



Public Prosecution Service for Northern Ireland

Hate Crime Policy

Independent, Fair and Effective



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List of abbreviations used in this document

CJINI	Criminal Justice Inspection for Northern Ireland
CJSNI or CJS	Criminal Justice System Northern Ireland
CLTs	Community Liaison Teams
DOJ	Department of Justice
NICTS	Northern Ireland Courts and Tribunals Service
NIPS	Northern Ireland Prison Service
NSPCC	National Society for the Prevention of Cruelty to Children
OFMDFM	Office of the First Minister and Deputy First Minister
PBNI	Probation Board for Northern Ireland
PPS	Public Prosecution Service for Northern Ireland
PSNI	Police Service of Northern Ireland
VIS	Victim Information Scheme
VSNI	Victim Support Northern Ireland
WS	Witness Service
YWS	Young Witness Service



1. Introduction

The PPS and Hate Crime

- 1.1 The Public Prosecution Service (PPS) is committed to dealing effectively with hate crime.
- 1.2 Hate crimes are violent manifestations of intolerance and have a significant impact not only on the immediate victim, but the group with which that victim identifies him or herself.
- 1.3 This policy statement provides guidance as to how decisions as to the prosecution of hate crime are taken and the assistance which will be given to victims and witnesses.
- 1.4 Hate crime can be committed in many different contexts whether it be activities organised by gangs, action targeted at individuals' homes or random attacks in public places.
- 1.5 Whilst the impact of hate crime may be different for each individual victim, all victims are likely to suffer some harm. In its Victims and Witnesses Policy the PPS sets out in detail best practice in relation to the proper treatment of victims and witnesses. The PPS recognises that an important aspect of its role is to ensure that the needs of victims and witnesses are met. This is particularly important in hate crime cases where victims are targeted because of their race, religion, sexual orientation or disability.
- 1.6 In drafting this policy statement the PPS has had regard to the Thematic Inspection of hate crime carried out by the Criminal Justice Inspection and in particular to the recommendation that criminal justice agencies adopt a common set of hate crime definitions. It is consistent with work being taken forward by other criminal justice agencies on hate crime and reflects a commitment on the part of the PPS to promote diversity awareness and good relations across the community.

The Role of the Public Prosecution Service

- 1.7 The Public Prosecution Service is the principal prosecuting authority for Northern Ireland.
- 1.8 The aim of the PPS is to provide the people of Northern Ireland with an independent, fair and effective prosecution service, which observes international human rights standards.

Independence

- 1.9 The Prosecution Service is wholly independent from both police and government. Its decisions are based on an impartial and professional assessment of the available evidence and the public interest.

Fairness

All actions will be undertaken with complete impartiality, to the highest ethical and professional standards. All persons, including those accused of offences, will be treated fairly. All victims and witnesses will be treated with respect and sensitivity.

Effectiveness

All prosecution decisions will be taken and every prosecution conducted in an effective and efficient manner. The PPS will provide value for money, while delivering a timely and quality service.

Human Rights

- 1.10 The PPS is committed to observing international human rights standards. It is a member of the International Association of Prosecutors and promotes the standards of professional responsibility adopted by that association:

'Prosecutors shall, in accordance with local law and the requirements of a fair trial, consider the views, legitimate interests and possible concerns of victims and witnesses, when their personal interests are, or might be affected, and seek that victims and witnesses are informed of their rights; and similarly seek to ensure that any aggrieved party is informed of the right of recourse to some higher authority/court, where that is possible.'
(IAP Standards para 4.3b)

1. Introduction

The court in considering the application of the law including that relating to hate crime, must have regard to the European Convention on Human Rights (ECHR), as implemented by the Human Rights Act 1998. All public authorities have a duty to act in a way which is compatible with the individual rights and freedoms contained in the ECHR. The PPS is a public authority and must act in a manner compatible with the human rights enshrined in the ECHR.

