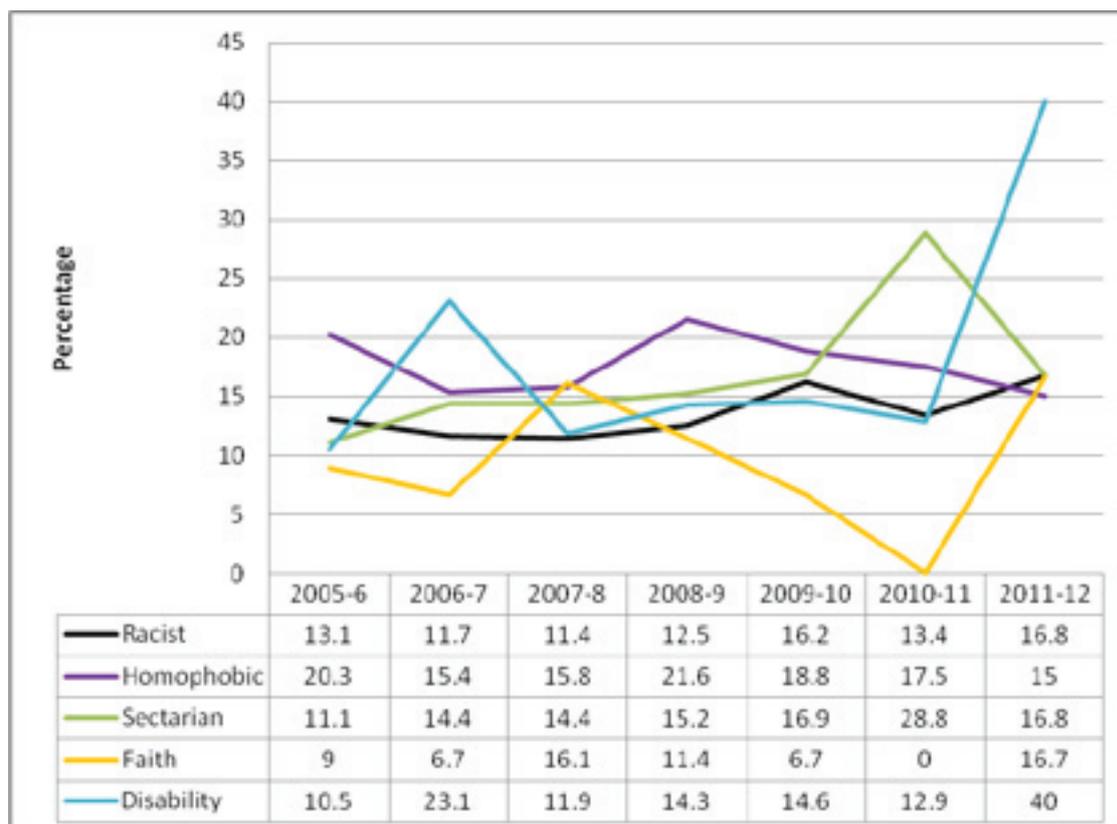
5. Hate Crime Detection Rates

One recurrent source of concern among support groups, the Policing Board and others has been the persistently low detection (or clearance) rates for hate crime offences in Northern Ireland.²⁴ In 2011-12 for example, detection rates for sectarian, racist, faith and homophobic hate crimes were all between 15% and 17%, compared with detection rates of 26% for all crime and 34% for violent crimes, while the 40% detection rate for disability hate crimes may be a largely result of the small number of such offences that have been recorded.

Figure 4 illustrates the detection rates for each of the five legally proscribed hate crimes in Northern Ireland over the past seven years. In most years that sanction detection rates have been between 10% and 20%, although in the case of each category of hate crime there have been higher detection rates in some years. However, in no case has a sustained increase in detection rates been maintained and overall the detection rates show a widely fluctuating level of success, and an inconsistent year on year pattern.

²⁴ The term detection rate or clearance rate refers to crimes that have been formally dealt with by some form of criminal justice sanction by the police. See appendix for formal definitions in each country.

Figure 4: Sanction Detection Rates for Hate Crimes



This section reviews the PSNI’s detection rates for hate crimes from three perspectives:

1. In relation to the performance targets set by the NIPB in the annual Policing Plan;
2. In comparison to the detection rates to other forms of crime in Northern Ireland; and
3. In comparison to detection rates for hate crimes in other parts of the UK.

Improving Detection Rates

The low level of detection rates has been noted among groups working on hate crime issues. The low detection rates have been recognised as a factor that suggests a low priority towards hate crime by the police and thus as a factor that may reduce subsequent levels of reporting of hate crime.

The need to improve the detection rates for hate crimes (and for other types of crime) has been noted in the various annual policing plans published by the Policing Board each year and which are used to hold the Chief Constable to account. In the *2006-09 Policing Plan* the target for the police was to increase detection rates of racist and sectarian crimes by two percentage points; in each of the following three years there was a general non-specified target of increasing the detection rates for sectarian, racist and homophobic hate crimes. The *2010-13 Policing Plan* set a target of a five percentage point increase in both racist and sectarian hate crime and a ten percentage point increase in detection rates for homophobic hate crimes and the following year the police were set a target of a two percentage point increase for racist and sectarian crimes and a four percentage point increase for homophobic crimes.

However, the published data indicates that there has not been a sustained or consistent increase in detection rates for hate crimes.

The *2012-15 Policing Plan* made no specific reference to increasing detection rates for hate crimes and in fact the only reference to hate crime in the Plan was to improve the 'quality of engagement with, and service provided to' to the victims of hate crime who are classified as part of a wider category of 'vulnerable people'. It is not clear though how such improvements (or otherwise) might be assessed.

The lack of any targets is presented in the *2012-15 Policing Plan* as part of a general strategy of removing 'purely statistical targets'. The Foreword, by the chair of the Northern Ireland Policing Board and the Chief Constable, noted that while numerical targets were 'an important means of monitoring crime reduction and detection rates' they did not 'adequately reflect the impact that the Police were making on community confidence'.

The NIPB has undertaken a variety of work in relation to the policing of hate crime over a number of years and its recent human rights thematic review *Policing with and for Lesbian, Gay, Bisexual and Transgender Individuals*²⁵ included a number of recommendations for the PSNI to improve its response to hate crime. These included having a specific target for increasing detection rates for homophobic and transgender hate crime.

The lack of any statistical targets in the Policing Plan along with the lack of any specific reference to the need to tackle or reduce hate crime (rather than provide support to victims) for the first time in many years may foster an impression that hate crime is not considered as such a serious problem as it once was by the PSNI and the NIPB.

Recommendation: The Policing Board should reaffirm its own commitment to improving policing responses through requiring evidence of both a better and more comprehensive recording of hate crimes and a consistent increase in detection rates.

Recommendation: The Policing Board should publish an annual review of the PSNI's performance in responding to hate crime.

Detection Rates of Hate Crime compared with Other Crime

It is also useful to compare the detection rates for hate crime with the detection rates for other types of crime over the same period. Figure 5 illustrates that the detection rates of hate crimes are considerably lower than detection rates for other major categories of crime.

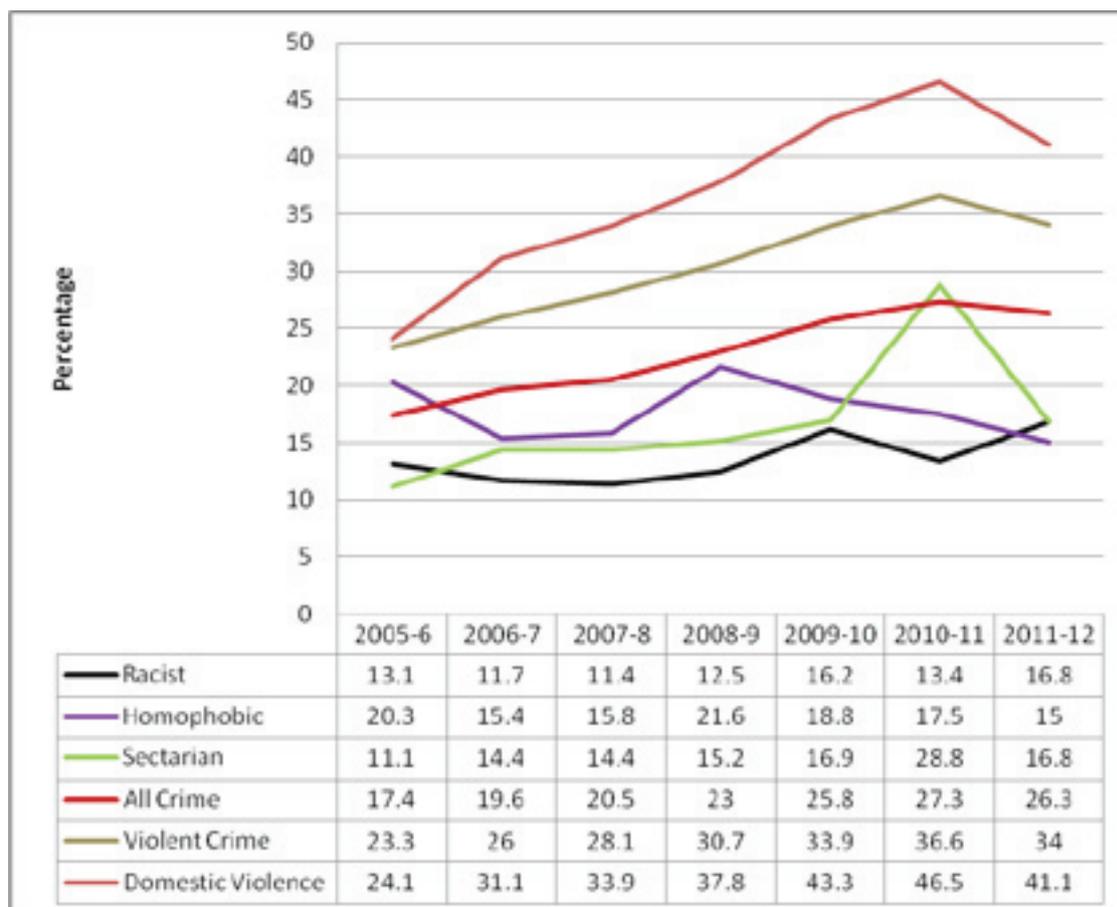
In 2005-6 the detection rates for racist and sectarian hate crimes were some 12% lower than those for all violent crimes and for domestic violence while those for all crimes at 17.4% were actually lower than those for homophobic crime at 20.3%.

However since then, while detection rates for all crimes, violent crimes and domestic violence have all steadily improved (at least until 2010-11) the detection rates for hate crimes have remained relatively static. Detection rates for all crimes rose to a high of 27.3% in 2010-11, while detection rates for acts of violence against the person reached 36.6% in the same year and in the case of domestic violence 46.5% of cases were cleared (PSNI 2011).

It is also worth noting the overall profile of the detection rates over the seven year period. The detection rates for all crimes, violent crimes and domestic violence follow a similar profile of steady improvement, which might be expected from a sustained focus of police attention.

25 http://www.nipolicingboard.org.uk/lgb_t_thematic_review.pdf

Figure 5: Sanction Detection Rates for Hate and Other Crimes



In contrast, as has already been noted, the profile of detection rates for hate crimes is chaotic and inconsistent. There has been no sustained progress but rather the profile suggests a lack of sustained strategic focus on addressing the problem of hate crime.

Comparing Detection Rates

One reason proffered for the low detection rates of hate crimes is the particular nature of the offence. There has been a suggestion that hate crimes that involve criminal damage are simply more difficult to detect than those involving violence against the person, while the 'low-level' or 'less-serious' nature of some hate crimes makes them less of a priority for the police.

If it is the particular nature of hate crime that leads to low detection rates then we might expect to see similar low detection rates in other parts of the UK. However, the low level of sanction detections of hate crimes in published data in Northern Ireland compares unfavourably with published data on sanction detections of hate crimes in both England & Wales and in Scotland. The differences may be due to differences in definition, in procedures, in rigour of approach, or in how sanction detection rates are counted by police forces in other parts of the United Kingdom, particularly in Scotland which has a different legal system. But this remains to be explained.

It may also be that the low detection rate in Northern Ireland is part of the legacy of the transition to democratic policing, and may be due to a lack of trust in the police compared with the situation in England & Wales and Scotland.

It should be noted that data on hate crimes in England & Wales is not as widely available as that published by the PSNI and the material used in the discussion below is the most recently published.

Home Office statistics for England & Wales reveal sanction detection rates of:

- 38% for cases involving racially or religiously aggravated grievous bodily harm;
- 43% for cases involving racially or religiously aggravated actual bodily harm;
- 46% for the most numerous offences, racially or religiously aggravated 'public fear, alarm or distress'; and
- A sanction detection rate of 27% for racially or religiously aggravated criminal damage to a vehicle.²⁶

Table 4 gives more details of the detection rates for the different offences. It also indicates that in most cases there was an increase in detection rates on the previous year. The only offence in which detection rates are comparable with *overall* detection rates for racist hate crime in Northern Ireland are the figures for racially or religiously aggravated criminal damage to a dwelling, where just 15% of offences were cleared.

Table 4: Sanction Detection Rates for Racial and Religiously Aggravated Offences in England and Wales, 2009-2010

| | Number of offences | No. Sanction detections | Sanction detection rate | % change from previous year |
|--------------------------|--------------------|-------------------------|-------------------------|-----------------------------|
| Grievous bodily harm | 223 | 85 | 38% | +6 |
| Actual bodily harm | 3,515 | 1,529 | 43% | +3 |
| Aggravated harassment | 2,376 | 913 | 38% | +3 |
| Aggravated public fear | 23,235 | 10,746 | 46% | +2 |
| Assault without injury | 4,330 | 1,819 | 42% | +2 |
| Crim. damage to dwelling | 850 | 131 | 15% | -4 |
| Crim. damage to vehicle | 1,133 | 308 | 27% | +4 |
| Other crim. damage | 604 | 135 | 22% | -3 |

A similar pattern is revealed by Metropolitan Police Service data on racist hate crimes, which shows that while recorded offences declined from 10,154 in 2006 to 8,863 in 2010, detection rates in the London area increased from 33.5% of cases in 2006 to 46.1% of cases in 2010.²⁷ Similar patterns of an increase in detection rates have also been recorded for religiously flagged offences, which rose from a detection rate of 22.6% in 2006 to 32.8% in 2010, and homophobic hate crimes which increased from 33.1% to 48.3% over the same period.

The differences in the detection rates are even more striking in Scotland where in 2010-2011 67.2% racist crimes were cleared by the police.²⁸ In the Strathclyde Police area the figures are similar, with sanction clearance rates for all racist incidents of 65.6% in 2011-12, an increase in 2.1% on the previous year and the sixth year in a row with an increase in clearance rates.²⁹ The clearance rates for homophobic

26 See the chapter by Ogunbor and Taylor, 2010: 157-162.

27 All data from the Metropolitan Police Service is based on data obtained as a result of a freedom of information request for this research. http://www.met.police.uk/foi/pdfs/disclosure_2011/february/2011010002606.pdf

28 Scottish Government 2012: 19, Table 7b <http://www.scotland.gov.uk/Resource/0039/00394647.pdf> The Scottish Government does not publish similar data for any other forms of hate crime.

29 http://www.strathclyde.police.uk/assets/pdf/22863/annual_report_statistical_supplement_2011-12.pdf

incidents were even higher in 2011-12 with 80.4% of the 446 recorded incidents being cleared, an increase of nearly 20% on the previous year.

