

Improving the Effectiveness of Hate Crime Legislation in Northern Ireland

Response from the Commissioner for Older People for
Northern Ireland

March 22

Hate Crime Branch
Community Safety Division
Department of Justice
Room A4.3, 4th Floor
Castle Buildings
Stormont Estate
Belfast, BT4 3SG

31 March 2022

RE: Consultation - *Improving the effectiveness of Hate Crime Legislation in Northern Ireland*

Dear Sir / Madam

I am writing on behalf of the Commissioner for Older People for Northern Ireland (COPNI). The Commissioner for Older People is an independent voice and champion for older people whose legal powers and duties are defined by the Commissioner for Older People (Northern Ireland) Act 2011. This is a statutory role, at arms-length of government, which takes an active role in safeguarding and promoting the interests of older people in Northern Ireland.

COPNI welcomes the opportunity to engage with this consultation on the development of Hate Crime Legislation, an issue which impacts sections of our society requiring particularly effective protections. On its publication, the Commissioner for Older People welcomed Judge Desmond Marrinan's recommendation that:

All current protected characteristics in Northern Ireland – race, religion, disability and sexual orientation should continue to receive protection under the proposed model set out in Recommendation 2, together with the new recommended protected characteristics of age, sex/gender and variations in sex characteristics.

(Hate Crime legislation in Northern Ireland Independent Review, 2020, p.19)

In light of Judge Marrinan's thorough analysis of the pertinent issues, the Commissioner was surprised and disappointed that the recommendation was only partially accepted by the Minister of Justice:

Recommendation 9 [in part]

All current protected characteristics in Northern Ireland - race, religion, disability and sexual orientation - will continue to receive protection under

the proposed model. Transgender identity should be included as a protected group in legislation.

(Consultation Document, 2022, p.14)

In effect, a decision appears to have been made to reject the inclusion of age as a protected characteristic despite a detailed jurisprudential opinion that to do so is reasonable and merited (Marrinan, 2020, p.228-229). Moreover, the Consultation Document (2022), fails to include a rationale for rejecting 'age' as a protected characteristic.

The Commissioner for Older People for Northern Ireland urges an immediate reconsideration of the exclusion of age as a protected characteristic from Hate Crime Legislation. The intent of Hate Crime Legislation is to protect more vulnerable groupings and address particularly socially divisive types of offending. COPNI reaffirms that older people are by various metrics a vulnerable group and crimes committed against older people are especially destructive of social cohesion. A more detailed rationale for the inclusion of age as a protected characteristic is outlined below.

The Inclusion of Older People in Hate Crime Legislation

The Organisation for Security and Co-operation in Europe (OSCE) states that hate crimes are “criminal acts motivated by bias or prejudice towards particular groups of people”.¹

Older people, as a group, must be encompassed by any development of hate crime protections. There is an apparent reluctance in some debates on the development of hate crime to include older people on the dubious basis that crimes against this group are rarely based on hostility towards the group but are more often motivated by a perception of weakness on the part of this victim group. COPNI maintain that targeting a group due to an actual or perceived weakness is a form of contempt or hatred for that group. An individual who commits an offence against an older person wholly or partially because they consider that older person to be 'easy-pickings' based on their age, evidences an attitude of hostility based on an active disdain for members of this group.²

Stated or implicit concerns that the inclusion of Older People (or 'age') as a category in legislative developments would render prospective measures too broad are wholly misplaced. Likewise, suggestions that, as we will (nearly) all become older people, the inclusion of such a category would be inconsistent

¹ OSCE ODIHR Hate Crime Reporting (2019), *Criminal Offence + Bias Motivation = Hate Crime*, available at: <https://hatecrime.osce.org/what-hate-crime>

² COPNI recognizes that legislative protection of 'Older People' from hate crime could be achieved by using the category 'age' as the protected characteristic.

with currently protected characteristics of race, religion, sexual orientation and disability. Such propositions are based on a mistaken assumption that the currently protected characteristics are comparable in terms other than membership of a group requiring protection. Membership of these groups is not necessarily similar: membership of a racial group being from birth, while an individual can experience a disability either from birth or later in life. The motivation, form and language of hatred directed towards a racial group and say, hatred directed towards a person or persons with a disability are not necessarily analogous. In sum, hate crime legislation is intended to demarcate offences which are especially socially divisive, in that they target members of (vulnerable) groups in society because they are or are assumed to be part of such a group. The development of hate crime legislation should focus on whether and how extra protection is afforded a particular group, it should not (vainly) attempt to draw parallels between various groups.

The Need for Protection

COPNI's 2019 report 'Crime and Justice' found that:

When it comes to crimes such as burglary, criminal damage, vehicle theft and violence without injury, the PSNI's outcomes for these crimes continue to be lower for older people than for other age groups. These are crimes which intrude on what might be considered 'safe spaces' and can cause severe and lasting harm.³

Statistically speaking, as regards the detection and prosecution of certain crimes which have a personal dimension, older people are a vulnerable group. Moreover, as older people are less likely to have such crimes (which are frequently motivated by a perception of vulnerability) resolved, there is an increased negative psychological impact experienced by all members of this grouping whether they are an actual victim or not. COPNI's research found that:

Findings from the Northern Ireland Perceptions of Crime Survey suggest that almost one in six adults aged 65-74 in Northern Ireland reported high levels of concern about being a victim of crime in their own home. This was particularly the case with burglary, with almost one in ten adults aged 60+ believing that they would be a victim of burglary in the next 12 months.⁴

In summary, there is evidence to support both the proposition that certain offences committed against older people are less likely to be successfully

³ *Crime and Justice: The Experience of Older People in Northern Ireland*, COPNI, 2019, p.6, available at: <https://www.copni.org/media/1540/206567-online-a4-crime-report-56p.pdf>

⁴ *Crime and Justice: The Experience of Older People in Northern Ireland*, COPNI, 2019, p.9, available at: <https://www.copni.org/media/1540/206567-online-a4-crime-report-56p.pdf>

prosecuted and that older people do feel particularly vulnerable. Consequently, the case for increased protection for this group is undeniable if indeed society is to challenge symbolically and practically, the lived experience of older people being 'easy-pickings'.

Conclusion

The OSCE make the point that: 'Laws—especially criminal laws—are an expression of society's values. Hate crime laws both express the social value of equality and foster the development of those values.'⁵ Older People in Northern Ireland are a section of society that urgently requires protection from Hate Crime. To withhold such protection would be an unconscionable and wholly avoidable misstep on the part of government. COPNI urge the Consultation Team to recognise the vulnerabilities of older people and ensure that our society commits to valuing older members of our society with appropriate and effective legal protection.

The Commissioner respectfully requests that this response is provided to the Minister before a decision is taken, and that there is a further opportunity for the Commissioner and Minister to discuss this consultation before it concludes.

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Yours sincerely

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⁵ OSCE Office for Democratic Institutions and Human Rights (2009) Hate Crime Laws: A practical guide Poland: OSCE ODIHR, p.7



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