The following rights are potentially engaged:

- Article 2 The right to life
- Article 3 The prohibition on inhuman and degrading treatment
- Article 6 The right to a fair trial
- Article 8 The right to respect for family & private life
- Article 9 The right to freedom of thought, conscience and religion
- Article 10 The right to freedom of expression
- Article 14 The prohibition on discrimination

Actions engaging human rights should always be lawful, necessary and proportionate to the legitimate aims of preventing crime or protecting the rights and freedoms of others.

The Structure of the PPS

- 1.11 The Service is headed by the Director of Public Prosecutions for Northern Ireland. There is also a Deputy Director.

In addition to the Director and the Deputy Director, the Prosecution Service is comprised of public prosecutors and administrative staff.

Public prosecutors are individual members of staff who have been designated by the Director to act on his behalf in the conduct of criminal proceedings including exercising the right of audience in these criminal proceedings. The term prosecutor includes public prosecutors and independent counsel (barristers) instructed on behalf of PPS.

The PPS is a regionally based organisation. There are four regions each coterminous with one or more court divisions. Each of the four regions is headed by a Regional Prosecutor who is accountable to the Director.

Each Regional Prosecutor has overall responsibility for decisions as to prosecution and for the conduct of all prosecutions in the region, with the exception of those cases that are considered by specialist prosecutors such as complex fraud cases.



2. Definitions of Hate Crime

2.1 The Perception-based Test

- 2.1.1 There is no statutory definition of hate crime. The PPS and other Criminal Justice Agencies adopt the following definition: “Any incident which constitutes a criminal offence perceived by the victim, or any other person, to be motivated by prejudice or hate towards a person’s race, religion, sexual orientation or disability.”
- 2.1.2 In adopting this definition, the PPS is seeking to build upon the perception based approach which has generally been accepted in recent years in relation to the definition of hate crime, as set out in the MacPherson report arising from the murder of Stephen Lawrence. This is known as the “Lawrence” or “MacPherson” definition.
- 2.1.3 This means that once an offence is perceived by the victim or any other person to be motivated by hate or prejudice towards a person’s race, religion, sexual orientation or disability then it is a hate crime. Its status does not change even if there is no other evidence with regard to motivation which can be adduced before a court.
- 2.1.4 The use of the perception based test ensures the early identification of an offence as a hate crime and allows investigators and prosecutors to take appropriate action. Police and prosecutors both use the same definition and the file can be marked accordingly. This assists in raising awareness of the race, religious, sexual orientation or disability aspect of any offence from the time of the reporting of the offence through investigation and up to and including prosecution.
- 2.1.5 For the purpose of this definition the following approach is adopted to the different terms used within the definition.

Race

- 2.1.6 A racist hate crime is any crime which is perceived to be racist by the victim or any other person, that is, perceived to be based upon prejudice towards or hatred of the race or the victim, or so perceived by the victim, or any other person. A racial group includes a group of persons defined by



2. Definitions of Hate Crime

reference to race, colour, nationality or their ethnic or national origin. Whilst including the many national origins now represented in Northern Ireland, the term also includes national origins in common usage in the United Kingdom namely, Irish, English, Scottish and Welsh. References to a person's racial group refer to any racial group into which he or she falls. Racial group includes the Irish Traveller community, and the Roma Traveller Community.

Religion

- 2.1.7 A faith/religious hate crime is defined as any crime 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.
- 2.1.8 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 includes Christians, Muslims, Hindus, Sikhs and different sects within a religion. It also includes people who hold no religious belief at all.
- 2.1.9 This category includes "sectarian" hate crime, that is a crime which is perceived to be sectarian by the victim or any other person. The term sectarian is almost exclusively used in Northern Ireland to describe incidents of bigoted dislike or hatred of members of different religious or political groups. It is broadly accepted that within the Northern Ireland context an individual or group is often perceived to be Catholic or Protestant, Nationalist or Unionist, or Loyalist or Republican.