Figure 6: Detection Rates for Racist and Homophobic Hate Crimes by the PSNI, Metropolitan Police Service and Strathclyde Police

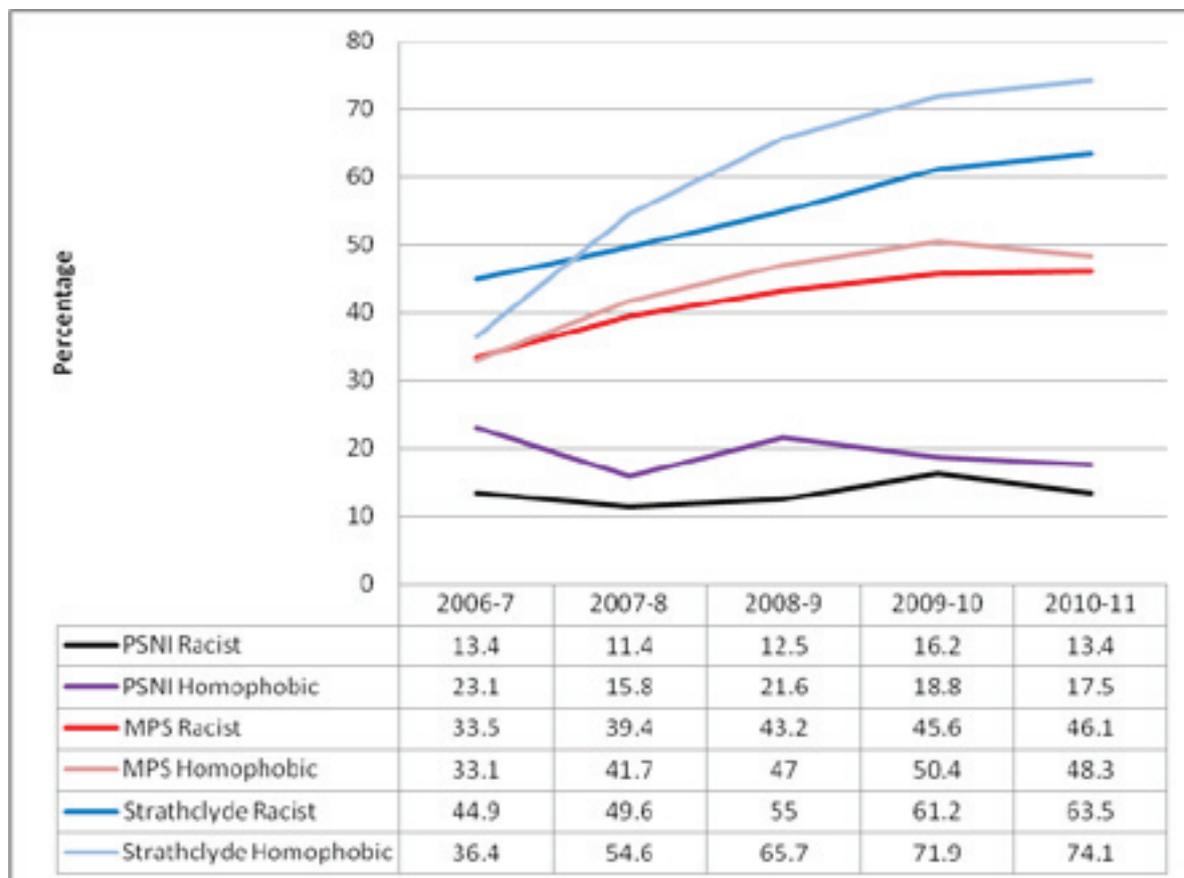


Figure 6 compares the detection rates for racist and homophobic hate crimes by the PSNI, Metropolitan Police and the Strathclyde Police. The chart graphically reveals the differences between the results of the three forces, and also highlights that while the detection rates for the PSNI are at best static, the Metropolitan and Strathclyde Police have both achieved a consistent increase in detection rates between 2006-07 and 2010-11.

It is also interesting to compare detection rates for racist hate crime and those for all crimes between the three police forces.

In Northern Ireland the detection rates for racist hate crimes are just about half the detection rate for all crimes (13.4% compared with 27.3% in 2010-11). In contrast the detection rates for racist hate crimes by the Strathclyde Police are slightly lower than for all crimes (a 63.5% detection rate for racist hate crimes compared with 74.2% detection rate for all crimes), while those for the Metropolitan Police are virtually the mirror image of PSNI detection rates, since the Met cleared 46.1% of racist hate crime compared with just 23.5% of all crimes.

Table 5 shows the difference in detection rates by the three forces for racist hate crimes and for all crimes in 2010-2011.³⁰

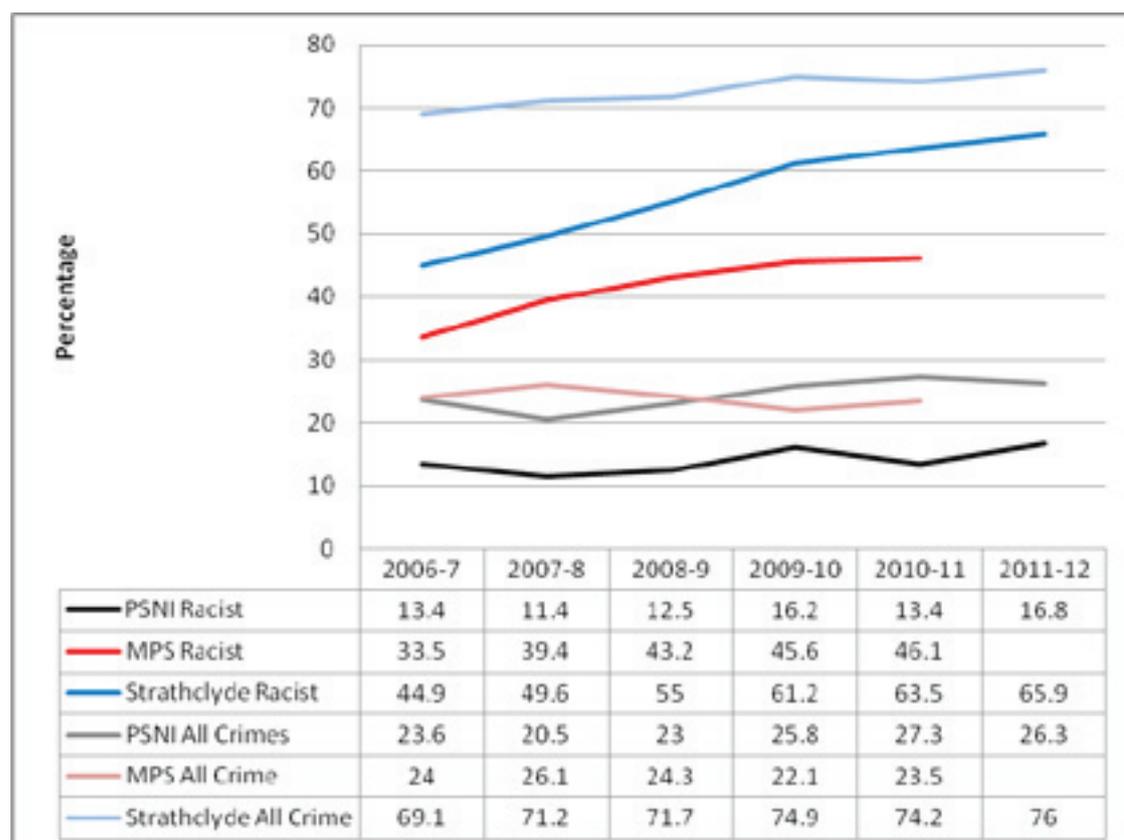
³⁰ This is the latest year for which data is available in Scotland.

Table 5: Detection Rates for Racist Crimes and All Crimes, 2010-11

| 2010/2011 | Crimes Detection | Rates % |
|----------------------------------|------------------|---------|
| Racism in NI | 531 | 13.4 |
| Racism in MPS area ³¹ | 8,863 | 46.1 |
| Racism in Strathclyde | 2,783 | 63.5 |
| All Crime NI | 105,040 | 27.3 |
| All crime MPS area | 823,419 | 23.5 |
| All Crime Strathclyde | 409,186 | 74.2 |

Figure 7 illustrates the trends over a six year period (five years for the Metropolitan Police). Detection rates for all crimes in London have been broadly similar to those in Northern Ireland, but both have been significantly lower than detection rates for all crimes in Strathclyde and for racist crimes in both London and Strathclyde.

Figure 7: Comparison of Detection Rates by PSNI, Metropolitan Police and Strathclyde Police, 2006-07 to 2011-12.



This brief review of data indicates that the PSNI’s detection rates for hate crime:

- Are low compared to their detection rates for other categories of crime;
- Have scarcely improved over the past six years; and
- Are significantly lower than those achieved by the police in London and Glasgow.

³¹ Data from the Metropolitan Police Service relates to the calendar year 2010 and was accessed in response to a freedom of information request.

Recommendation: The PSNI should be encouraged to review the approaches to dealing with hate crime that have been developed by police organisations in other jurisdictions to identify differences in policy and practice which may either account for the difference in detection rates and/or may lead to an improvement in the detection rates for hate crime in Northern Ireland.

From Detection to Prosecution

The Scottish Government also publishes data on the nature of the police responses to racist crimes and these figures reveal that a high percentage of such cases also result in some form of action against the perpetrator. In 2008-2009 for example, the police made 3,650 referrals to either the Crown Office and Procurator Fiscal Service (COPFS) or to the Children's Reporter, issued 101 police warnings, referred five cases to another agency and took 'other action' in a further 918 cases. In just 720 of the 5,423 cases was no further action taken against a perpetrator, while in 29 cases the outcome was unknown. This means that no action was identified in just 14% of the 5,423 cases (Scottish Government 2010: 20, Table 15).

In contrast to the information that is made available on the nature of police responses to racist hate crimes in Scotland, neither the PSNI nor the Department of Justice publish any information on criminal justice responses to the perpetrators of hate crime in Northern Ireland, beyond the reference to the number of detections in the PSNI's annual Statistical Report.

Recommendation: In order to improve transparency in the processing of hate crime cases through the criminal justice system the PSNI should be required to provide annual figures for the number of hate crime cases submitted to the PPS. They should also clarify the relationship between the figures for sanction detections and for cases passed to the PPS. These should be published and reviewed annually.

Conclusions

This brief comparative review of detection rates in different parts of the UK clearly indicates that the police response to both racist and homophobic crimes has been much less effective in Northern Ireland than in both England & Wales and in Scotland. This is true both in relation to the percentage of recorded hate crimes that are subject to a sanction detection and to any improvement of the sanction detection rates over the past several years.

This data thus raises the question as to why there is such a disparity between the detection rates for hate crimes in England & Wales, Scotland and Northern Ireland. There are a limited number of possible reasons why the detection rates are so much lower in Northern Ireland than elsewhere:

1. There is some difference in the manner in which the police interpret a detection.
2. Victims are less willing to work with the police.
3. Hate crime is treated as less of a priority in Northern Ireland.
4. The quality of the police work is poorer.
5. The impact of paramilitarism or the perception of the involvement of paramilitaries in hate crime.
6. A continued lack of consensus over the legitimacy of the police in Northern Ireland compared with police in Great Britain.
7. The endemic and institutionalised nature of prejudice in Northern Ireland.³²

³² See McVeigh (2011) *The Next Stephen Lawrence?* Belfast, NICEM

It is often claimed that the PSNI are one of the most heavily scrutinised police organisations and are subject to extremely high standards of accountability. However, the PSNI do not appear to have been held effectively to account in relation to the way in which they have been responding to hate crimes. The targets that have been set in the annual Policing Plans have rarely been met, detection rates remain very low and there has been no effective improvement in the policing response to hate crimes.

The Northern Ireland Policing Board has ultimate responsibility to hold the PSNI to account for their performance in response to all forms of crime. In the Foreword to the *2012 Policing Plan* the Chair of the Board states that 'performance against numerical target was not evidence that the Police were improving the service provided', the data reviewed above suggests that with regard to dealing with hate crimes the PSNI has clearly not improved the quality of service and this continued failure to respond effectively towards hate crimes is only likely to reduce the level of confidence that the various minority communities have in the police.

6. Prosecuting Hate Crimes

Once the PSNI has investigated a hate crime the police pass the evidence to the Public Prosecution Service (PPS) who have the responsibility to assess the evidence and make a decision as to whether to prosecute. The Criminal Justice Inspection (CJINI) highlighted, in both the initial thematic inspection report into the management of hate crime and the subsequent follow-up report (CJINI 2007, 2010), the limited amount of information on the use of the Criminal Justice No 2 Order since it was introduced in 2004. In the follow-up report the Inspector noted that the PPS had since issued internal guidance to directing and prosecuting lawyers on the procedures to be followed when appropriate prosecution files have been identified in relation to hate crime offences. Since the follow-up report the PPS has also published its hate crime policy (PPS 2010) which outlines some of the principles and standards impacting on the prosecution of hate crime offences.

Deciding Whether to Prosecute

In the *Hate Crime Policy* the PPS notes a crucial change that occurs as hate crime offences proceed through the criminal justice system - from a subjective decision based on perception, to an objective assessment of the quality of the evidence. Initially when an offence is reported the PSNI may flag a crime as a hate crime on the basis of the Lawrence/Macpherson definition: that a hate crime is any offence that is perceived by the victim or any other person to be motivated by prejudice or hatred based on the victim's actual or perceived membership of a specific group. It is the responsibility of the police to gather the evidence both of the crime and of the perceived hate element.

However, in making a decision whether or not to prosecute in any case the PPS applies the Test for Prosecution (see Appendix 5). This Test is deemed to have been met if:

1. The evidence which can be adduced in court is sufficient to provide a reasonable prospect of conviction - the Evidential Test; and
2. Prosecution is required in the public interest - the Public Interest Test.

In relation to hate crime cases the PPS has to assess two aspects of the evidence in deciding whether to prosecute:

1. The evidence of the criminal offence; and
2. Whether there is evidence of any aggravating element (the 'hate' part of the crime) to the evidential standard.

The PPS may thus decide to prosecute for (a) the substantive criminal offence or (b) to prosecute for the substantive criminal offence but seek to prove the aggravation element to the court. If the test for prosecution is met, the PPS will prosecute the offence.

The PPS must also decide whether it is in the public interest to prosecute any offence. The *Hate Crime Policy* states 'motivation of hatred' first in its list of factors in favour of prosecution and also notes that there may be 'circumstances in which, although there is sufficient evidence to provide reasonable prospect of conviction, prosecution is not required in the public interest' (PPS, 2011: 17). The full list of 13 factors in favour of prosecution and eight against are set out below.

Public Interest considerations in favour of prosecution

1. Where the offence was motivated by hostility against a person because of their race, religion, sexual orientation or disability;
2. Where the victim of the offence, or their family, has been put in fear, or suffered personal attack, damage or disturbance. The more vulnerable the victim the greater the aggravation;
3. The seriousness of the offence i.e. where a conviction is likely to result in a significant penalty;
4. Where the suspect was in a position of authority or trust and the offence is an abuse of that position;
5. Where the suspect was a ringleader or an organiser of the offence;
6. Where the offence was premeditated;
7. Where the offence was carried out by a group;
8. Where the offence involved the possession or use of a firearm, imitation firearm or other weapon such as a knife;
9. Where the offence is prevalent;
10. Where there is a marked difference between the actual or mental ages of the suspect and the victim and the suspect took advantage of this;
11. Where the suspect has previous convictions or cautions which are relevant;
12. Where the suspect is alleged to have committed the offence whilst on bail, on probation, or subject to a suspended sentence or an order binding the defendant to keep the peace, or released on licence from a prison or a place of detention or otherwise subject to a court order;
13. Where there are grounds for believing that the offence is likely to be continued or repeated, for example, where there is a history of recurring conduct.

The factors that may militate against prosecution are:

Public Interest considerations against prosecution

1. Where the court is likely to impose a very small or nominal penalty;
2. Where the loss or harm can be described as minor and was the result of a single incident, particularly if it was caused by an error of judgment or a genuine mistake;
3. Where the offence is not of a serious nature and is unlikely to be repeated;

4. Where there has been a long passage of time between an offence taking place and the likely date of trial unless:
 - the offence is serious;
 - delay has been caused in part by the suspect;
 - the offence has only recently come to light; or
 - the complexity of the offence has resulted in a lengthy investigation;
5. Where a prosecution is likely to have a detrimental effect on the physical or mental health of a victim or witness, particularly where they have been put in fear;
6. Where the suspect is elderly or where the defendant is a child or young person;
7. Where the suspect had, at the time of the offence or trial, significant mental or physical ill-health, unless the offence is serious or there is a real possibility that it may be repeated. Prosecutors must balance a suspect's mental or physical ill-health with the need to safeguard the public or those providing care services;
8. Where the suspect has put right the loss or harm that was caused (although suspects must not be able to avoid prosecution simply because they pay compensation) (PPS 2011: 18-19).

