



**RESPONSE OF THE COUNCIL FOR PUBLIC AFFAIRS OF THE  
PRESBYTERIAN CHURCH IN IRELAND TO THE DEPARTMENT OF JUSTICE  
PUBLIC CONSULTATION AND CALL FOR VIEWS ON IMPROVING THE  
EFFECTIVENESS OF HATE CRIME LEGISLATION IN NORTHERN IRELAND**

MARCH 2022

**Background**

1. The Presbyterian Church in Ireland (PCI) has over 200,000 members belonging to 500 congregations across 19 Presbyteries throughout Ireland, north and south. The Council for Public Affairs is authorised by the General Assembly of the Presbyterian Church in Ireland to speak on behalf of PCI on matters of public policy.
2. PCI appreciated the opportunity to engage with Judge Murrin's Independent Review of Hate Crime Legislation in Northern Ireland. This was carried out in an inclusive and comprehensive manner, producing a very substantial report with significant recommendations.

**General comments**

3. As a denomination PCI condemns unlawful acts that seek to bully and intimidate individuals within society in Northern Ireland. We continue to encourage gracious and informed discussion about how the moral and religious diversity which characterises contemporary society can best be achieved. This includes regular engagement with the Northern Ireland Human Rights Commission and the Equality Commission, where discussions have considered how to 'disagree well' in the public square.
4. As the Department of Justice begins the process towards drawing up new legislation in this area, PCI welcomes the staged approach to consultation. The issues involved are important, and need to be handled with wisdom and sensitivity without being rushed. PCI also acknowledges the proactive engagement on the consultation and a PCI representative attended an online engagement session led by DoJ co-ordinated by NICVA's Community Faiths Forum towards the end of 2021.
5. In an [article](#) in the *Newsletter* in August 2020 PCI's Public Affairs Officer commented that "*freedom to only express ideas that are popular is no freedom at all*". It is paramount therefore that efforts in finding a way forward on hate crime do not become a precursor to curtailing legitimate debate or the exploration of differences of opinion in a constructive and positive way.

### **Definition of a Hate Crime/Attitudes**

6. PCI welcomes the indication that the DoJ is not proposing to include a definition of hate crime explicitly in the Hate Crime Bill (par. 6.23) recognising that it could be too prescriptive and open to interpretation, which in turn could have unintended consequences. Creating a definition in itself is not a panacea. The blunt instrument of the law, even as a last resort, is no substitute for the hard, and often challenging, work of transforming hearts and minds.
7. DoJ is suggesting that the attitudes of “bias, bigotry, prejudice and contempt” may be included in guidance as recognised motivating factors of hate crime. PCI would urge caution in this approach to prevent the curtailing of open debate and expression of genuinely held views. In a world increasingly defined through the lens of individual identity, and choices which we are often told are fluid and non-binary, there is risk of being left with a binary option which boils down to this – “if you are not for me then you are against me, and if you are against me (while of course you have a the right to hold your personal beliefs) there is no place for you to articulate those beliefs”. The place of public debate or personal expression risks becoming a zero-sum game where if “you win, I lose” and vice versa.
8. The terms ‘bias’ and ‘prejudice’ carry low thresholds and cannot simply risk becoming synonyms for expressing an “alternative point of view”. Such terminology can be directed towards people of faith for example when expressing a perspective on marriage that may now be seen by some in wider society to be biased or prejudiced. The inclusion of a provision (regulation 131) in the [Marriage \(Same-sex Couples\) and Civil Partnership \(Opposite-sex Couples\) \(Northern Ireland\) Regulations 2019](#) that Article 8 of the Public Order (Northern Ireland) Order 1987 be amended so that any discussion or criticism of marriage which concerns the sex of the parties to marriage is not to be taken of itself to be threatening, abusive, insulting or intended to stir up hatred or arouse fear, recognises some of the complexity in this area.
9. PCI notes that DoJ acknowledges in its consultation document that “some criminal justice partners have argued that additional attitudes would not have a significant effect on how incidents were recorded and investigated... [and] the current notion of hostility is set at the correct level to ensure criminality is dealt with without broadening hate crime into the discrimination sphere”. PCI urges the DoJ, and incoming Minister, to pay particular attention to these perspectives.

### **Addition of a Third Threshold of ‘By Reason of’**

10. PCI notes that this third threshold was not included in the recent, and often controversial, Hate Crime and Public Order (Scotland) Act 2021, neither has been recommended by the Law Commission in England and Wales for inclusion in future hate crim legislation. PCI concurs with views expressed which indicate that there is little demonstrable evidence that this additional third threshold will provide any success of redress, and therefore agrees that it should not be added to the current thresholds in legislation.

## Defining Sectarianism in relation to Hate Crime Law

11. PCI notes the consideration of sectarian hate crimes where the term ‘sectarian’ denotes religion or perceived religious background as an indicator of a particular group, alongside political opinion. Between 2016 and 2019 there were over 400 attacks on places of worship – both Christian and other faiths<sup>1</sup>. Property belonging to the GAA and Orange Order is also attacked on a regular basis, often not making the headlines.
12. These continued attacks on property highlight that the term ‘sectarian’ should be referred to specifically within any new hate crime legislation. Of course, sectarian hate crimes are not only levelled at buildings, and it is important that such provision also encompasses attacks on individuals, or groups of individuals. It is a sad indictment on all of us in society here that, over 20 years since the signing of the Good Friday/Belfast Agreement, this remains an issue for which robust legislation is required.
13. The definition suggested by DoJ in the document refers solely to “Christian sectarianism” rather than those of other faiths, or none. It also does not refer to political opinion. PCI is of the view that such an approach keeps a focus on the unique circumstances of Northern Ireland with regard to internecine tensions. PCI also notes that any non-Christian religious sectarianism will not be treated differently to other hate crimes, and will be considered under the categories of racial or religious hate crime. It is vitally important that other non-Christian faith communities in Northern Ireland have confidence that this is indeed the case.