Sexual Orientation

- 2.1.10 A homophobic hate crime is defined as any crime which is perceived to be homophobic by the victim or any other person. Homophobia can be defined as prejudice towards, or hatred of lesbian, gay, or bisexual people, or a fear of their lifestyle, culture or characteristics.
- 2.1.11 This category includes transphobic. This is any incident which is perceived to be transphobic by the victim or any other person. Transphobia can be defined as prejudice towards or hatred of transsexual persons. A transsexual person is a person who has 'gender dysphobia' 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.

Disability

- 2.1.12 A disability related hate crime is any crime 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 is defined by Article 2(5) of the Criminal Justice (No.2) Order 2004 as any physical or mental impairment. This differs from the definition in the Disability Discrimination Act 1995.

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

Offences Aggravated by Hostility

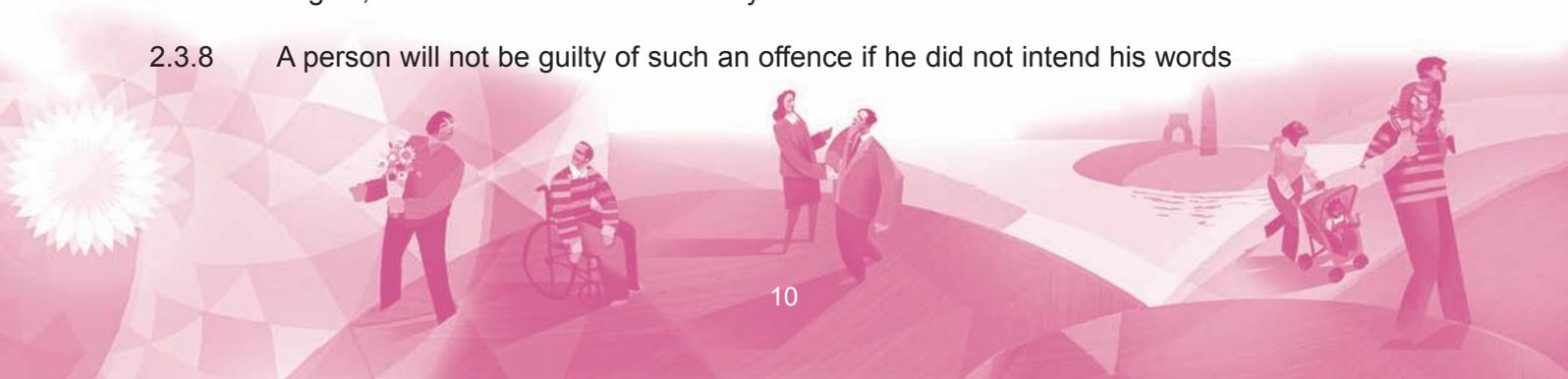
- 2.2.1 Certain hate crimes are also “offences aggravated by hostility”. For an offence aggravated by hostility to be committed, there must be sufficient objective evidence of hostility which is offender-motivated, rather than perception-based. These are criminal offences prosecuted at court where there is sufficient evidence that can be adduced before the court that the offence was aggravated by hostility. Article 2 of the 2004 Order places requirements on the court when it is considering the seriousness of an offence. Where an offence is aggravated by hostility the court must treat the aggravation as a factor that increases the seriousness of the offence, enabling a higher penalty to be imposed.
- 2.2.2 Article 2(3) defines an offence as ‘aggravated by hostility’ if: ‘... either at the time of the offence, immediately before or after its commission, the offender demonstrates hostility to the victim based on the victim’s membership of a racial, religious or sexual orientation group, or of the victim’s disability or presumed disability; or ‘... the offence is motivated, wholly or partly, by hostility towards members or presumed members of a group – either a racial, religious or sexual orientation group, or the victim’s disability or presumed disability’.
- 2.2.3 If the hostility is also based on other factors, this is immaterial in the court’s consideration of the racial, religious, disability or sexual orientation hostility involved (Article 2(4)).
- 2.2.4 Article 2(5) defines racial, religious and sexual orientation groups. It also defines disability. Racial group has the same meaning as in the Race Relations (Northern Ireland) Order 1997, i.e. ‘a group of persons defined by reference to colour, race, nationality or ethnic or national origins, and references to a person’s racial group refer to any racial group into which he falls’. Racial group includes the Irish Traveller community, and the Roma Traveller Community. It defines religious group as meaning a group of persons defined by reference to religious belief or lack of religious belief; sexual orientation as a group of persons defined by reference to sexual orientation; and disability as any physical or mental impairment. These definitions are the same as those adopted for the purpose of the perception based test set out above.