The first three of the factors against prosecution all relate to potentially minor offences and may be one factor why there has been such limited use of the 'hate crime' legislation in Northern Ireland. The PPS policy document does not state what the criteria for a 'minor' offence or harm might be, and research has indicated that any hate crime offence can have a serious impact on a victim and their families, and that in many cases the victims have been subjected to numerous hate crimes before they decide to report an incident. To the victim of hate crime it may be questionable whether any reported hate crime should be considered as a minor offence.

Furthermore, as has been noted above, a perceived failure to prosecute the perpetrators of hate crimes for the hate element of the offence may be a factor that undermines the victim's confidence in the criminal justice system and thus their likelihood to report future incidents to the police.

The Scottish Approach to Prosecuting Hate Crimes

The Crown Office and Procurator Fiscal Service (COPFS) in Scotland has arguably taken a stronger position in relation to hate crime offences. A statement by the Lord Advocate noted '*we have a consistently robust approach to (hate crime) cases*' because of the effect that hate crime has on victims and their families. The statement continued:

*'In all cases, there is a **strong** presumption that the public interest should be in favour of prosecution where evidence of prejudice exists'*. (emphasis in the original)

This approach was reiterated by members of staff of the COPFS who stated that if a case is flagged as a hate crime by the police then only in very rare circumstances would it not be prosecuted and this would usually only be done at the request of a victim.³³ The Lord Advocate has also issued advice for staff which clarifies and elaborates on this approach, although this is not a public document.

The Scottish prosecutor appears to take a more assertive approach to prosecuting all forms of hate crime offences than does its Northern Irish counterparts, as there was no indication from COPFS that an offence that was deemed minor would be less likely to be prosecuted than a more serious offence. And in fact the attitude of the

³³ Interview with staff from COPFS on 3 May 2012. The untitled and undated statement was produced at the interview.

COPFS was affirmed by police officers in both Strathclyde and Lothian and Border, who stated that even 'low-level' crimes involving verbal abuse were subject to serious investigation and evidence gathering.³⁴

The positive approach of the COPFS is further evidenced by their data on the number of cases sent to prosecution, which is discussed at the end of this chapter.

Plea Bargaining

Another factor that was raised during the course of the research was the extent to which the PPS may be willing to not pursue the 'hate crime' element of a prosecution in order to guarantee or better secure a conviction on the criminal offence. This was highlighted in relation to the large proportion of cases in which prosecutions proceed for a criminal offence but without pursuance of any element of 'aggravation by hostility'.

The PPS *Hate Crime Policy* states that "plea bargaining" has no place in the practice or procedures of the Prosecution Service' (PPS 2011: 23). However, the policy does state that there may be circumstance in which the PPS may reduce the charges against a defendant:

5.9.5 The acceptance by the Prosecution Service of an offer from the defence to plead guilty to a lesser offence must be consistent with the evidence and information available at the time and meet the requirements of justice. The following may be relevant factors:

- whether the court can properly sentence the defendant for his or her criminality;
- any relevant information concerning the defendant's previous convictions and likelihood of re-offending; and
- the proper interests of victims and witnesses.

5.9.6 In no circumstances may the prosecution accept an offer to plead guilty to an offence in respect of which the defendant otherwise asserts his or her innocence.

The PPS also noted that cases that include accusations of prejudicial abuse as an indicator of the 'hate crime' will often involve an element of one person's word against another's and in the absence of a witness or some other form of evidence the 'aggravating factor' can be notoriously difficult to prove in court. This may result in a substantive criminal charge being pursued while the 'hate element' is not.

It may be useful for the PPS to follow the lead of the Lord Advocate in Scotland, who included a simple and clear sentence on this matter in his statement on hate crime prosecutions:

*In the process of plea adjustment, the aggravation by prejudice will **not** be removed by the prosecutor - where there still exists available and admissible evidence of the aggravation which is sufficient to secure a conviction. (emphasis in the original)*

Recommendation: The PPS should issue a public statement asserting their intention to prosecute all cases in which there is evidence of hatred.

34 Interviews with officers from Strathclyde Police and Lothian and Borders Police on 3 May 2012.

Statistics of Hate Crime Prosecutions

One way to assess the approach to and effectiveness in prosecuting hate crime cases is to review the statistics that are available. Since 2007-08 the PPS has published two sets of data on hate crime cases. A two-year data set relates to the number of files received from the PSNI which involved an offence aggravated by hostility. The second and larger set of figures relates to decisions taken by the PPS each year since 2007-08 with regard to prosecutions and diversions on offences aggravated by hostility.

The two sets of data relate to two different aspects of the processing of cases flagged as hate crimes. The smaller set relates to the transition of case files that the PSNI has recorded as hate crime and which they pass on to the PPS for consideration for prosecution. The larger set relates to the PPS's own assessment of how to proceed with those files that have been flagged as hate crimes.

A third set of figures was accessed from the Department of Justice documenting the number of hate crime cases passing through the various stages of the criminal justice system and recorded on the Causeway IT system.³⁵

The next section reviews the three sets of data separately and considers their implications for our understanding of how the criminal justice system is responding to hate crimes.

Files from the PSNI to the PPS

In the two years for which data is available the PPS identified 645 files, involving a total of 939 individuals, which had been flagged by the police as hate crime and which the prosecutor considered to involve an element of aggravation by hostility (Table 6).

Table 6: Files received from PSNI which the PPS considered to have been Aggravated by Hostility

| | Racial | Religious | Sexual orientation | Disability | Total |
|---------|--------|-----------|--------------------|------------|-------|
| 2007-08 | 114 | 153 | 48 | 13 | 328 |
| 2008-09 | 106 | 154 | 45 | 12 | 317 |
| Total | 220 | 307 | 93 | 25 | 645 |

It might be assumed that there would be a reasonably close correlation between the number of files passed to the PPS by the PSNI and the number of cases deemed to have been 'cleared' or 'detected' by the PSNI³⁶, given that a detection is defined as case that involve a formal sanction such as:

- Charging or summoning an offender;
- Issuing a caution;
- Having an offence accepted for consideration in court; or
- For a juvenile an informed warning, restorative caution or a prosecutorial decision.

A case is also deemed to have been cleared if the PPS directs that there should be no prosecution.

³⁵ The Department of Justice has noted that the figures accessed from Causeway were provided for a separate illustrative purpose, not for analysis and they have not been validated.

³⁶ In the 2008-09 Statistical Report the PSNI used the term 'clearance', from 2009-10 they have used the term 'detection'.

Table 7 sets out the PSNI data for detections of each category of hate crime for the same two year period. The PSNI data indicates a lower number of detections for three of the four categories where files were passed to the PPS, while the sectarian / religious hate crime category has a larger number of detections than cases passed from the PSNI to the PPS.

Table 7: PSNI data on hate crime detections by category

| | Racial | Religious / Sectarian | Sexual orientation | Disability | Total |
|---------|--------|--------------------------|-----------------------|------------|-------|
| 2007-08 | 86 | 162 | 18 | 5 | 271 |
| 2008-09 | 96 | 159 | 29 | 4 | 288 |
| Total | 182 | 321 | 47 | 9 | 559 |

These sets of data highlight one issue, the apparent disparity in information provided by the PSNI and that published by the PPS, which will need to be addressed if we are to be able to:

1. Assess how the criminal justice system as a whole is responding to hate crime;
2. Identify how individual agencies are dealing with hate crime;
3. Identify specific weaknesses in the overall process of processing hate crime cases through the criminal justice system; and
4. Establish a more joined up approach to hate crime through all sections of the criminal justice system.

The Causeway IT system, which went live on 30 November 2009, should enable these issues to be addressed by providing systematic data on the progress of hate crime files through the criminal justice system.

Identifying Cases Aggravated by Hostility for Prosecution

Given that the police identify and record hate crimes and then pass the files on to the PPS for prosecutions one might expect the PPS figures for decisions on cases involving offences aggravated by hostility to bear a close relationship to the number of cases passed from the PSNI to the PPS.³⁷

The PPS data indicates that it made decisions on 562 cases in 2007-08, 518 in 2008-09, 665 in 2009-10 and 639 in 2010-11, a total of 2,384 cases in four years. However, over the same period the PSNI claim to have cleared a total of just 1,301 hate crime cases, 1,083 fewer than the total processed by the PPS (Table 8). Again there is a substantial difference in the two sets of figures, and in fact the PSNI figures for total detections only account for 55% of the number of cases dealt with by the PPS.

³⁷ It should be noted that there may be some discrepancy in the totals since a case may be passed from the PSNI to the PPS in one financial year and a decision taken by the PPS in a subsequent financial year. The currently available data does not enable one to follow individual cases, but one might reasonably expect there to be a broad correlation over a period of time.

Table 8: Hate crimes cleared by the PSNI and dealt with by the PPS, 2007-11

| | PSNI Detections | PPS Decisions | Difference |
|---------|-----------------|---------------|------------|
| 2007-08 | 271 | 562 | 291 |
| 2008-09 | 288 | 518 | 230 |
| 2009-10 | 356 | 665 | 309 |
| 2010-11 | 386 | 639 | 253 |
| Total | 1,301 | 2,384 | 1,083 |

One explanation for this difference is that the PSNI and the PPS have different methods of counting the data or the PSNI and the PPS data may refer to different things i.e. a case may involve multiple suspects or a number of separate crimes.

Another explanation is that not all of the cases that the PPS identify as cases aggravated by hostility may have been flagged as hate crimes by the PSNI. That is, the PPS may identify an aggravating factor in the evidence that had not been noted by the PSNI.

Recommendation: The PPS and the PSNI should work together to improve the quality of statistics relating to hate crime offences. In particular they should review how to read across the number of cases that move between the two organisations. Specifically data should be able to match the number of cases that are deemed 'detected' by the PSNI and those prepared for prosecution by the PPS.

PPS Decisions on Cases Aggravated by Hostility

The second data set relates to PPS decisions on how to proceed with cases that have been identified as being aggravated by hostility. Table 9 sets out the decisions taken by the PPS in all cases aggravated by hostility over a four- year period from 1 April 2007 to 31 March 2011. This shows that the PPS took decisions on 2,384 cases, of which 190 were prosecuted under indictment³⁸, 1,047 were summarily prosecuted, 256 were dealt with by caution, 93 through an informed warning and 155 by youth conference. In 643 cases no prosecution or diversionary action was taken.

Table 9: Decisions by PPS on Cases aggravated by hostility 2007-11, by number

| Motivation | Decisions Taken | | | | | | Total |
|-----------------------|-----------------|---------|-----------|------------------|------------------|----------------|-------|
| | Prosecution | | Diversion | | | No Prosecution | |
| | Indictable | Summary | Caution | Informed Warning | Youth Conference | | |
| Racial | 35 | 326 | 53 | 18 | 38 | 211 | 681 |
| Sectarian / Religious | 112 | 610 | 183 | 70 | 111 | 291 | 1377 |
| Sexual Orientation | 41 | 89 | 13 | 4 | 5 | 124 | 276 |
| Disability | 2 | 22 | 7 | 1 | 1 | 17 | 50 |
| Total | 190 | 1047 | 256 | 93 | 155 | 643 | 2384 |

³⁸ An indictable only offence is a more serious offence that is dealt with at a Crown Court. A summary offence is a more minor offence which will be dealt with in the Magistrates Court.

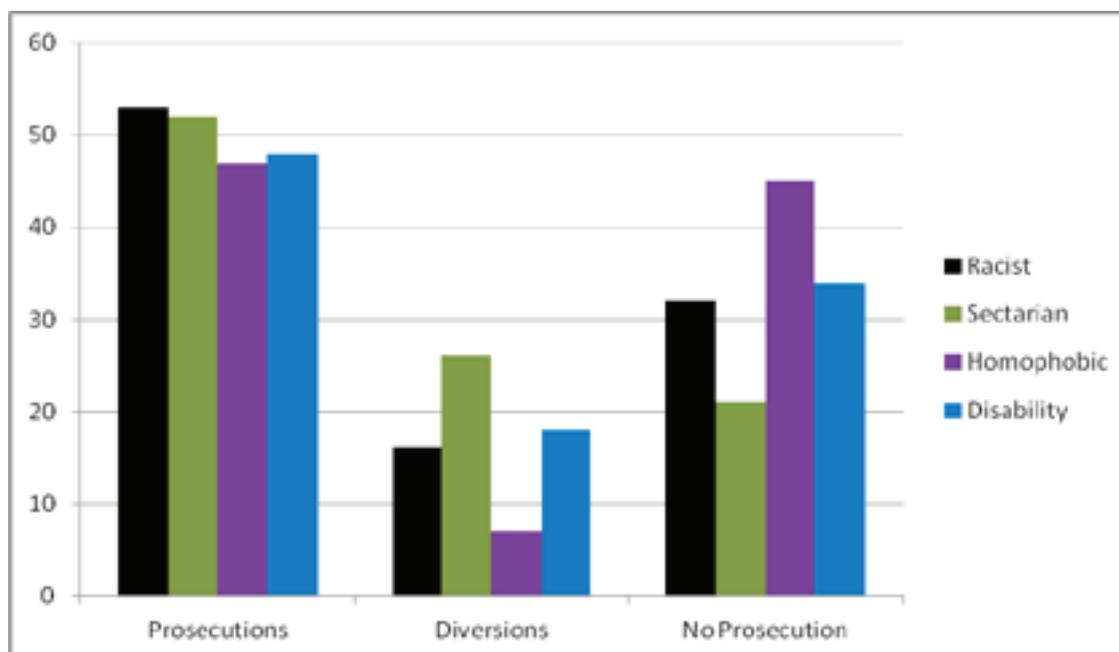
Table 10 presents the same data as percentages. This shows that 52% of cases resulted in a decision to prosecute; 22% resulted in some form of diversionary activity and 27% resulted in a decision of 'no prosecution'.

Table 10: Decisions by PPS on Cases aggravated by hostility 2007-11, by percentage

| Motivation | Decisions Taken | | | | | | Total |
|-----------------------|-----------------|---------|-----------|------------------|------------------|----------------|-------|
| | Prosecution | | Diversion | | | No Prosecution | |
| | Indictable | Summary | Caution | Informed Warning | Youth Conference | | |
| Racial | 5 | 48 | 8 | 3 | 5 | 32 | 100 |
| Sectarian / Religious | 8 | 44 | 13 | 5 | 8 | 21 | 100 |
| Sexual Orientation | 15 | 32 | 5 | 1 | 1 | 45 | 100 |
| Disability | 4 | 44 | 14 | 2 | 2 | 34 | 100 |
| Total | 8 | 44 | 11 | 4 | 7 | 27 | |

The difference in the PPS’s decisions in relation to choosing to prosecute, direct to some form of diversionary activity or not to prosecute for each of the four categories of hate crime is illustrated in Figure 8.

Figure 8: Decisions taken by PPS on Hate Crime files, by percentage



The overall data reveal some degree of variation according to the different categories of hate crime.

- Racist and sectarian hate crimes were slightly more likely to be prosecuted by the PPS than homophobic or disability hate crimes, although homophobic hate crimes were most likely to result in indictable prosecutions, suggesting that homophobic offences were more likely to be of a more serious nature than other categories of hate crime.

- Diversions were most likely to be used in cases of sectarian or religious hate crime (26%) while just 7% of homophobic hate crimes were dealt with in this manner.
- Finally, while just 21% of sectarian or religious hate crimes were not prosecuted or subject to diversion, this figure rose to 45% of cases involving a homophobic hate crime.

Recommendation: The PPS should review the patterns for prosecutions for cases involving homophobic prejudice in order to explain why they are so different from prosecutions of the other four categories of hate crimes.

Tracking Cases through the Criminal Justice System

A further set of figures was provided by the Department of Justice drawn from the Causeway IT system for the calendar year 2011. The Department of Justice have emphasised that the figures from Causeway were provided for an illustrative purpose and not for analysis and they have not been validated. However, while the available data has not been fully validated the figures are similar to data provided by the PPS and the Court Service and therefore may be useful in providing some indication of the broad trends of how hate crime cases proceed through the criminal justice system. Furthermore, now that the Causeway system is fully operational (CJINI 2012, Mason 2012) it should be possible for the Department to publish fully validated data tracking hate crime cases through the criminal justice system.