## Stirring Up Offences

14. With regard to consideration of the ‘stirring up offences’ the concern, in particular, is that removal of the dwelling defence is that the offence can be widened, and would not be subject to the clear and obvious protection that individuals’ discussions within their own homes would not give rise to criminal liability. The existing legislation provides a fairly robust protection in allowing people to express their genuinely held opinions within their home as opposed to the broader question of what is a private conversation. Placing restrictions on discourse within private dwellings may remove the freedom to discuss controversial topics at home between family members, friends or other guests.
15. PCI notes the view of the Department that the dwelling defence is no longer fit for purpose and in particular does not provide a suitable or appropriate defence for private, online communication. However, whilst stating that alternative protection needs to be put in place there is no clear definition within this document of what that will be, or how it might be applied. On a very practical level it is much easier to define a ‘private dwelling’ in law than a ‘private conversation’.
16. Challenges to the expression of faith in the public square are becoming more common. For many Christians grounding their public conduct in the truth-claims of their faith forms a key element of their religious commitment. Recognising this is a vital part of what it means for a society to genuinely value religious freedom.

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<sup>1</sup> <https://www.bbc.co.uk/news/uk-northern-ireland-49414293>

17. There must be space within society to express views with which others may disagree, recognising that this works both ways and allows people to express views about religious belief with which we may disagree. This includes inside the home. Often people of faith use their homes as extensions of their faith and religious activity. Many Christians demonstrate hospitality – inviting family, friends and other guests into their home, as a clear expression and outworking of their faith. Others use their homes to host discussions on subjects of interest to their understanding of faith including Bible study or missionary activity overseas and locally. PCI anticipates that it would not be the intention of the Department or incoming Minister to potentially criminalise such activities.
18. PCI acknowledges that as with most legislative challenges this is an issue which is somewhat nuanced. However, PCI would strongly oppose any change to legislation which would remove protection from individuals to express their strongly held personal and/or religious beliefs within their own home without being at risk of committing a criminal offence. The danger in changing the test is that in application it may be watered down or not provide as effective and clear a protection as the existing statutory defence currently applied not only in Northern Ireland, but in England and Wales.
19. On balance it may be better to retain the clear definition which currently exists, rather than to seek to define a new test which will be uncertain, and will have to be interpreted and applied by the Courts, in order that clarity can be brought to bear on what it means in practice. The need to balance Articles 8, 9 and 10 of the European Convention on Human Rights against any proposals is not insignificant.
20. Should the Department and incoming Minister be minded to introduce a specific defence for private conversations it is important that there be clarity about what would fall under this protection. For example, a private conversation may take place with more than one other person. However, such a provision should be additional to, not a substitute for, the private dwelling defence.

#### **Role of the Director of Public Prosecutions in Decisions for Stirring Up Prosecutions**

21. Acknowledging the drawbacks of making the Director Public Prosecutions solely responsible for decisions on whether or not to prosecute stirring up offences, PCI has sympathy with the view that retaining this level of consent acts as an additional safeguard against potential misuse of the legislation.

#### **Exploring Misogyny/Transmisogyny in Hate Crime Law**

22. PCI notes the intention of the Department to include gender in phase two of the public consultation on hate crime later this year and at this stage is seeking views to inform its own considerations relating to misogyny, which incorporates transmisogyny. On these questions PCI makes the following observations:
  - a. Incorporating transmisogyny into misogyny for the purposes of this call for views conflates two separate and distinct characteristics. This is unfortunate and should be avoided in any further consultation.

- b. The expansion of hate crime legislation into further and wider breaches has the potential risk of becoming increasingly pervasive and moves far beyond what might be considered the original function of hate crime legislation which was to protect vulnerable and minority groups. Indeed, where gender becomes a potential factor in hate crime, it is expanded to incorporate almost anyone.
- c. With regard to gender identify and specifically transgender identify, PCI acknowledges that these are contested conversations across many spheres in society. Without opening a discussion on these different perspectives PCI is clear in its view that a biblical 'theology of the body' argues that one's body cannot be ignored but is crucial in determining our identity. There may be some who find that view, or those of other denominations and faith groups, to be 'hateful'. Might this create a potential conflict between the freedom to hold and express religious belief and the expansion of legislation?
- d. PCI would seek to resist any changes to legislation which would make it more difficult to secure a conviction for domestic abuse and sexual offences, or create further difficulties for victims.

#### **Concluding remarks**

- 23. PCI looks forward to further engagement with the Department of Justice and the incoming Minister on these important issues, and PCI representatives would be happy to meet with officials to discuss any aspect of this submission.



**Rev Daniel Kane (Convener of the Council  
for Public Affairs)**



**Rev Trevor D Gribben  
(Clerk of the General Assembly)**