2. Definitions of Hate Crime

- 2.2.5 Article 2(5) also defines membership of racial, religious or sexual orientation groups as including association with members of those groups. It provides that when an issue of 'presumed' membership is involved, this means presumed by the offender.
- 2.2.6 It is important that the prosecutor is aware of the relevant legislation available in this area to ensure that the crimes are prosecuted effectively. The test applied by the prosecutor and the powers the court has in sentencing this type of crime are discussed in more detail in Section 9 of this policy document.

2.3 The Public Order (Northern Ireland) Order 1987

- 2.3.1 It should be noted that the law in Northern Ireland is not identical to that in England and Wales regarding hate crime offences.
- 2.3.2 The Public Order (Northern Ireland) Order 1987 creates a number of substantive hate crime offences with regard to religious belief, colour, race, nationality, ethnic or national origins. These categories were extended by the 2004 Order to include sexual orientation and disability.
- 2.3.3 The Public Order (Northern Ireland) Order 1987 creates offences and provides for penalties for the use of threatening, abusive or insulting words or behaviour, the display and distribution of written material, and related activities intended, or likely, having regard to all the circumstances, to stir up hatred or arouse fear.
- 2.3.4 The penalties for stirring up hatred or arousing fear in such cases is on summary conviction a maximum of 6 months' imprisonment, a fine not exceeding the statutory maximum, or both, and on conviction on indictment, a maximum of 2 years' imprisonment, a fine or both.
- 2.3.5 For an offence to be committed under the provisions of the 1987 Order, there has to be one of the following: it has to be 'threatening, abusive or insulting', and it has to be intended to, or likely in all the circumstances to stir up hatred.
- 2.3.6 Hatred is defined as meaning hatred against a group of persons in Northern Ireland defined by reference to religious belief, colour, race, nationality or ethnic or national origins, sexual orientation or disability.
- 2.3.7 Fear means fear of a group of persons in Northern Ireland defined by reference to religious belief, colour, race, nationality or ethnic or national origins, sexual orientation or disability.
- 2.3.8 A person will not be guilty of such an offence if he did not intend his words



or behaviour, or the written material, to be threatening, abusive or insulting and was not aware that they might be.

- 2.3.9 In such proceedings 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 written material displayed, would be heard or seen by a person outside that or any other dwelling.
- 2.3.10 It is proposed to introduce a new offence of “chanting” at sporting events. It will be an offence to chant (the repeated uttering of words or sounds) if it consists of or includes matter which is threatening, abusive, or insulting to a person by reason of that person’s colour, race, nationality, ethnic or natural origins, religious belief, sexual orientation or disability. It is proposed that this new offence will be prosecuted summarily only and will carry a maximum fine not exceeding level three.