The data tracks the number of suspects in cases that were identified as having a hate crime motivation by the PSNI, identifies decisions relating to prosecution made by the PPS for cases aggravated by hostility, and outcomes of such cases in court.

Table 11: Data from the Causeway IT system on hate crime prosecutions for 2011

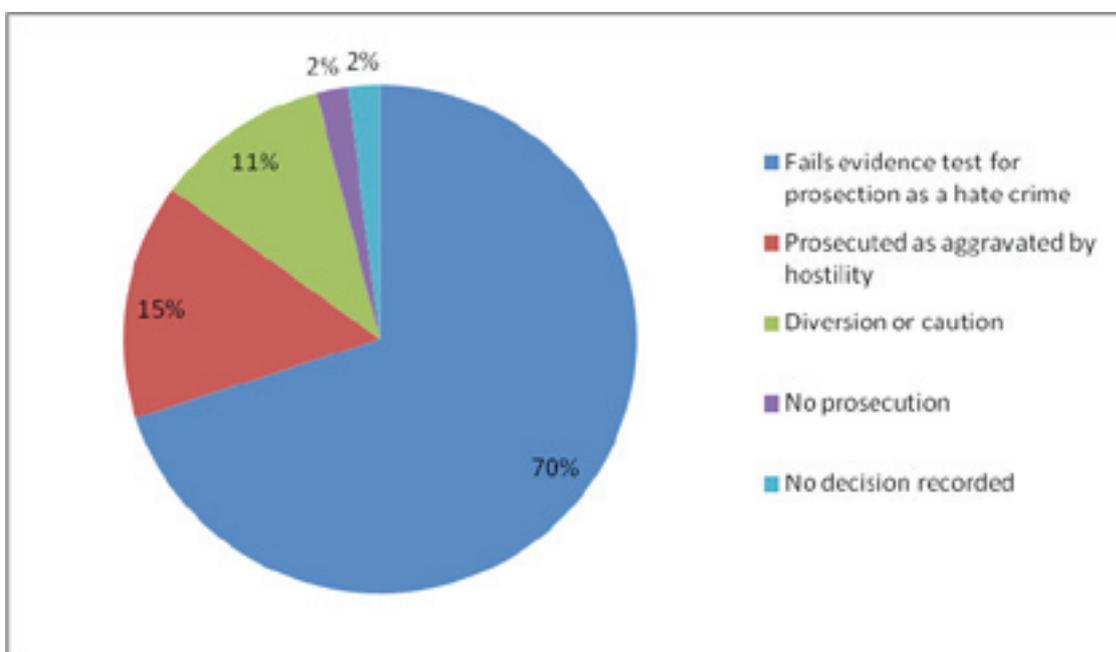
| | | 2011 | % of cases with HC motivation flagged by PSNI | % of total aggravated by hostility prosecutions |
|----|--|------|---|---|
| 1 | No. of suspects with a hate crime motivation recorded by PSNI and sent to PPS | 728 | 100 | |
| 2 | Suspects with a hate crime motivation recorded who were prosecuted | 625 | 86 | |
| 3 | Suspects with hate crime motivation given a diversion or caution | 80 | 11 | |
| 4 | Suspects with hate crime prosecution: no prosecution decision | 12 | 2 | |
| 5 | Suspects with hate crime prosecution: no decision recorded | 11 | 2 | |
| 6 | 'Aggravated by hostility' not confirmed by PPS (fails evidence test) | 513 | 70 | |
| 7 | Suspects prosecuted for offences 'aggravated by hostility' | 201 | | 100 |
| 8 | Suspects prosecuted as 'aggravated by hostility' which were recorded as hate crime by the PSNI | 112 | 15 | 56 |
| 9 | Suspects with no hate crime motivation but with 'aggravated by hostility' set by PPS | 89 | | 44 |
| 10 | Suspects with no 'aggravated by hostility' court result | 196 | | 98 |

| | | | | |
|----|--|---|--|---|
| 11 | Suspects with an 'aggravated by hostility' court result | 5 | | 2 |
| 12 | Suspects with an 'aggravated by hostility' court result but PPS 'aggravated by hostility' flag not set | 2 | | |

Table 11 indicates that in 2011, 728 suspects of a crime involving a hate element were identified by the PSNI and passed to the PPS. Of these the PPS decided to prosecute 625 people (Line 2), while of the remaining 103, 80 were given a diversion or a caution (Line 3); in 12 cases there was no prosecution (Line 4) and in 11 cases there was no decision recorded (Line 5) (See Figure 9).

However, while the PPS decided to prosecute a total of 625 of the 725 suspects forwarded by the PSNI, in 513 of the cases (70% of the initial total) there was considered to be insufficient evidence to prosecute the aggravated by hostility element (Lines 1, 2& 6).

Figure 9: Decisions taken by PPS on Hate Crime Cases in 2011



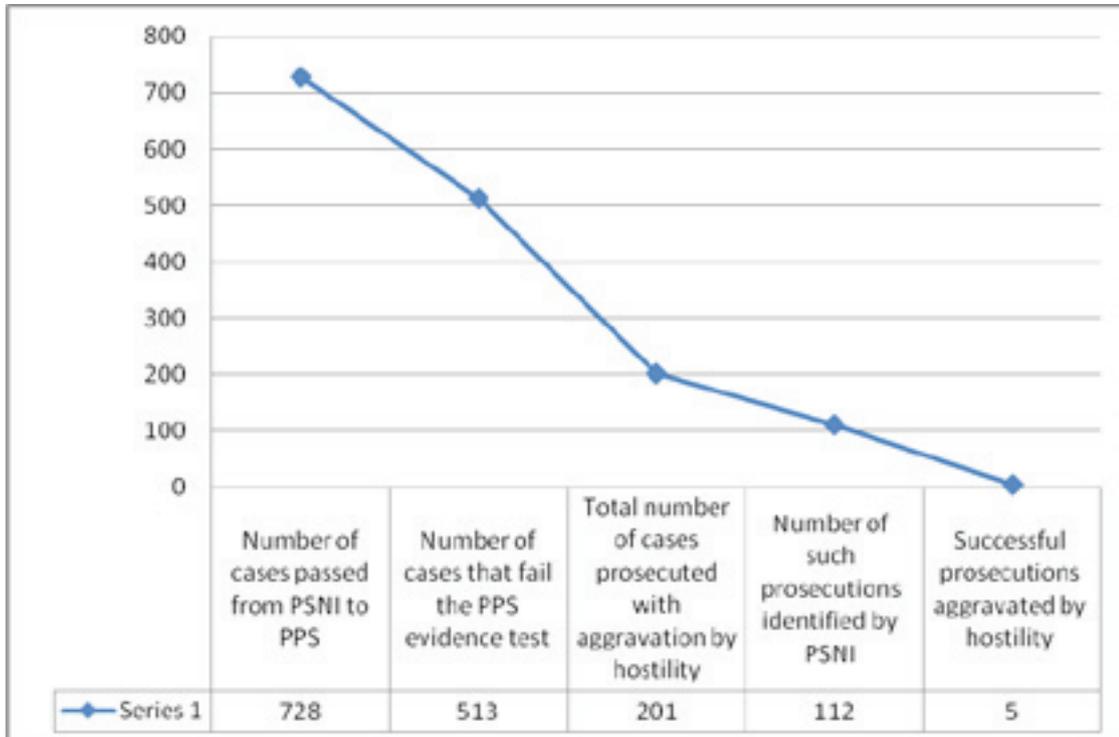
In 2011 the PPS identified a total of 201 suspects where they believed there was sufficient evidence to prosecute for an offence aggravated by hostility. However, only 112 of these had been identified as hate crimes by the PSNI (Line 8), while the remaining 89 were identified by the PPS in the course of their work (Line 9). Thus just 15% of the original 728 cases that had been flagged as hate crimes by the PSNI were prosecuted as having an aggravating element by the PPS.

In total 201 suspects were prosecuted for an offence with an aggravating factor (Line 7). Of the 201 suspects, 112 (58%) had been identified by the PSNI as a having a hate motivation, while 89 (42%) were identified by the PPS in the process of preparing for prosecution.

In only five of these 201 cases (2%) was the aggravating element proven in court (although in two other cases where the PPS had not flagged the case an aggravating factor was proven (Line 12)). In 196 of these 201 cases the criminal offence was proven but the aggravating factor was not proven in court. In 98% of cases the prosecution failed to prove the existence of an aggravating factor. In two further cases a person was convicted for an offence with an element aggravated by hostility, but in these cases the hate element had not been identified by the PSNI or by the PPS.

Figure 10 plots the progress through the criminal justice system of the 728 cases passed from the PSNI to the PPS, through the decision to prosecute to decisions in the courts.

Figure 10: Progress of Cases through the Criminal Justice System in 2011



These figures for prosecutions are disturbing for two reasons:

1. They suggest that in just 15% of cases that were identified as a hate crime by the police the PPS believed there was sufficient evidence to prosecute with an element of aggravation by hostility. This may be due to factors such as the quality of evidence being produced by the PSNI or to an overly cautious approach being taken by the PPS.
2. The high proportion of cases (42%) that have not been flagged as a hate crime by the PSNI, but which are eventually prosecuted with an element of aggravation by hostility by the PPS. This suggests that the PSNI are failing to identify aggravating factors in a substantial number of cases and, if this is the case, it suggests that a significant number of hate crimes may still not be being recorded as such in PSNI statistics.

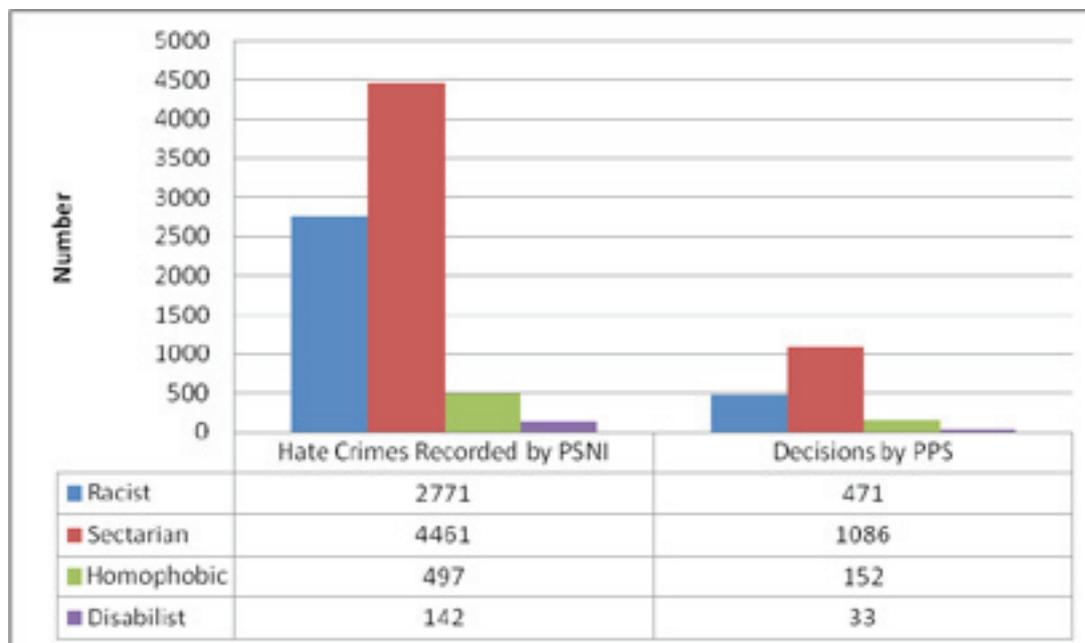
Thus, although there appear to be some improvement in the collection of data on the processing of hate crime offences through the criminal justice system, the data is raising as many questions as it answers. The different sets of data from the PSNI and the PPS also highlight the continued lack of co-ordinated data production from the different parts of the criminal justice system.

It is worth noting at this point that the available data on prosecutions for hate crime offences only relates to use of the Criminal Justice (No 2) (NI) Order; none of the figures that have been reviewed in this section relate to data on prosecutions under Section 3 of the 1987 Public Order Order.

It is also possible to review the relationship between the number of hate crimes recorded by the PSNI and the number of cases where a decision is taken by the PPS to prosecute or direct to some form of diversion. In this case we have excluded cases where there was a decision not to prosecute for an offence aggravated by hostility as the hate element will not have been included in any sanction. Although the figures

cannot be read across exactly, they may suggest a proportionate relationship between the number of recorded hate crimes and the number of sanctions taken by the PPS.

Figure 11: Hate crimes recorded by PSNI and subject to prosecution or diversion decisions by PPS, 2007-8 to 2011-12



The figures indicate that the PPS imposes a sanction decision in relation to 22% of the total number of hate crimes recorded by the PSNI, but that this varies from 31% of homophobic hate crimes, 24% of sectarian crimes, 23% of disability crimes and just 17% of racist hate crimes.

Comparing Responses within the UK

It is interesting to compare the available data on the recording and prosecution of hate crimes in Northern Ireland with published data on hate crime prosecutions from both Scotland and England & Wales.

In Scotland the Crown Office and Procurator Fiscal Service provide a brief summary review on an annual basis of prosecutions relating to both race crime³⁹ and offences aggravated by religious prejudice.⁴⁰ The data (Table 13 below) shows that an average of 66% of racist crimes recorded by the police are reported to the COPFS each year and around 80% of these result in court proceedings, 14% in some other form of 'Direct Measures' which include a warning, a fiscal fine, a diversion scheme or a referral to the Children's Reporter. No more that 6% of reports to COPFS each year were not proceeded with, and this percentage includes an unspecified proportion that were awaiting a marking decision and thus might well be proceeded with in the future.

Table 13: Actions by COPFS to Racist Hate Crimes in Scotland

| | 2006/07 | 2007/08 | 2008/09 | 2009/10 | 2010-11 |
|---------------------|---------|---------|---------|---------|---------|
| Crimes Recorded | 6,654 | 6,676 | 6,617 | 6,470 | 6,169 |
| Reports to COPFS | 4,361 | 4,365 | 4,334 | 4,320 | 4,178 |
| % Court Proceedings | 79 | 80 | 80 | 81 | 84 |
| No action | 4 | 5 | 5 | 6 | 5 |

39 <http://www.copfs.gov.uk/sites/default/files/Hate%20Crime%20-%20publication%20-%20final%20published%2017%20May%202012.pdf>

40 <http://www.copfs.gov.uk/About/Departmental-Overview/diversity/racist-crime/Analysis>

The data on response to offences aggravated by religious prejudice (which is broadly equivalent to sectarian hate crimes in Northern Ireland) shows an even greater proportion of prosecutions, with court proceedings being initiated in over 90% of cases in each year. Fewer than 4% of cases each year are not proceeded with. Table 14 sets out the actions by the COPFS to such offences from 2004-5 to 2009-10.

Table 14: Religiously Aggravated Crime Tables 2004-05 – 2009-10⁴¹

| Religious Prejudice Aggravations | | | | | | | |
|---|--------------------------------|------------|------------|------------|------------|------------|------------|
| Marking Group | Charge Instruction | 2004-5 | 2005-6 | 2006-7 | 2007-8 | 2008-9 | 2009-10 |
| No Proceedings | No Pro | 11 | 26 | 11 | 14 | 24 | 18 |
| Direct Measures | FF | 2 | 11 | 3 | 5 | 6 | 2 |
| | Reporter | 1 | 4 | 11 | 14 | 3 | 11 |
| | Warning | 18 | 10 | 7 | 13 | 11 | 2 |
| | Diversion | 1 | 1 | 1 | 0 | 0 | 1 |
| | Total Direct Measures | 22 | 26 | 22 | 32 | 20 | 16 |
| Court Proceedings | Prosecute | 424 | 625 | 601 | 528 | 579 | 548 |
| | Not a separate charge | 22 | 27 | 63 | 35 | 44 | 47 |
| | Total Court Proceedings | 446 | 652 | 664 | 563 | 623 | 595 |
| Not Marked | Not Marked | | | | | 2 | |
| | Grand Total | 479 | 704 | 697 | 608 | 669 | 629 |

The Crown Prosecution Service (CPS) in England and Wales also publishes an annual report on hate crime prosecutions which includes figures for prosecutions of racist, religious, homophobic and disability hate crimes.⁴² The report for 2010-2011 notes that the proportion of cases which resulted in a charge being brought rose from 59.4% of hate crimes referred to the CPS in 2006-2007 to 72% in 2010-2011.

