



**RESPONSE OF THE COUNCIL FOR PUBLIC AFFAIRS OF THE
PRESBYTERIAN CHURCH IN IRELAND TO THE CONSULTATION PAPER ON
THE HATE CRIME LEGISLATION IN NORTHERN IRELAND INDEPENDENT
REVIEW**

APRIL 2020

Background

1. The Presbyterian Church in Ireland (PCI) has over 217,000 members belonging to 535 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 that the Moderator Rev Dr William Henry, Clerk to the General Assembly Rev Trevor Gribben, and Public Affairs Officer Karen Jardine had to meet with Judge Marrinan and the Secretariat team during the research phase of this review and welcomes this further opportunity to respond to aspects of the consultation on the Independent Review of Hate Crime Legislation in Northern Ireland.
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. Efforts should be made to ensure that 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.

Definitions

4. PCI recognises that while the term 'hate crime' is widely used it is not well understood and, as outlined by the Review Team in the consultation document, there is a lack of consistency across the criminal justice system in terms of reporting, convicting and sentencing. The evidence suggests that the current legislative and judicial arrangements have proven to be unsatisfactory both in addressing those incidents which would be considered 'hate crimes', and in holding alleged perpetrators to account.

5. There are many advantages to seeking to define the term ‘hate’ and what might constitute a ‘hate crime’, not least in providing some clarity and consistency to those involved in the legal and judicial process. While from a theological perspective PCI might differ in the assessment that ‘hate is not inherent in human relationships’, creating a definition in itself is not a panacea. The blunt instrument of the law is no substitute for the hard and often challenging work of transforming hearts and minds.
6. PCI notes the working definition of a hate crime proposed by the Review Team as *“acts of violence, hostility and intimidation offered towards people because of their identity or perceived ‘difference’”*. This definition highlights motive, begins to establish a threshold which must be reached, and differentiates hate crime from hate speech.

Protected characteristics

7. One of the key drivers for the review of hate crime legislation in Northern Ireland is a perception that the current protected characteristics of race, religion, sexual orientation and disability no longer adequately reflect the diversity of identities here. Efforts to expand the list of protected characteristics should not reduce the focus or emphasis on existing categories of hate crime. At the same time, any development of a hierarchy of protected characteristics, intentional or otherwise, should be resisted.
8. Adding the general characteristics of ‘gender’ and ‘age’ has the potential to dilute the effectiveness of any new legislative proposals and, with that, losing its purpose in protecting those who may be vulnerable and disadvantaged. PCI appreciates the sincere motivations behind including these general characteristics alongside others, like homeless status. However, rather than apply these broad categories there may be merit in adding criteria that cover victim vulnerability and/or exploitation of that vulnerability.

Freedom of expression

9. PCI recognises that the Review Team takes the European Convention on Human Rights under its consideration and specifically Articles 9 and 10 regarding freedom of expression and freedom of thought, conscience and religion. For many Christians, grounding their public conduct in the truth-claims of their faith forms a key element of their religious commitment. There must still 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 religion with which we may disagree. After all, the freedom to only express ideas that are popular is no freedom at all.
10. PCI notes the Review Team’s comments about the recent introduction of the Marriage (Same-sex Couples) and Civil Partnership (Opposite-sex Couples) (Northern Ireland) Regulations 2019 which includes at Regulation 131 provision 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.

11. Like the Review Team, PCI was disappointed that this legislation was introduced without prior consultation or reference to ongoing work, including this independent review. We would ask the Review Team to consider actively extending to Northern Ireland section 29JA of the Public Order Act 1986¹, a provision inserted in 2010, which expands discussion or criticism beyond marriage to sexual conduct or practices. However, if the Review Team is not minded to pursue this amendment, PCI supports the retention of the express defence of freedom of expression in relation to views on same-sex marriage as included in the 2019 Regulations.

Online hate crime

12. The consultation on this review of hate crime closes at a time when our normal way of life in Northern Ireland, and across the world, has shifted unrecognisably in response to the Covid-19 pandemic. Much of our daily interactions have moved online, and this includes participation in worship services and other religious activities. In this context there may be, through the course of quoting or expounding scripture for example, a perception that the second or third type of harm described in paragraph 12.10 had been caused.
13. It is appropriate that the Review Team considers Article 10 of the European Convention on Human Rights in this context. PCI is supportive of the view that any alleged hate speech would engage Article 10, with contextual facts being considered to determine whether each prosecution is necessary and proportionate. There needs to be clarity that the legitimate use and exposition of scripture, even in an online environment, is a protected right in itself and does not constitute a hate crime.

Sectarianism

14. PCI notes the consideration of sectarian hate crimes as part of the independent review, where the term 'sectarian' denotes religion or perceived religious background as an indicator of a particular group, alongside political opinion. Over the past 3 years there have been over 400 attacks on places of worship – both Christian and other faiths². Property belonging to the GAA and Orange Order is also attacked regularly.
15. 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.

¹ <http://www.legislation.gov.uk/ukpga/1986/64/section/29JA/2010-10-23>

² <https://www.bbc.co.uk/news/uk-northern-ireland-49414293>

Restorative Justice

16. PCI notes the evidence cited by the Review Team about the positive impact of restorative justice for the perpetrator, but also importantly for the victim. While this might not be appropriate for all offending behaviour, restorative justice approaches can ease pressure on the criminal justice system. All steps should be taken to ensure that victims are protected in such a process, with no compulsion to participate.



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



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