2.4 A Common Approach

- 2.4.1 The PPS does not investigate crime; that is the role of the police.
- 2.4.2 Crimes are investigated by the Police Service of Northern Ireland (PSNI). When the PSNI investigate a crime, they send a file containing the evidence they have obtained to the PPS. A Public Prosecutor within PPS decides who is to be prosecuted and for what offences on the basis of a common test for prosecution which is discussed in Section 5. It is essential that the PPS works closely with the police, who use the same definition of hate crime as set out at Section 2.1 above, to ensure that these cases are identified at an early stage and recorded.
- 2.4.3 Adopting the Lawrence definition of hate crime helps in raising awareness of the race, religious, sexual orientation or disability element in any offence right from the point of reporting, through investigation up to and including any prosecution.
- 2.4.4 There are important features common to all four categories of hate crime. Two key aspects the criminal justice agencies can assist with are:
- the need to encourage the reporting of crime; and
 - the provision of services to support the victims of hate crime to give their evidence effectively, and thereby assist in reducing the commission of hate crime.
- 2.4.5 These will be looked at in more detail later in this policy document (see Sections 3, 4, 7 and 8).

3. Particular Issues relating to Hate Crime

- 3.1 While there are common concerns about the way in which all cases involving the four categories of hate crime are prosecuted, the PPS recognises that there are individual issues for particular victims or witnesses and these will be considered in each case in which they arise.
- 3.2 Hate crimes can have a devastating effect on a victim and those who fear becoming victims. The type of behaviour can take many forms, but the most common are assaults, intimidation, harassment and criminal damage. Victims can become repeat victims, compounding the anxiety and fear and causing fear amongst their whole community. It is recognised that low level hate crime can lead to more serious incidents occurring and it is vital that hate crime incidents are reported.
- 3.3 Hate crime is particularly hurtful to victims as they are targeted solely because of their personal identity, their actual or perceived racial or ethnic origin, religion, sexual orientation, or disability.
- 3.4 These offences can be committed randomly or can be part of an organised campaign of continued harassment and victimisation by neighbours, or by extremist groups, or a combination of these.
- 3.5 The PPS in conjunction with its partner agencies in the criminal justice system is committed to working together to effectively prosecute these offences.
- 3.6 The impact on victims is different for each individual, but many experience similar problems. They can feel isolated, unsafe in their own homes, afraid to go out or of staying at home, withdrawn and suspicious of strangers. Their mental and physical health may suffer. These consequences can resonate within the racial or religious group in the wider community, and that community can feel victimised and under attack. This can also be the case for sexual orientation or disability based hate crime.

- 3.7 The PPS recognises that some people may be reluctant to report a hate crime incident. This may be through fear that they may be subject to a police investigation themselves because of where they were or what they were doing when the incident occurred. For example, they may themselves have been committing an immigration offence or a minor sexual criminal offence. The PPS is committed to playing its part in the protection of all members of society through the appropriate use of the criminal justice process. Although the PPS cannot guarantee that people who commit minor offences in such circumstances will not be prosecuted, when deciding if a prosecution should take place, we will consider such offences in the context of what has occurred.
- 3.8 It is acknowledged that hate crimes are under-reported to police for various reasons including:
- previous experience of or lack of confidence in police or the criminal justice system;
 - perception that police and criminal justice agencies are not interested and will not take action;
 - language difficulties;
 - personal circumstances eg immigration status;
 - fear of breach of privacy and becoming exposed to further incidents;
 - lack of knowledge of reporting systems;
 - perception about how the police and criminal justice agencies will respond;
 - perception that it is acceptable to treat members of the affected groups in this way.
- 3.9 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. The PPS works with police to identify these crimes, seeking relevant admissible evidence and prosecuting the crimes effectively at court, directing the court's attention to all relevant evidence and factors, to allow the court to pass appropriate sentences.