The report also notes that 12,651 convictions were secured out of a total of 15,284 prosecutions for all hate crime offences in 2010-2011, while the number of individuals being prosecuted that resulted in a conviction rose from 77% in 2006-2007 to 82.8% in 2010-2011, and the number of people pleading guilty to the offence also rose from 64% to 71.5% over the same period.

Conclusions

The PPS has done considerable work in developing its policy on hate crime and in proceeding with cases that have aggravated by hostility element for prosecution or for some form of diversionary measure. However, the available data suggests that there have been few convictions for offences where there is an element of aggravation by hostility and this needs to be investigated to determine why this is the case and how it might be addressed.

41 <http://www.copfs.gov.uk/About/Departmental-Overview/diversity/racist-crime/Analysisus>

42 http://www.cps.gov.uk/publications/docs/cps_hate_crime_report_2011.pdf

While there is a challenge in prosecuting hate crimes that involves the shift from the subjective element in the reporting of a hate crime to meeting the evidential test for prosecution, it is important that this challenge is met if the behaviour and attitudes of perpetrators are to be addressed by the criminal justice system.

Furthermore, the currently available data does not reveal how many of the 'hate crime' cases passed to the PPS by the PSNI are successfully prosecuted for some form of substantive criminal offence, and this may undermine much of the positive work that has been done.

Recommendation: The PPS should review its approach to prosecuting cases that have an aggravated by hostility element to assess why:

- a) **Such a relatively small proportion of cases they receive from the PSNI are subsequently deemed appropriate to be sent for prosecution as an offence aggravated by hostility; and**
- b) **So few cases that are sent for prosecution appear to be successfully prosecuted for the 'hate crime' element.**

Recommendation: The PSNI should systematically review its work in gathering evidence and preparing hate crime files to determine why such a small proportion result in prosecutions for offences aggravated by hostility by the PPS.

Recommendation: The PPS should systematically review the quality of hate crime files prepared by the PSNI to identify structural weaknesses that should be addressed by the PSNI.

Recommendation: The PPS and PSNI should work together to review why such a large proportion of cases that are deemed prosecutable for an offence aggravated by hostility have not been identified as a hate crime by the PSNI.

Recommendation: The PPS should gather and publish annual data on the number of hate crime files that are referred back to the PSNI due to insufficient or poor quality evidence.

Recommendation: The PPS should publish figures for the number of cases approved for prosecution under Part 3 of the 1987 Public Order (NI) Order.

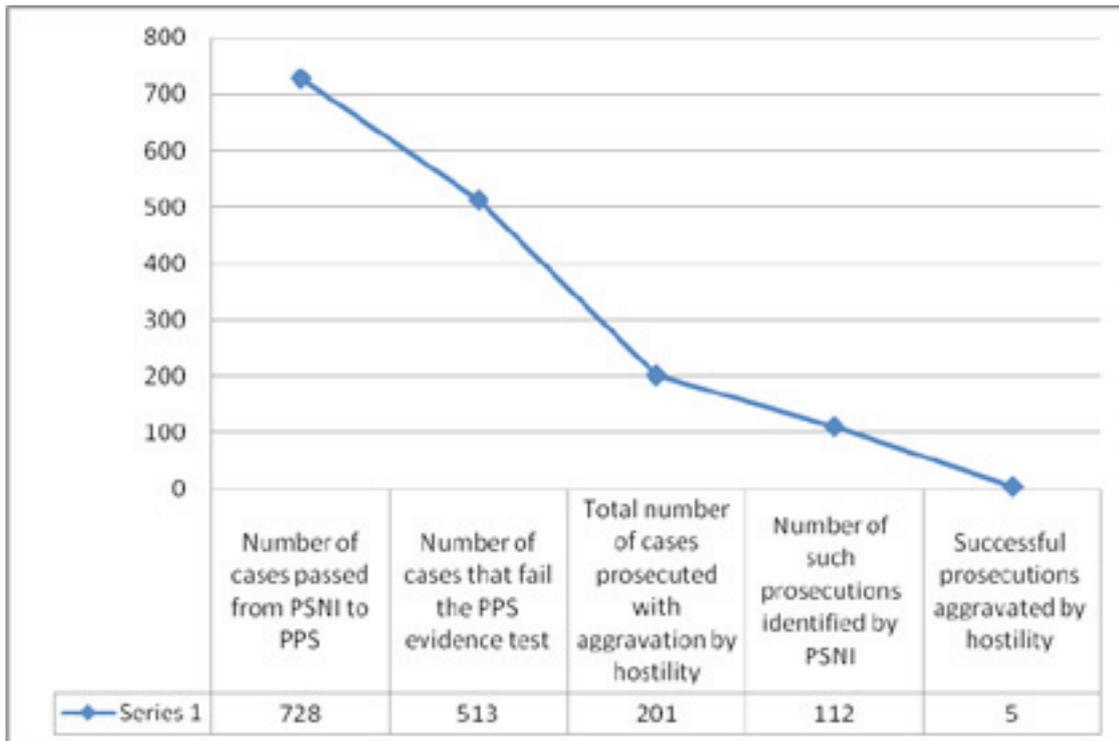
7. The Court Service and Hate Crime

The Criminal Justice Inspection's 2007 thematic inspection highlighted the lack of data on the number of hate crimes being prosecuted through the court system, and also the lack of data on the use of the Criminal Justice (No 2) (NI) Order 2004 through the courts. The Inspectorate recommended that:

1. The Northern Ireland Court and Tribunal Service and the Probation Board, should record key statistics at local and corporate level; and
2. Cases presented to a court using the 2004 Criminal Justice Order should be recorded as such by both the Court Service and the PPS (CJINI 2007: 33).

In the following inspection report, published in July 2010, the Inspector noted some limited progress in response to these two recommendations: the Court Service did record the outcomes of cases that had been presented in court as hate crime offences aggravated by hostility; but records indicated that there had been just 13 occasions when the prosecutor had raised the aggravated by hostility motivation to the attention of the court and just 11 cases when the judge had imposed an enhanced sentence (CJINI 2010: 7). Figure 12 suggests that little had changed by 2011.

Figure 12: Progress of Cases through the Criminal Justice System in 2011



The CJINI follow up report also noted that there was still no formal monitoring of the use of the legislation, but the inspector expressed an expectation that the development of the data sharing mechanism of the Causeway IT system should lead to an improvement of the recording process (CJINI 2010: 12-13). The Inspector also highlighted a number of factors that could undermine the recording of data through the criminal justice system in particular if:

1. the prosecutor does not clearly present the case as aggravated by hostility;
2. the court does not direct on the issue at sentencing; or
3. the court clerk fails to correctly record the direction (CJINI 2010: 13).

There was thus a need for an ongoing monitoring of the presentation of hate crime cases in court and the recording of data by the court to ensure that the available data was an accurate reflection of the use of the law.

We have identified three sources of information on hate crime prosecutions for aggravating factors through the courts service. These are:

1. Court Service statistics relating to the use of the Criminal Justice (No 2) (Northern Ireland) Order and Part 3 of the Public Order Order;
2. Information from the Causeway IT system from the Department of Justice;⁴³ and
3. Information on hate crime prosecutions from the PPS.

The next section reviews the available data from these three sources to assess the scale and outcome of prosecutions for hate crime offences through the courts.

⁴³ We would note again that the data from Causeway has not been validated; however the figures for convictions in the Causeway data is the same as those provided by the Court Service.

Court Service Statistics

The Court Service statistics department provided information on the use of the two main pieces of legislation that relate to hate crime, the Criminal Justice (No 2) (NI) Order 2004 and Part 3 of the Public Order (NI) Order 1987, within the court system for the period 2007 to 2011.

The Court Service identified 19 cases between 2007 and 2011 when it was noted that the issue of a crime being aggravated by hostility was recorded. In 15 cases the sentence was enhanced, in one case the sentence was not enhanced and in three cases the aggravation element was not accepted by the judge (Table 15).

The scale and pattern of this data is broadly similar to that provided to the Criminal Justice Inspector two years previously (13 cases between 2005 and 2010). Unless the slightly greater number of cases in 2011 marks the beginning of a trend, the data suggests that there has been no significant increase in the number of cases where the aggravation by hostility factor is asked to be considered by the courts.

Table 15: Cases involving an aggravation by hostility factor in the Court Service, 2007-11⁴⁴

| | Accepted as hate crime – sentence enhanced | Accepted as hate crime – sentence not enhanced | Not accepted as hate crime | Total |
|--------------------|--|--|----------------------------|-------|
| 2007 | 3 | | 1 | 4 |
| 2008 | 3 | 1 | 1 | 5 |
| 2009 | 1 | | | 1 |
| 2010 | 1 | | | 1 |
| 2011 ⁴⁵ | 7 | | 1 | 8 |
| Total | 15 | 1 | 3 | 19 |

The Criminal Justice Inspector did not review the use of the Public Order (NI) Order, and in general it has not been widely cited as a part of a wider package of legislation relating to hate crime, although the Public Prosecution Service noted the importance of the Order in its *Hate Crime Policy*. However, the Court Service was able to identify the use of Part 3 of the Order in a small number of cases, all of which were heard in a Magistrates Court.

Table 16 reveals that the section of the Public Order (NI) Order relating to 'acts intended or likely to stir up hatred or arouse fear' has been used against just 21 defendants in the five years since 2007, and in fact in 2007 and 2008 the legislation was not used at all. The defendant was found guilty in just eight of the 21 cases.

44 This includes data available from both Magistrates and Crown Courts.

45 Provisional figures only as of 24 May 2012.

Table 16: Cases dealt with under Part 3 of the Public Order (NI) Order, 2007-11

| | Guilty on all charges | Not guilty on all charges | Total |
|--------------------|-----------------------|---------------------------|-------|
| 2007 | 0 | 0 | 0 |
| 2008 | 0 | 0 | 0 |
| 2009 | 3 | 1 | 4 |
| 2010 | 1 | 4 | 5 |
| 2011 ⁴⁶ | 4 | 8 | 12 |
| Total | 8 | 13 | 21 |

The available information from the Court Service highlights the very limited use of the available legislation to prosecute individuals accused of hate crime offences. The available data suggests that in five years just 40 individuals were prosecuted in court using one of the two pieces of legislation specifically relevant to hate crimes and just 23 people were convicted of such offences.

The question remains as to how far these figures reflect the actual usage of the hate crime legislation rather than reflecting a limited or inexact recording of the use of specific legislation.

Data from the Causeway IT System

Further information on prosecution for hate crime offences comes from the non-validated data set from the Causeway IT system by the Department of Justice and information published by the Public Prosecution Service and available on its website.

The data enumerates the number of hate crime cases recorded through the various stages of the criminal justice system. Relevant data relating to the Court Service is only available for the calendar year 2011 and states that:

1. A total of 201 persons were prosecuted for offences that were aggravated by hostility. However, it should be noted that it is not clear whether these are cases that were passed by the PPS for prosecution or cases actually opened in court (see discussion below).
2. In 196 of the cases the aggravated by hostility element was not accepted by the court, that is the hate crime element was not proven. This may mean the hate element was not raised by the prosecutor rather than the prosecution case being rejected by the court.
3. In just five cases the 'aggravated by hostility' element was accepted by the court.

These figures suggest that there was a conviction rate of just 2.5% for cases where the PPS had highlighted an aggravating or hate crime factor as an element in a prosecution. This may mean that the PPS is very poor at prosecuting cases with an aggravated by hostility element or it is prosecuting cases where there is insufficient evidence to justify the prosecution.

The Causeway data also notes that in two further cases there was a conviction for an offence aggravated by hostility where the aggravating factor had not been flagged by the PPS. This in turn raises questions of both the PSNI and the PPS. Why were two of only seven cases (29%) in which a conviction was secured with an element of aggravation by hostility not flagged as hate crimes by either the PSNI or the PPS?

46 Provisional figures only as of 14 June 2012.

These two figures, the five cases where the aggravating element was proved by the PPS and the two identified as hate crimes in court, equal the seven cases that involved a conviction with an aggravating element that were recorded by the Court Service data for 2011 in Table 14 above.

Data from the Public Prosecution Service

The third set of data on hate crime prosecutions can be found on the PPS website and covers the four financial years from 2007-08 to 2010-11⁴⁷. It has been discussed in detail above, see Section 6, Table 6.

These reports indicate that that the PPS prosecuted (or at least approved for prosecution) a total of 1,237 cases that involved an element of aggravation by hostility (190 indictable cases and 1,047 summary cases) in four years. However, over the same period the Court Service recorded only 11 such cases. This suggests that the Court Service is recording less than 1% of cases that were submitted for prosecution by the PPS.

Questions Raised by the Data

The three sets of figures present conflicting views of the ways in which hate crimes are being prosecuted and dealt with by the courts. The Court Service data indicates that only a very small number of cases involving a prosecution with a factor 'aggravated by hostility' have been presented at court. In contrast the data from Causeway and that published by the PPS suggest a far larger number of cases which are 'aggravated by hostility' have been sent for prosecution in court.

The Criminal Justice Inspector highlighted two key factors in relation to documenting the use of the Criminal Justice Order in prosecuting hate crimes in the 2007 inspection report.

- First, the failure of the prosecuting barrister to highlight the aggravating factor when prosecuting a case; and
- Second, the failure of the Court Service to adequately record the aggravating factor being raised in a prosecution.

Neither issue had been fully addressed by the time of the follow up inspection of 2010. These two factors appear to be the reason for the contradictory nature of the data relating to hate crime prosecutions.

1. In prosecuting an offence as a crime aggravated by hostility, the PPS is required to mark or 'flag' a file as 'aggravated by hostility'. However, it still remains the responsibility of the prosecuting barrister to raise the aggravating factor in court, i.e. to verbally bring the aggravating factor to the attention of the judge. Failure to do so will mean that the hate element is not noted in the court record. In Crown Courts all cases are digitally recorded by NICTS and a review of such cases by the Court Service indicated a disparity in the number of cases stated by the PPS as involving aggravation by hostility and cases opened as such in court. This suggests that although the PPS had flagged a case as being aggravated by hostility in preparing the case, the prosecuting barristers appear to not to highlight this aspect in court. As a result the case is not recorded as a prosecution of an offence 'aggravated by hostility' and the hate crime flag will no longer remain on the case file.

47 http://www.ppsni.gov.uk/SiteDocuments/Reports/10_11/7.%20Motivation/Motivation_Decisions.htm

2. The NICTS does not digitally record cases in Magistrates Courts and therefore a similar review of cases could not be undertaken. As a result the NICTS could not rule out poor recording practices as a factor in Magistrates Courts, but felt that this was unlikely. If one removes the cases prosecuted by the PPS as summary cases, and thus heard in Magistrates Courts, and focus on the indictable cases, which were most probably heard in the Crown Court, there were still 190 cases that the PPS sent for prosecution, but only 11 such cases were recorded by the Court Service. This represents a rate of 6% of relevant cases involving an aggravating factor being recorded.

The data thus suggests that there is a serious issue in relation to the prosecution of hate crime offences through the Court Service and which may be due to one of the following factors:

1. The prosecuting barristers are regularly and repeatedly failing to raise the aggravating factor before the courts;
2. The Court Service is failing to record the aggravating factor in some cases; or
3. A combination of the two.

Despite plans for further training for PPS staff, limited progress appears to have been made in relation to the effective recording of the use of the Criminal Justice Order to prosecute crimes aggravated by hostility.

One option would be to remove the responsibility of the prosecuting barrister to raise the hate crime element in court by adopting the system used in Scotland where, we were informed, if the COPFS flag a case as a hate crime it is automatically raised as such in court and there is no responsibility on the prosecuting barrister to highlight the matter. This approach would also ensure that the hate crime flag remains on the case file and should facilitate a more systematic recording of such cases by the NICTS.

A Comparative Perspective

In contrast to the situation in Northern Ireland, the Crown Prosecution Service in England & Wales publishes an annual report detailing the prosecution of hate crimes and giving a breakdown of the number of successful and unsuccessful prosecutions. The latest, fourth, annual report for 2010-11 reveals that prosecutions increased by more than 10% over the previous year and 82.8% of the 15,284 prosecutions nationally resulted in a conviction.⁴⁸

The report also notes that there was little difference in success rates between each of the five hate crime categories – 83% for racist and religious hate crime; 80.7% for homophobic and transphobic hate crime and 79.8% for disability hate crime.

The CPS report also notes that the proportion of successful convictions has increased from 76.8% in 2006-07 to 82.8% in 2010-11 and that 85.5% of successful prosecutions involve a guilty plea by the defendant. Keir Starmer, the Director of Public Prosecutions, cited this figure as positive evidence that the prosecutors were 'building stronger cases'.

There is less evidence from Scotland in relation to the results of court proceedings. However, research on religiously aggravated offending in 2010-11 noted that court proceedings had been concluded in relation to 457 cases in that year and of these 390 resulted in a conviction; this amounts to an 85% successful prosecution rate.⁴⁹

48 http://www.cps.gov.uk/publications/docs/cps_hate_crime_report_2011.pdf see also http://www.cps.gov.uk/publications/equality/hate_crime/index.html

49 <http://www.scotland.gov.uk/Resource/Doc/362943/0122956.pdf> page 9

In both examples the conviction rates for hate crime offences appear to be much more numerous than in Northern Ireland and in both jurisdictions the successful conviction rates are extremely high compared to those suggested by the figures that are currently available for Northern Ireland.

Conclusions

The available evidence suggests a confusing picture for the prosecution of hate crime offences through the courts in Northern Ireland. The PPS state that they are pursuing larger number of cases for prosecution, but the Court Service continues to record very small numbers of cases that involve a conviction for offences with a hate crime element. At best this may be a bureaucratic issue to be resolved, at worst it suggests an extremely limited efficacy in prosecuting persons for offences involving an element of hatred.

Either way the work of the criminal justice system in Northern Ireland stands in stark contrast with both England & Wales and Scotland in convicting hate crime offenders.

The importance of publishing regular, accurate and integrated information on how the criminal justice system deals with hate crime offenders was highlighted in the 2005 report on hate crime by the Northern Ireland Affairs Committee and subsequently by the Criminal Justice Inspector in 2007 and 2010. Such data is a necessary component in being able to:

- Assess the effectiveness and utility of the hate crime legislation;
- Identify any deficiencies in the legislation;
- Identify the effectiveness of the various branches of the criminal justice system in responding to hate crimes;
- Identify systemic weaknesses in the various branches of the criminal justice system in responding to hate crimes;
- Act as a deterrent to perpetrators of hate crime by evidencing the seriousness with which such offences are viewed by the criminal justice system; and
- Increase public confidence that the criminal justice system is taking seriously the problem of hate crime.

Eight years after the introduction of legislation allowing for increased sentences for offences aggravated by hostility we still have no effective data to assess how effective the law is in responding to hate crime.

Recommendation: The Department of Justice should urgently review and identify good practice as to how hate crime offences are being addressed in and by the court system in other jurisdictions and put in place a system that ensures:

- **that all hate crimes cases flagged by the PPS are automatically raised as such in court;**
- **the effective recording of all prosecutions for all hate crime offences; and**
- **the availability of public data on prosecutions, convictions and sentences for all hate crime offences.**

8. Youth Justice Agency and Hate Crime

The data published by the Public Prosecution Service indicated that between 2007 and 2011 there were 155 cases where the PPS referred a hate crime case to the Youth Justice Agency (YJA) for youth conferencing. The majority of these cases were sectarian hate crimes (111), 38 were racist, five were homophobic and one involved a disabilist hate crime (see Table 6 above). Youth conferencing accounted for 7% of hate crime cases dealt with by the PPS between 2007-8 and 2010-11.

Young people under the age of 18 may be referred to a youth conference in cases where a conviction through the courts is not considered to be warranted. The decision to refer a young person to a diversionary conference is made by the Public Prosecution Service, and is only available where the offender has admitted the offence.

Diversionary conferences are organised by the Youth Justice Agency with the aim of providing a forum of discussion with the offender, the victim, and anyone else affected by the crime. Discussions at the conference provide the opportunity for victims to explain the impact of the crime on their lives, and for the offender to make amends and be held accountable for their offence.

A conference plan will be produced, which will be presented to the prosecutor for their approval. If the prosecutor accepts the plan, it must then be compiled with by the young offender. However, if the young offender fails to comply or the prosecutor doesn't accept the plan, then the prosecutor can refer the case to court.

The Youth Justice Agency were approached for further information on how they dealt with those cases which had been flagged by the PPS as involving factors aggravated by hostility. The YJA are not currently part of the Causeway system of flagging or identifying any cases as a hate crime or as being 'aggravated by hostility' by the PPS. Consequently, they had no data on the number of cases referred to them that had been identified as a hate crime from the Causeway flagging system.

The YJA were aware however of a number of cases that did involve hate crime elements, but this was usually identified either through a reading of the case files that were passed to the YJA or, more frequently, in the course of interviews with victims or witnesses in preparation for the youth conferencing process.

If a hate element was identified as being a factor in a case then this would be addressed by the co-ordinator in the course of the youth conference process. But the Youth Justice Agency do not treat hate crime cases differently to any other case and their focus is on addressing the specific needs of the victim and the young person. The YJA do not therefore keep any records of cases that they had identified as involving hate crimes during the course of the youth conference. The YJA have developed a number of programmes with partner organisations to challenge hate crime; these include Mediation Northern Ireland for sectarian motivated offences and Age Concern for those motivated by age.

Youth conferencing is one of the key means of dealing with most forms of criminal behaviour involving young people within the criminal justice system. Data published by the PPS indicates that they have used youth conferencing as a means of disposing of one in fourteen hate crime cases that they have considered for prosecution. However, since the Youth Justice Agency, which has responsibility for youth conferencing, is not part of the Causeway data exchange system, it is not made aware of the formal system of the flagging of files as hate crime cases.

It is important that hate crime cases can be tracked systematically on their journey through the various agencies within the criminal justice system. It is also important that all relevant information pertaining to cases is passed from one agency to the next. This appears not to be happening in the transition from the Public Prosecution Service to the Youth Justice Agency, with the result that the Youth Justice Agency and its staff may not be aware of all relevant details in certain cases.

Recommendation: The Youth Justice Agency should be included within the Causeway IT system to ensure that their staff are aware of all relevant issues when dealing with cases that involve an element of aggravation by hostility.

Recommendation: The YJA should liaise with the PPS to ensure that files are marked in a way that enables the YJA to identify those that involve elements of prejudice or which are aggravated by hostility.

9. Probation Board and Hate Crime

The Probation Board for Northern Ireland (PBNI) will become involved with a person who has been accused of perpetrating a hate crime, either as a result of a 'hate' element being flagged in the court during the trial and at subsequent conviction; or it may occur through a hate element being identified by the judge as a relevant factor in the case at sentencing.

PBNI's first contact with an offender is usually via a request for a Pre-Sentence Report (PSR) from the Court, the purpose of which is to assist the Court in determining the most suitable method of dealing with an offender. A PSR will consist of an outline of the offender's social and personal circumstances, an analysis of their offending behaviour and an assessment of risk, including risk of serious harm.

The PBNI will have a more sustained engagement with a person who is convicted of an offence aggravated by hostility or that involves stirring up hatred, if they have been sentenced to a Probation Order, Community Service, Combination Order or prison sentences with a supervisory element, Determinate, Indeterminate or Extended Custodial Sentence. PBNI supervision entails an assessment of risk in order to identify the factors which contribute to offending behaviour. A risk management plan is then put in place identifying specific interventions to challenge and change the criminogenic behaviours. This also applies to behaviour motivated by bias or prejudice.

Within the offending behaviour analysis PSR authors are required to identify specifically any violence which is assessed as being motivated by hate or prejudice, although a case may not be prosecuted as a hate crime. PBNI staff have a responsibility to document any hate related issues in PSRs even though these may not be the charge before the Court.

The PBNI retrospectively identified ten cases in the period from 2007-2011 in which an individual's sentence had been enhanced because the offence was aggravated by hostility or was accepted as a hate crime. Two of the ten cases resulted in PBNI community supervision, both of which have now been completed.

PBNI has a number of initiatives underway. Training has been delivered to a small number of staff on raising awareness on hate crime and this is to be further rolled out. The current policy on hate crime has been rewritten and has gone out for consultation. PBNI has a Good Relations Group which seeks to increase awareness of ethnic and minority group issues. PBNI has been working in partnership with a range of community organisations to develop interventions, knowledge and skills amongst staff. PBNI is also actively working to develop specific interventions to work with offenders convicted of hate crimes. Through the PBNI Victim Registration scheme victims of offences perpetrated by those subject to PBNI supervision are signposted to appropriate services.

PBNI is also actively engaged in a number of community initiatives, such as Collaborative Working in Disadvantaged Areas and the Youth Engagement Project, which involve inter-agency collaborative working with statutory and voluntary partners.

The Probation Board is currently reviewing the range of existing interventions designed to work with hate crime offenders in both the UK and beyond with the aim of

adopting or adapting a model for use with relevant offenders in Northern Ireland. Any programme that they decide to use is expected to be operational by 2013.

If any review of the way that the criminal justice system in Northern Ireland deals with hate crime offenders has any impact, it will lead to an increase in successful prosecutions for such offences. It is important in such a case that the system has agreed an effective programme for engaging with perpetrators of hate crime and which can successfully challenge the attitudes and behaviour of the perpetrators rather than simply punishing them by imprisonment.

Recommendation: The Probation Board should work closely with other key criminal justice agencies and build on its ongoing work with community and voluntary organisations in designing and implementing programmes to work with hate crime offenders. This should include a review of practice in other jurisdictions and a comparison of the effectiveness of mandatory and voluntary programmes.

10. Northern Ireland Prison Service and Hate Crime

The Northern Ireland Prison Service and NIACRO secured funding under the SEUPB Peace III programme to run a pilot project, the Challenge to Change Programme (CTC) between 2009 and 2012⁵⁰. The aim was to engage with individuals convicted of hate crime offences with the aim of challenging the individual's behaviour and changing their attitudes. The initial aim was to work with 30 people over the course of the pilot.

Given the small numbers of people who have been convicted in the courts of hate crime offences, and the lack of information on the nature of the disposal, it was assumed that there would be a relatively small pool of people who would be invited to participate in the programme.

However, on commencement it was identified that there was not a single report available that would identify anyone who had been imprisoned as a result of cases or offences that were motivated by hostility or which had been flagged as hate crime cases from the courts into the prison system.

CTC staff reviewed over 1,000 cases to identify potential participants for the CTC pilot in Hydebank Wood Young Offenders Centre and HMP Magilligan. This aimed to identify offences that were related to hate crime i.e. criminal damage, assault, assault occasioning actual bodily harm, grievous bodily harm, attempted murder etc. and also offences of riotous behaviour and/or petrol bombing. It also involved reviewing associated case files to identify any documentation relating to motivation, court reports, Pre-Sentencing Reports, police evidence etc. Very little relevant information was available.

The review identified 124 cases where a potential element of prejudice or hatred was involved in the offence and this ultimately provided a pool of 58 people that could be considered further. This included individuals who had been convicted of riotous behaviour at an interface, attacks on other nationals and commentary on file that suggested that sectarian/racist language was used in assault type offences.

Following a further process of review and discussions with both staff and inmates 29 individuals were identified who agreed to participate in the pilot CTC Programme: 18 in Hydebank Wood and 11 in HMP Magilligan. These 29 individuals included 25 cases that involved elements of sectarian hostility and four cases involving racial hostility.

This review of the process of identifying participants for the Challenge to Change Programme highlights the fact that there are people within the prison system who have been convicted of offences that involve elements of prejudicial hostility but

50 <http://www.niacro.co.uk/challenge-hate-crime/>

that such individuals are not readily identified or identifiable. This means that it is difficult to direct such people towards any rehabilitative work that aims to challenge or address their prejudicial attitudes and behaviour, and thus increases the possibility that they will re-offend.

Recommendation: The Northern Ireland Prison Service should work closely with other key criminal justice agencies and with relevant community and voluntary organisations in designing and implementing programmes to work with hate crime offenders. This should include a review of practice in other jurisdictions and a comparison of the effectiveness of mandatory and voluntary programmes. NIPS should also give consideration to issues, such as attendance and access, that arise in developing consistently delivered programmes within the context of a closed environment.

11. Developing Policy

There has been official recognition of the seriousness of hate crime in Northern Ireland for a number of years and which most significantly can be traced from the passing of the hate crime legislation in 2004 and the Northern Ireland Affairs Committee report. However, the development of coherent and strategic policy and practice has been haphazard and uneven.

The Criminal Justice Inspector has been critical of the slow responses in developing or improving policy and practice on hate crime within individual criminal justice agencies and in particular noted the lack of any co-ordinated response to hate crime among the key criminal justice agencies and the limited progress in developing any overarching hate crime strategy as key weaknesses (CJINI 2010).

Since the 2010 report there has been some progress, but more in the way of promises which have yet to be delivered than actual. It is true that some agencies have developed, are developing or are reviewing hate crime policies, but progress that has been proven to have a practical impact to victims or communities, has been uneven:

- The Public Prosecution Service draft hate crime policy was made available for consultation in July 2009 and the final draft was published in December 2010.⁵¹
- The PSNI policy document on hate incidents was produced in 2006 (Policy Directive 02/06)⁵² and was due for review in December 2009. The review does not appear to have taken place, however the PSNI is currently reviewing its approach to hate crime.
- The CJINI noted the slow progress in developing a hate crime strategy by the Criminal Justice Board, but did note that a common definition of hate crime had been agreed in April 2010.⁵³ There is still no evidence of any formal hate crime strategy emerging from the Criminal Justice Board.
- OFMDFM did include objectives in relation to sectarian and racist hate crime in both *A Shared Future* (2005) and the *Race Equality Strategy* (2005). However, *ASF* was abandoned in 2007 and the *Race Equality Strategy* only covered the period until 2010. The 2010 consultation on a successor to *ASF*, the *Programme for Cohesion, Sharing and Integration* made a number of references to responding to 'racism, sectarianism, intolerance and other forms of prejudice'. However, we are awaiting publication of the final CSI programme.

51 <http://www.ppsni.gov.uk/Site/1/Documents/PPSNI%20HATE.pdf>

52 http://www.psnipolice.uk/policy_directive_0206_police_response_to_hate_incidents.pdf

53 The definition is: 'Any incident which constitutes a criminal offence, perceived by the victim or any other person as being motivated by prejudice or hate towards a person's race, faith or religion, sexual orientation, disability, political opinion, or gender identity; or a person's perceived race, faith or religion, sexual orientation, disability, political opinion, or gender identity.'

- Unite Against Hate, a Northern Ireland wide campaign to raise awareness of and advocate against all types of hate crime campaign, was funded and supported by OFMDFM, Department of Justice, PSNI, Community Relations Council and the Equality Commission for two years until September 2011. But despite a positive evaluation and the availability of ongoing funding, the campaign was effectively suspended while the funders worked out a number of logistical matters.

All of the above contributes to a sense of a drift in terms of government and statutory led policy and practice in relation to hate crime in Northern Ireland. The brief flurry of activity that emerged as incident numbers grew and community concerns increased in the earlier part of the last decade appears to have ground to a halt and hate crime seems to be regarded either as less of a problem than it once was or that current policy and practice is sufficient to address the issue.