4. Working with our Criminal Justice Partners to serve the Community

- 4.1 The PPS is not the only agency that deals with cases of hate crime. The police, the Northern Ireland Courts and Tribunals Service, the Youth Justice Agency and the Judiciary all have roles to play in promoting greater confidence in the criminal justice system. The PPS will work with its partner agencies to help ensure that the whole criminal justice process brings perpetrators of hate crime to justice.
- 4.2 The PPS is an active member of the interagency 'Hate Crime Steering Group' chaired by the Department of Justice. It has representation from PSNI, Probation Board for Northern Ireland, Northern Ireland Prison Service, the Office of the First Minister and Deputy First Minister (OFMDFM) and Northern Ireland Courts and Tribunals Service. This group provides a useful mechanism for a more co-ordinated approach to hate crime across the criminal justice system.
- 4.3 Using the wide definition of hate crime helps in raising awareness of the racist, religious, sexual orientation or disability element in any offence right from the point of reporting, through investigation up to and including any prosecution. By using this definition, the criminal justice agencies aspire to raise levels of confidence and therefore reporting of such incidents.
- 4.4 The definition covers all crimes which are perceived to be motivated by hate towards any of the four categories by anyone involved in them, including the perpetrator or independent witness.
- 4.5 Police adopt this same definition of hate crime and it is their policy to indicate this as a motivating factor on the case file sent to PPS. The PPS then applies the test for prosecution in the normal way and the prosecutor makes a determination as to whether the evidence shows that the incident was aggravated by hostility based on the victim's actual or perceived religion, race, sexual orientation or disability. If this is the case, it is recorded on the case file and the electronic Case Management System and brought to the attention of the court. The court, in turn, keeps a record of the outcomes of these cases.

- 4.6 The PPS monitors the cases in which it concludes there is sufficient evidence that the offence was aggravated by hostility, and annually publishes statistics showing the number of such cases in its Annual Report.
- 4.7 Not every incident that is reported as a crime can be prosecuted, and even where the test for prosecution is met there may be insufficient admissible evidence relating to offender-motivation to put before a court to enable it to impose a higher penalty for an offence aggravated by hostility. In the latter situation the offence can still be prosecuted, but can not be prosecuted as an offence aggravated by hostility.
- 4.8 This means that some incidents that come within the definition of hate crime may not lead to criminal proceedings, or where they do, the prosecution may not be able to provide the court with evidence of motivation by hatred. However, where such evidence is available, the PPS shall inform the court of it.
- 4.9 The prosecutor has a key role to play in making sure that these offences are effectively prosecuted. The evidence relating to the hostility element must be taken into account appropriately at every stage. If a line of enquiry should be followed by police that may assist in meeting the evidential test, the prosecutor should advise police of this.



5. Prosecution Decisions

5.1 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.

5.2 The Evidential Test

- 5.2.1 Public prosecutors determine whether there is sufficient evidence to provide a reasonable prospect of conviction against each defendant on each charge.
- 5.2.2 A reasonable prospect of conviction exists if, in relation to an identifiable individual, there is credible evidence which the prosecution can adduce before a court upon which evidence an impartial jury (or other tribunal), properly directed in accordance with the law, may reasonably be expected to find proved beyond reasonable doubt the commission of a criminal offence by the individual who is prosecuted.
- 5.2.3 It is necessary that each element of this definition is fully examined when considering the evidential test for each particular case.

5.3 The Public Interest Test

- 5.3.1 Once a public prosecutor is satisfied that there is sufficient evidence to provide a reasonable prospect of conviction, the next consideration is whether the public interest requires prosecution. It is not the rule that all offences for which there is sufficient evidence must be prosecuted – prosecutors must exercise their discretion as to whether a prosecution is required in the public interest.
- 5.3.2 In 1951 Sir Hartley Shawcross QC MP, the then Attorney General, made the following statement to Parliament in relation to prosecutorial discretion: “It has never been the rule in this country ... that suspected criminal offences must automatically be subject of prosecution”.
- 5.3.3 Broadly, the presumption is that the public interest requires prosecution where there has been a contravention of the criminal law. This presumption provides the starting point for consideration of each individual case. In some instances the serious nature of the case will make the presumption a very strong one. One factor in favour of prosecution is motivation of hatred on grounds of race, religion, sexual orientation or disability. However, there are circumstances in which, although the evidence is sufficient to provide a reasonable prospect of conviction, prosecution is not required in the public interest. For example, public prosecutors should positively consider the appropriateness of a diversionary option, particularly if the defendant is a youth.

5. Prosecution Decisions

5.3.4 The following section lists some public interest considerations for prosecution which may be relevant and require to be considered by a prosecutor when determining where the public interest lies in any particular case. The following list is illustrative only.

Public Interest considerations in favour of prosecution

- i. where the offence was motivated by hostility against a person because of their race, religion, sexual orientation or disability;
- ii. 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;
- iii. the seriousness of the offence i.e. where a conviction is likely to result in a significant penalty;
- iv. where the suspect was in a position of authority or trust and the offence is an abuse of that position;
- v. where the suspect was a ringleader or an organiser of the offence;
- vi. where the offence was premeditated;
- vii. where the offence was carried out by a group;
- viii. where the offence involved the possession or use of a firearm, imitation firearm or other weapon such as a knife;
- ix. where the offence is prevalent;
- x. 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;
- xi. where the suspect has previous convictions or cautions which are relevant;
- xii. 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;
- xiii. 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.

5.3.5 The following section lists some public interest considerations against prosecution which may be relevant and required to be considered by a prosecutor when determining where the public interest lies in any particular case. The following list is illustrative only.

Public Interest considerations against prosecution

- i. where the court is likely to impose a very small or nominal penalty;
- ii. 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;

- iii. where the offence is not of a serious nature and is unlikely to be repeated;
- iv. 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
- v. 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;
- vi. where the suspect is elderly or where the defendant is a child or young person;
- vii. 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;
- viii. 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).

5.3.6 These considerations are not comprehensive or exhaustive – the public interest considerations which may properly be taken into account when deciding whether the public interest requires prosecution will vary from case to case. In each case where the Evidential Test has been passed, the prosecutor will weigh the relevant public interest factors that are applicable. The prosecutor will determine whether or not the public interest requires prosecution.

5.3.7 While the prosecutor primarily will weigh the evidence and information reported in the investigation file to assist his consideration of the public interest, other appropriate sources of information may also be used including those agencies (for example Social Services) who are currently dealing with the defendant. The defendant, or persons acting on behalf of the defendant, may also submit evidence and information to the Prosecution Service for consideration.

5.3.8 Any person, including a victim or witness or any other person affected by hate crime, who considers that they have relevant evidence or information to impart should bring this to the attention of the police. It should be noted that the PPS has no investigative function.



5.4 The Burden & Standard of Proof

- 5.4.1 For there to be a conviction in a criminal court, the prosecution has to prove the defendant's guilt beyond a reasonable doubt.
- 5.4.2 This is a very high standard of proof and there are many reasons why a defendant may not be convicted. Witnesses should not assume that a defendant has been acquitted because their evidence has not been believed.
- 5.4.3 In addition, in considering whether the case can be presented in court as having been 'aggravated by hostility', the prosecutor must consider whether, in respect of the evidence that can be adduced before the court, there is a reasonable prospect that the court will be satisfied beyond reasonable doubt that the offence was aggravated by hostility. (This is outlined in more detail in Section 9.)

5.5 Mode of Trial

- 5.5.1 As a general observation, summary offences relate to less serious criminal behaviour and are tried in the Magistrates' court before a District Judge, indictable offences relate to more serious criminal behaviour and are tried at the Crown court before a judge and jury.
- 5.5.2 However, there are a number of offences which may be tried at either the Magistrates' or Crown Courts, for example, theft and assault occasioning actual bodily harm. For these offences, on taking a decision to prosecute, the public prosecutor must also decide whether this prosecution should be tried in the Magistrates' Court or the Crown Court. In making this decision the prosecutor will consider whether the Magistrates' Court is the appropriate venue in that it has sufficient sentencing powers in relation to the gravity of the offence.