Unfortunately Northern Ireland again lags behind other parts of the UK in the priority with which it regards hate crime and the attention that is given to updating and developing both strategic and specific policy documents related to addressing hate crime. For example:

- HM Government produced its Cross-Government Action Plan on Hate Crime in September 2009⁵⁴ and more recently produced *Challenge it, Report it, Stop it* its 2012 action plan to tackle hate crime which outlines more than 50 specific actions.⁵⁵
- The Scottish Executive published its action plan on tackling sectarianism in 2006⁵⁶ and updated and extended its legislation in 2009.⁵⁷
- The Crown Prosecution Service has produced a comprehensive range of documents relating to the different categories of hate crime⁵⁸ and publishes annual statistics on hate crime prosecutions.
- The Lord Advocate's Office in Scotland has produced guidelines to Chief Constables on offences aggravated by prejudice⁵⁹ while the COPFS produces an annual report of prosecutions of hate crime offences.

The concerns that were raised by the Criminal Justice Inspection about lack of a co-ordinated strategy to tackle hate crime remain pertinent two years after the review report was published. There remains a lack of a co-ordinated response to hate crime and there is an evident need for a comprehensive review of policy and practice throughout the criminal justice system, which should culminate in the development of a government led hate crime policy.

The Department of Justice did give a commitment to developing and publishing 'draft proposals for a strategic approach to addressing hate crime' in their consultation paper on community safety, published in January 2011.⁶⁰ The Community Safety Strategy was launched in late July 2012.⁶¹ The section outlining the Department's approach to hate crime is as follows:

54 <http://webarchive.nationalarchives.gov.uk/+http://www.homeoffice.gov.uk/documents/hate-crime-action-plan/hate-crime-action-plan2835.pdf?view=Binary>

55 <http://www.homeoffice.gov.uk/publications/crime/hate-crime-action-plan/action-plan?view=Binary>

56 <http://www.scotland.gov.uk/Publications/2006/01/26134908/0>

57 <http://www.scotland.gov.uk/Topics/Justice/crimes/8978>

58 <http://www.cps.gov.uk/publications/prosecution/racerel.html>

59 <http://www.copfs.gov.uk/sites/default/files/Publications/Resource/Doc/13541/0000616.pdf>

60 http://www.dojni.gov.uk/index/public-consultations/current-consultations/consultation_on_a_new_community_safety_strategy_for_ni.htm

61 <http://www.dojni.gov.uk/index/publications/publication-categories/pubs-policing-community-safety/css-july2012.pdf>

6.27 A collaborative approach is required across the Executive to effectively tackle hate crime. When finalised, the Programme for Cohesion, Sharing and Integration will set the context for partnership working to address the wider social issues that lead to prejudice and hate.

Outcomes

6.28 Our overall aim through the Community Safety Strategy is **to reduce the harm caused by hate crime.**

6.29 Over the medium to long term (3-5 years) we will:

- increase awareness of the impact of hate crime;
- increase community confidence in the ability of the justice agencies to tackle hate crime;
- reduce the number of victims of hate crime; and
- support greater community cohesion.

6.30 Over the short term (0-2 years) we will:

- encourage greater reporting of hate crime, and consider how third party reporting systems can support reporting;
- increase effective support for victims of hate crime;
- promote and support awareness campaigns with key partners;
- ensure effective and appropriate enforcement powers are available; and
- deliver targeted interventions to challenge hate crime and address offending behaviour and patterns.

It is important that the Community Safety Strategy acknowledges the importance of addressing hate crime in an effective manner. The proposed outcomes make reference to a number of issues highlighted in this report. These include short term measures to ensure effective and appropriate enforcement powers are available; and to deliver targeted interventions to challenge hate crime and address offending behaviour and patterns. In the longer term the Strategy aims to increase community confidence in the ability of the justice agencies to tackle hate crime.

Each of these is important; however these objectives also need to involve a more co-ordinated and joined-up response by the criminal justice system, which in turn is driven by an overarching government strategy, if they are to have a significant impact on the overall scale of hate crime in Northern Ireland.

Recommendation: The Department of Justice should urgently progress the preparation and publication of an overarching hate crime strategy and should take on board the findings of this research report in its preparation.

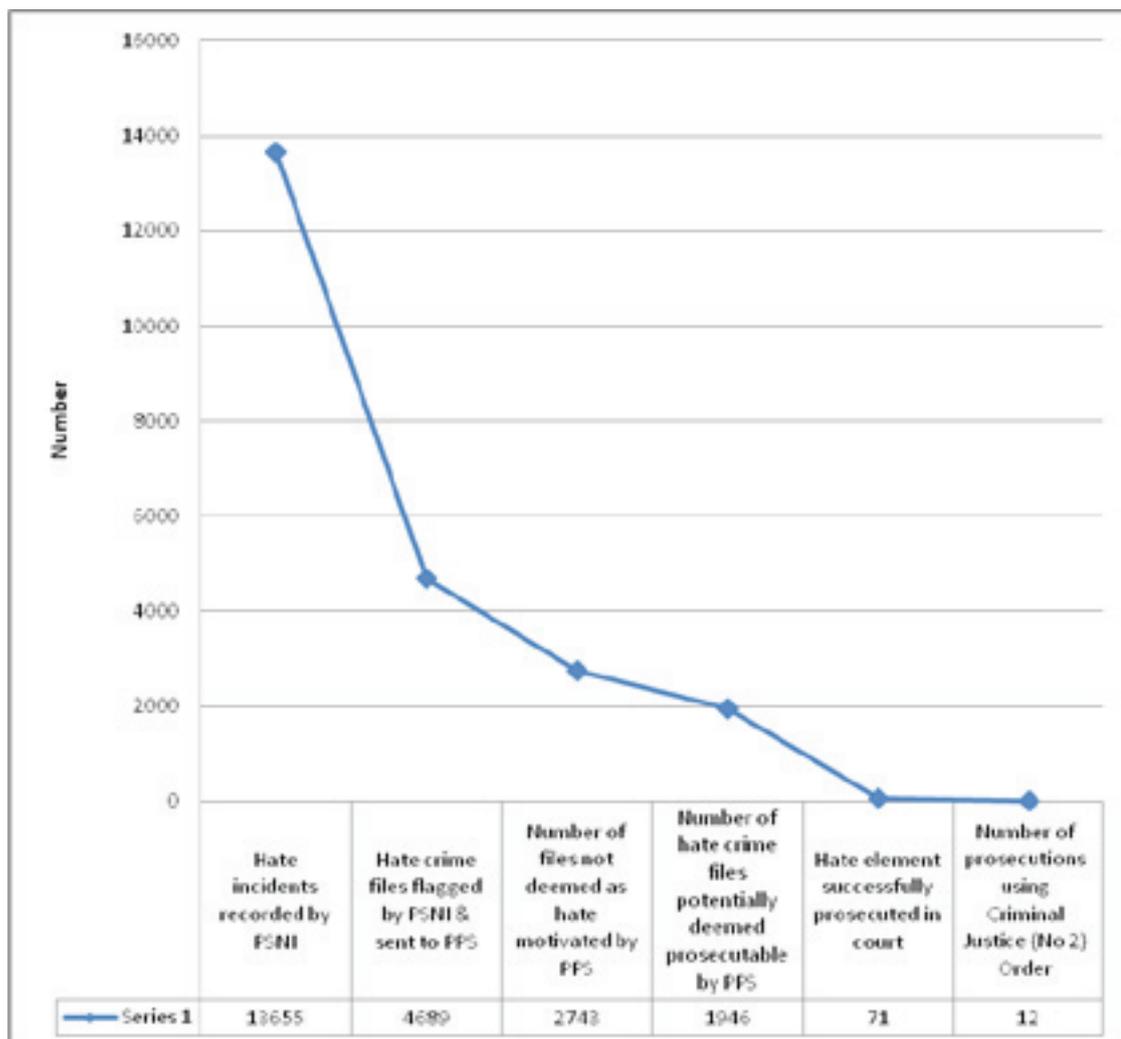
Recommendation: The Department of Justice should conduct a general review of the current hate crime legislation in Northern Ireland (Public Order (NI) Order and the Criminal Justice No 2 (NI) Order) to assess the effectiveness of the existing laws. The review should consider whether the law is appropriate and whether it should be amended, extended or simply replaced.

Recommendation: The Department of Justice should ensure the availability of a coherent body of data relating to the treatment of reported hate crimes and their progress through the criminal justice system.

12. Data, Issues, Questions

Hate crime has been identified by the various criminal justice agencies as a significant issue and this has resulted in legislation being enacted, increased reporting of hate crime, and better understanding of the impact of hate crime on victims and communities. However, there are still very few cases where perpetrators are convicted for the 'hate' element of their crimes. The following figure illustrates the progress of cases through the criminal justice system from being recorded by the PSNI to successful prosecution in court over the five-year period from 2007-08 to 2011-12.

Figure 13: Progress of Cases through the Criminal Justice System from reporting to police to conviction in the courts from 2007-08 to 2011-12⁶²



In the five years from 2007-08 to 2011-12 the PSNI recorded 13,655 hate incidents across the five categories included within the Criminal Justice (No 2) Order. Of these the PSNI passed 4,689 hate crime files to the Public Prosecution Service.

The PPS deemed that in 2,743 the crimes were not deemed as 'hate motivated'. There was therefore no prosecution for the hate element, although the substantive criminal offence would be prosecuted if there was sufficient evidence.

Of the remaining 1,946 files that were potentially prosecutable as a 'hate crime', there were 71 successful prosecutions involving legislation relating to hatred or prejudice. Twelve of these prosecutions were under the Criminal Justice (No 2) (Northern Ireland) Order 2004, while the other 59 involved use of the Public Order (NI) Order 1987, the Protection from Harassment (NI) Order 1997 and the Criminal Attempts and Conspiracy (NI) Order 1983.

This means that each hate incident recorded by the PSNI has a one in 200 chance of being successfully prosecuted.

In addition to these figures the research reveals:

- Hate crime detection rates by the PSNI average between 12 and 16%. There has been no sustained progress in detection rates over the past seven years.

⁶² This table is compiled from a mixture of data from the PSNI and by the PPS.

- Detection rates for hate crimes (c16%) are low compared with ordinary crime (26%), with violent crime (34%) and with domestic violence (41%).
- Detection rates for racist hate crimes in Northern Ireland (13%) are less than one third of those in London (46%) and barely one fifth of those in Strathclyde (64%).
- Fewer than 2% of victims of hate crime have been referred to Victim Support compared to 35% of victims of all crimes.
- The Northern Ireland Prison Service has received no offenders whose files were flagged as a hate crime.

This review of the responses to hate crime by the criminal justice system in Northern Ireland and the comparison with the responses by the authorities in England & Wales and Scotland to hate crime reveals very different responses to similar problems.

- Each of the three UK jurisdictions has similar legislation which allows for an increase in sentences for people convicted of an offence that is aggravated by one of a number of forms of prejudice.
- Published statistical data on the responses by the criminal justice system varies, with the most information being available in relation to racist hate crimes and with considerably more data being available in Scotland and England & Wales than in Northern Ireland.
- Levels of recorded racist hate crime per head of population are broadly similar in England, Scotland and Wales, with considerably lower rates being recorded in Northern Ireland.
- Police detection rates for racist and religious hate crimes are considerably higher in Scotland and for racist hate crimes in England (and rates have also been generally increasing in recent years) compared to Northern Ireland, where detection rates are low and remain largely static.
- Prosecution rates for racist and religious hate crimes in Scotland are high, and similarly in England & Wales prosecution rates for racist, homophobic and disability hate crimes referred by the CPS are high and levels have been increasing. In contrast there have been very few prosecutions under the hate crime legislation in Northern Ireland.
- The development of policy and strategy to address hate crime has been slower in Northern Ireland than in England & Wales or Scotland.

This review of the apparent effectiveness of criminal justice response to hate crime in the different jurisdiction of the UK and the relatively poor response in Northern Ireland raises a number of questions:

1. Why are the detection rates of hate crime in Northern Ireland so low compared to rates in England & Wales and Scotland?
2. Why has there been no significant increase in the detection rates in recent years in Northern Ireland when police forces in both England & Wales and Scotland have produced an increase in detection rates?
3. Why are there still so few successful prosecutions using the 'hate crime' legislation in Northern Ireland, when there are significant numbers of successful prosecutions in both England & Wales and Scotland?
4. Is the limited number of prosecutions due to failings in police work?
5. Is the limited number of prosecutions due to the way the PPS approaches the issue?

6. Is the apparently limited number of prosecutions due to the lack of recording of cases through the courts?
7. Is the limited number of prosecutions for hate crimes due to a failure to develop an effective co-ordinated strategy and practice across the criminal justice sector?
8. Or is it simply that hate crimes are not being taken as seriously as they should?
9. Why is there still no data published on an annual basis data that monitors the progress of hate crimes through the criminal justice system, as recommended by the NIAC in 2005 and by the CJINI in 2007, and which might help answer some of these questions?

13. Recommendations

Department of Justice

1. The Department of Justice should conduct a general review of the current hate crime legislation in Northern Ireland (Public Order (NI) Order and the Criminal Justice No 2 (NI) Order) to assess the effectiveness of the existing laws. The review should consider whether the law is appropriate and whether it should be amended, extended or simply replaced.
2. The use of an increase in sentence for offences aggravated by hostility should be examined with regard to it being a barrier when dealing with the consequences of and behaviours relating to hate crime.
3. The Department of Justice should amend the 2004 Criminal Justice (No 2) (NI) Order to include hostility towards transgender people as an aggravating factor for any crime.
4. The Department of Justice should undertake a broad review of how different groups and agencies are addressing the problem of hate crime and harassment of disabled people and should develop a more co-ordinated approach to raising awareness of the issue of disability hate crime and developing a more effective response.
5. The Department of Justice and the PSNI should work together to review why the figures for religious, disability and transphobic hate crime remain so low and whether these reflect the scale of the problem or reflect a lack of awareness of the issue or a lack of confidence in the criminal justice system.
6. The Department of Justice should work with (in the first instance) the Departments of Education, Employment and Learning, and Health, Social Services and Public Safety to develop a strategy for comprehensive recording of hate crimes and incidents. Each department should publish data on hate crimes on an annual basis. These, and potentially other departments, should also publish their policy(s) and practice for addressing the issue of hate crime.
7. The Department of Justice should urgently review and identify good practice as to how hate crime offences are being addressed in and by the court system in other jurisdictions and put in place a system that ensures:
 - that all hate crimes cases flagged by the PPS are automatically raised as such in court;
 - the effective recording of all prosecutions for all hate crime offences; and
 - the availability of public data on prosecutions, convictions and sentences for all hate crime offences.

8. The Department of Justice should ensure the availability of a coherent body of data relating to the treatment of reported hate crimes and their progress through the criminal justice system.
9. The Department of Justice should prepare and publish an overarching hate crime strategy and should take on board the findings of this research report in its preparation.

Northern Ireland Policing Board

10. The Policing Board should reaffirm its own commitment to improving policing responses through requiring evidence both of a better and more comprehensive recording of hate crimes and a consistent increase in detection rates.
11. The Policing Board should publish an annual review of the PSNI's performance in responding to hate crime.
12. The Policing Board should review progress that the PSNI has made in implementing the recommendations in the ICR report on disability hate crime and the recommendations relating to this contained in their Human Rights Annual Reports.

Police Service of Northern Ireland

13. The PSNI should provide some clear guidance about the range of activity that is included within the term 'hate incident' and the boundaries between 'hate crime' and 'hate incident'.
14. In order to improve the analysis of the nature of the problem of hate crime and potential gaps in the information gathering, the PSNI should review their data collection on hate crime incidents and should provide a clearer breakdown of the location of all incidents. This should include mapping, identifying and quantifying hate crimes in a more detailed manner, thus ensuring that a broad range of information is available to ensure a clearer picture of the problem in all sections of Northern Ireland society.
15. The PSNI should be encouraged to review the approaches to dealing with hate crime that have been developed by police organisations in other jurisdictions to identify differences in policy and practice which may either account for the difference in detection rates and/or may lead to an improvement in the detection rates for hate crime in Northern Ireland.
16. In order to improve transparency in the processing of hate crime cases through the criminal justice system the PSNI should be required to provide annual figures for the number of hate crime cases submitted to the PPS. They should also clarify the relationship between the figures for sanction detections and for cases passed to the PPS. These should be published and reviewed annually.
17. The PSNI should systematically review its work in gathering evidence and preparing hate crime files to determine why such a small proportion result in prosecutions for offences aggravated by hostility by the PPS.

Victim Support

18. There is a need for some considerable improvement in the figures for the number of victims of hate crime that are referred to Victim Support. The PSNI and Victim Support should work together to monitor the revised procedures for supporting victims of hate crime, and identify any weaknesses in practice and gaps in services to victims of hate crime.
19. Victim Support should improve its engagement with relevant support groups servicing the various constituencies victimised through hate crime.

Police Service of Northern Ireland and Public Prosecution Service

20. The PPS and PSNI should work together to review why such a large proportion of cases that are deemed prosecutable for an offence aggravated by hostility have not been identified as a hate crime by the PSNI.
21. The PPS and the PSNI should work together to improve the quality of statistics relating to hate crime offences. In particular they should review how to read across the number of cases that move between the two organisations. Specifically data should be able to match the number of cases that are deemed 'detected' by the PSNI and those prepared for prosecution by the PPS.

Public Prosecution Service

22. The PPS should issue a public statement asserting their intention to prosecute all cases in which there is evidence of hatred.
23. The PPS should review the patterns for prosecutions for cases involving homophobic prejudice in order to explain why they are so different from prosecutions of the other four categories of hate crimes.
24. The PPS should review its approach to prosecuting cases that have an aggravated by hostility element to assess why:
 - a. Such a relatively small proportion of cases they receive from the PSNI are subsequently deemed appropriate to be sent for prosecution as an offence aggravated by hostility; and
 - b. So few cases that are sent for prosecution appear to be successfully prosecuted for the 'hate crime' element.
25. The PPS should systematically review the quality of hate crime files prepared by the PSNI to identify structural weaknesses that should be addressed by the PSNI.
26. The PPS should gather and publish annual data on the number of hate crime files that are referred back to the PSNI due to insufficient or poor quality evidence.
27. The PPS should publish figures for the number of cases approved for prosecution under Part 3 of the 1987 Public Order (NI) Order.

Youth Justice Agency

28. The Youth Justice Agency should be included within the Causeway IT system to ensure that their staff are aware of all relevant issues when dealing with cases that involve an element of aggravation by hostility.
29. The YJA should liaise with the PPS to ensure that files are marked in a way that enables the YJA to identify those that involve elements of prejudice or which are aggravated by hostility.

Probation Board for Northern Ireland

28. The Probation Board should work closely with other key criminal justice agencies and build on its ongoing work with community and voluntary organisations in designing and implementing programmes to work with hate crime offenders. This should include a review of practice in other jurisdictions and a comparison of the effectiveness of mandatory and voluntary programmes.

Northern Ireland Prison Service

29. The Northern Ireland Prison Service should work closely with other key criminal justice agencies and with relevant community and voluntary organisations in designing and implementing programmes to work with hate crime offenders. This should include a review of practice in other jurisdictions and a comparison of the effectiveness of mandatory and voluntary programmes. NIPS should also give consideration to issues, such as attendance and access, that arise in developing consistently delivered programmes within the context of a closed environment.

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Appendix 1**Section 2, Criminal Justice (No 2) (Northern Ireland) Order 2004****Increase in sentence for offences aggravated by hostility****2.—**

- (1) This Article applies where a court is considering the seriousness of an offence.
- (2) If the offence was aggravated by hostility, the court—
 - (a) shall treat that fact as an aggravating factor (that is to say, a factor that increases the seriousness of the offence); and
 - (b) shall state in open court that the offence was so aggravated.
- (3) For the purposes of this Article an offence is aggravated by hostility if—
 - (a) at the time of committing the offence, or immediately before or after doing so, the offender demonstrates towards the victim of the offence hostility based on—
 - (i) the victim's membership (or presumed membership) of a racial group;
 - (ii) the victim's membership (or presumed membership) of a religious group;
 - (iii) the victim's membership (or presumed membership) of a sexual orientation group;
 - (iv) a disability or presumed disability of the victim; or
 - (b) the offence is motivated (wholly or partly) by hostility towards—
 - (i) members of a racial group based on their membership of that group;
 - (ii) members of a religious group based on their membership of that group;
 - (iii) members of a sexual orientation group based on their membership of that group;
 - (iv) persons who have a disability or a particular disability.
- (4) It is immaterial for the purposes of sub-paragraph (a) or (b) of paragraph (3) whether or not the offender's hostility is also based, to any extent, on any other factor not mentioned in that sub-paragraph.
- (5) In this Article—

"disability" means any physical or mental impairment;

"membership", in relation to a racial, religious or sexual orientation group, includes association with members of that group;

"presumed" means presumed by the offender;

"racial group" has the same meaning as in the Race Relations (Northern Ireland) Order 1997 (NI 6);

"religious group" means a group of persons defined by reference to religious belief or lack of religious belief;

"sexual orientation group" means a group of persons defined by reference to sexual orientation.

Appendix 2

Part 3, Public Order (Northern Ireland) Order 1987

PART III STIRRING UP HATRED OR AROUSING FEAR

Acts intended or likely to stir up hatred or arouse fear

Meaning of “fear” and “hatred”

8. In this part—

“fear” means fear of a group of persons in Northern Ireland defined by reference to religious belief, colour, race, nationality (including citizenship) or ethnic or national origins;

“hatred” means hatred against a group of persons in Northern Ireland defined by reference to religious belief, colour, race, nationality (including citizenship) or ethnic or national origins.

Use of words or behaviour or display of written material

9.—

- (1) A person who uses threatening, abusive or insulting words or behaviour, or displays any written material which is threatening, abusive or insulting, is guilty of an offence if—
 - (a) he intends thereby to stir up hatred or arouse fear; or
 - (b) having regard to all the circumstances hatred is likely to be stirred up or fear is likely to be aroused thereby.
- (2) An offence under this Article may be committed in a public or a private place, except that no offence is committed where the words or behaviour are used, or the written material is displayed, by a person inside a dwelling and are not heard or seen except by other persons in that or another dwelling.
- (3) In proceedings for an offence under this Article it is a defence for the accused to prove that he was inside a dwelling and had no reason to believe that the words or behaviour used, or the written material displayed, would be heard or seen by a person outside that or any other dwelling.
- (4) A person who is not shown to have intended to stir up hatred or arouse fear is not guilty of an offence under this Article if he did not intend his words or behaviour, or the written material, to be, and was not aware that it might be, threatening, abusive or insulting.
- (5) This Article does not apply to words or behaviour used, or written material displayed, solely for the purpose of being included in a programme broadcast or included in a cable programme service.

Publishing or distributing written material

10.—

- (1) A person who publishes or distributes written material which is threatening, abusive or insulting is guilty of an offence if—
 - (a) he intends thereby to stir up hatred or arouse fear; or

- (b) having regard to all the circumstances hatred is likely to be stirred up or fear is likely to be aroused thereby.
- (2) In proceedings for an offence under this Article it is a defence for an accused who is not shown to have intended to stir up hatred or arouse fear to prove that he was not aware of the content of the material and did not suspect, and had no reason to suspect, that it was threatening, abusive or insulting.
- (3) References in this part to the publication or distribution of written material are to its publication or distribution to the public or a section of the public.

Distributing, showing or playing a recording

11.—

- (1) A person who distributes, or shows or plays, a recording of visual images or sounds which are threatening, abusive or insulting is guilty of an offence if—
 - (a) he intends thereby to stir up hatred or arouse fear; or
 - (b) having regard to all the circumstances hatred is likely to be stirred up or fear is likely to be aroused thereby.
- (2) In this part “recording” means any record from which visual images or sounds may, by any means, be reproduced; and references to the distribution, showing or playing of a recording are to its distribution, showing or playing to the public or a section of the public.
- (3) In proceedings for an offence under this Article it is a defence for an accused who is not shown to have intended to stir up hatred or arouse fear to prove that he was not aware of the content of the recording and did not suspect, and had no reason to suspect, that it was threatening, abusive or insulting.
- (4) This Article does not apply to the showing or playing of a recording solely for the purpose of enabling the recording to be broadcast or included in a cable programme service.

Appendix 3

Definition of a Detection

Northern Ireland: Definition of a Detection

Detections (or clearances as they may alternatively be known) are, broadly speaking, those crimes that have been 'cleared up' by the police. Crimes are counted as 'detected or cleared' in accordance with strict counting rules issued by the Home Office. They are counted on the basis of crimes rather than offenders.

For example, if six offenders are involved in a robbery and are all arrested and charged, then this counts as one detection (i.e. the robbery is deemed to be 'detected'). Alternatively if only one of the six is identified and charged while the other five remain unidentified and at large, this also means that the robbery can still be deemed as 'detected'.

The following methods of detection involve a formal sanction:

- charging or issuing a summons to an offender;
- issuing a caution to the offender;
- having the offence accepted for consideration in court; or
- the offender is a juvenile who is dealt with by means of an informed warning, restorative caution or prosecutorial diversion.

In addition, for the most serious offence types ('indictable only' – see recorded crime paragraph above for explanation) a non sanction detection can be claimed if:

- the Public Prosecution Service (PPS) directs no prosecution; or
- the case cannot proceed because the offender has died.

Source: PSNI Annual Statistical Report: Hate Incidents and Crimes 1 April 2009 – 31 March 2010: 15.

http://www.psni.police.uk/3._08_09_hate_incidents_and_crimes.pdf

England and Wales: Definition of Detected Crime

Detected crimes are those that have been 'cleared up' by the police. Not every case where the police know, or think they know, who committed a crime can be counted as a detection and some crimes are counted as detected although the victim might not be satisfied with the outcome. The police may use one of several methods to count a crime as detected and they fall into two categories.

'**Sanction detections**' include offences which are cleared up through a formal sanction, i.e. when an offender has:

- been charged or summonsed;
- been cautioned, reprimanded or given a final warning;
- had an offence taken into consideration;
- received a penalty notice for disorder; or
- received a warning for cannabis possession (those aged 18 and over who are caught in simple possession of cannabis can be eligible for such a warning).

Not all sanction detections will necessarily result in a subsequent conviction. In cases detected by 'charge/summons', the Crown Prosecution Service may not take forward proceedings or the offender might be found not guilty at court.

'**Non-sanction detections**' comprise those where the offence was counted as cleared up but no further action was taken. From 1 April 2007 non-sanction detections can only be claimed for 'indictable-only' offences (those offences which must be tried in a Crown Court) where a Crown Prosecutor is satisfied there is enough evidence to provide a realistic prospect of conviction but has decided not to proceed with the case, or where the case cannot proceed because the offender has died.

Source: Ogunbor, I. and Taylor, P. 2010: 150.

<http://rds.homeoffice.gov.uk/rds/pdfs10/hosb1210.pdf>

Scotland: Definition of a Clearance

The definition of "cleared up" used in Scotland is noted below. This definition came into force with effect from 1 April 1996.

A crime or offence is regarded as cleared up where there exists a sufficiency of evidence under Scots law to justify consideration of criminal proceedings notwithstanding that a report is not submitted to the procurator fiscal because either

(i) by standing agreement with the procurator fiscal, the police warn the accused due to the minor nature of the offence, or

(ii) reporting is inappropriate due to the non-age of the accused, death of the accused or other similar circumstances.

Source: Scottish Government 2010: 8.

<http://www.scotland.gov.uk/Resource/Doc/310580/0097992.pdf>

Appendix 4

The Test for Prosecution

5.1.1 It is the responsibility of the police to investigate alleged offences and to gather evidence about what occurred. When they have obtained evidence that an identifiable individual has committed an offence, they send a file to the PPS to decide who is to be prosecuted and for what offences. These are often difficult decisions for which the PPS is responsible, not the victim or police.

5.1.2 It is important to remember that the PPS is not the legal representative of the victim of a crime, nor does it act as their legal advisor; it is an independent prosecuting authority which is required to have regard to the overall public interest.

5.1.3 The way in which decisions as to prosecution are taken is set out in the Code for Prosecutors. The Code sets out the general principles to be applied.

5.1.4 Prosecutions are initiated or continued by the Prosecution Service only where it is satisfied that the Test for Prosecution is met. The Test for Prosecution is met if:

- i. the evidence which can be adduced in court is sufficient to provide a reasonable prospect of conviction – the Evidential Test; and
- ii. prosecution is required in the public interest – the Public Interest Test.

5.1.5 Each aspect of the test must be separately considered and passed before a decision to prosecute can be taken. The Evidential Test must be passed before the Public Interest Test is considered. The public prosecutor must analyse and evaluate all of the evidence and information submitted in a thorough and critical manner.

5.1.6 In applying the Test for Prosecution the public prosecutor must adhere to those obligations set out in the Code of Ethics of the Public Prosecution Service for Northern Ireland.

(PPS 2010)

Appendix 5

Other Definitions

A recorded crime: Recorded crime data are based on an aggregated count of each crime within the notifiable offence list. Notifiable offences include all offences that could possibly be tried by jury (these include some less serious offences, such as minor theft that would not usually be dealt with this way) plus a few additional closely related offences, such as assault without injury. Information on recorded crimes that are detected is collected in the same way.

An incident: All incidents reported to the police are recorded in accordance with the National Standard for Incident Recording, which sets out a common approach to be followed in classifying the broad range of calls for service the police receive from the general public. In many cases these incidents may be crimes in law, such as disorderly behaviour or many road traffic offences, but they are not of a level of severity that would result in the recording of a notifiable crime (as described above). Thus, they are not included in the main police recorded crime dataset.

Sanction detections: occur where the offender receives some formal sanction such as being charged or summonsed, cautioned or by having an offence taken into consideration at court (TICs). Non sanction detections occur where the offence was cleared up but where no further action is taken against an offender.

Hate crime: Hate crime is any offence 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.

Racist incident: A racist incident is defined as any incident which is perceived to be racist by the victim or any other person. A racial group can be defined as a group of persons defined by reference to race, colour, nationality or ethnic or national origins (this includes UK National origins i.e. Scottish, English, Welsh and Irish) and references to a person's racial group refer to any racial group into which he/she falls. Racial group includes the Irish Traveller community.

Homophobic incident (sexual orientation): A homophobic incident is defined as any incident which is perceived to be homophobic by the victim or any other person. Homophobia can be defined as a fear or dislike directed towards lesbian, gay or bisexual people, or a fear or dislike directed towards their perceived lifestyle, culture or characteristics. Sexual orientation can be defined as an individual's preference for a particular sex (be it the opposite or the same), or an individual's view of their own sexuality.

Sectarian incident: A sectarian incident is defined as any incident which is perceived to be sectarian by the victim or any other person. The term 'sectarian', whilst not clearly defined, is a term almost exclusively used in Northern Ireland to describe incidents of bigoted dislike or hatred of members of a different religious or political group. It is broadly accepted that within the Northern Ireland context an individual or group must be perceived to be Catholic or Protestant, Nationalist or Unionist, or Loyalist or Republican.

Faith/religious incident (non-sectarian): A faith/religious incident is defined as any incident which is perceived to be based upon prejudice towards or hatred of the faith of the victim or so perceived by the victim or any other person. A faith or religious group can be defined as a group of persons defined by reference to religious belief or lack of religious belief. This would include Christians, Muslims, Hindus, Sikhs and different sects within a religion. It also includes people who hold no religious belief at all.

Disability (or disablist) incident: A disability related incident is defined as any incident which is perceived to be based upon prejudice towards or hatred of the victim because of their disability or so perceived by the victim or any other person. Disability can be defined as any physical or mental impairment which has substantial and long-term adverse effect on a person's ability to carry out normal day to day activities.

Transphobic incident: A transphobic incident is defined as any incident which is perceived to be transphobic by the victim or any other person. Gender should not be confused with sexual orientation. A transsexual is a person who has 'gender dysphoria' or dissatisfaction with his or her own birth gender. Transsexuals may be lesbian, gay, bisexual or heterosexual and may or may not consider an incident perpetrated against them to be homophobic.

**The organisations which delivered
the Challenge Hate Crime project were:**

Northern Ireland Prison Service

www.dojni.gov.uk/index/ni-prison-service.htm

NIACRO

www.niacro.co.uk



Carecall

www.carecallwellbeing.com

Corish Film Productions

www.corish.tv

Institute of Conflict Research

www.conflictresearch.org.uk

Mediation NI

www.mediationnorthernireland.org

Violence Prevention Network

www.violence-prevention-network.de



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