5.6 What if the Victim Withdraws the Complaint?

- 5.6.1 The prosecution does not automatically stop. The public prosecutor will ask police to take a statement from the victim to explain why they wish to withdraw the complaint and confirm whether the original statement was true. If it is suspected that the victim has been pressurised or frightened, police may be asked to investigate this.
- 5.6.2 If the statement is true and the victim still wishes to withdraw, consideration will be given as to whether it is possible to continue with the prosecution

without the victim's evidence, and if so, whether the PPS should do so against the victim's wishes. Even when a victim may not wish to proceed, he or she can be compelled to give evidence and this must be considered by the public prosecutor.

5.7 Diversionary Options

- 5.7.1 If the Test for Prosecution is met, the public prosecutor must decide the most appropriate way of disposing of the case. This can be other than by prosecution at court. The diversionary options available to the prosecutor are:

Informed Warning

The public prosecutor may require police to administer an Informed Warning to the defendant. An Informed Warning is a formal reprimand by police and, although not a conviction, is recorded on a person's criminal record for a period of 12 months.

Caution

The public prosecutor may require police to administer a Caution to the defendant. A Caution is a formal reprimand by police and, although not a conviction, is recorded on a person's criminal record for a period of 30 months for youths and 5 years for adults.

Youth Conference

Where the defendant is a youth (aged from 10 to 18 years), the public prosecutor may consider a diversionary Youth Conference as an alternative to prosecution in court. This type of restorative conference may involve a number of parties including the defendant, the victim and police. A plan will be produced at this conference – this plan must be approved by the prosecutor. A Youth Conference is a formal process and, although not a conviction, is recorded on a person's criminal record for a period of 30 months.

- 5.7.2 These diversionary options are only available to public prosecutors if the defendant admits to the prosecutor that he committed the offence and agrees to accept and participate in the diversionary option. Admissions of guilt must be based on an informed decision by the defendant.
- 5.7.3 If the police are unable to administer an Informed Warning or a Caution (for example, the defendant cannot be contacted or does not turn up for an appointment with police), then the case will be referred back to the Prosecution Service for further consideration.

5. Prosecution Decisions

- 5.7.4 Similarly, if a Youth Conference plan cannot be agreed or is not approved by a public prosecutor, the case will be referred back to the Prosecution Service which may direct a prosecution. Even if a public prosecutor decides to prosecute a youth in court, the court may however consider that the option of Youth Conference is an appropriate disposal of the case on conviction.
- 5.7.5 The public prosecutor will consider the appropriateness of the available disposal options in regard to each defendant separately. Depending on the facts of each case, it may be appropriate for different disposals to be applied to separate defendants within the same case. For example, in a case with three defendants, one defendant may be prosecuted, a second defendant who is a youth may take part in a Youth Conference and it may be decided not to prosecute a third defendant.
- 5.7.6 Generally, provided there is sufficient evidence available, the more serious the offence the more likely the PPS are to prosecute in the public interest, even if this is against the victim's wishes. This may mean the victim may be compelled to give evidence.
- 5.7.7 It should be noted that in cases where there is sufficient evidence that the case has been aggravated by hostility, provided that the test for prosecution is met, the public interest will normally require prosecution rather than diversion. However, each case must be considered on its own particular circumstances.

5.8 The Victim's Views

- 5.8.1 The PPS is committed to ensuring that the proper interests of victims are considered at every stage of the criminal process including when the decision to prosecute is taken. This is outlined in more detail in Section 6.

5.9 Accepting Guilty Pleas to Lesser Offences

- 5.9.1 Decisions to prosecute, including the specific offences to be prosecuted, are taken by the Prosecution Service in accordance with the Test for Prosecution to which all public prosecutors must adhere. Such decisions are taken after a careful assessment of all the evidence and information reported, including any obvious or likely defence and the requirements of the public interest.



- 5.9.2 The general principle is that the decision to prosecute and the offences to be prosecuted, should not be altered unless there is a proper reason, once they have been taken and formally issued by the Prosecution Service.
- 5.9.3 The defence may on occasion approach the PPS with an offer to plead guilty to only some of the charges that they are facing, or to a lesser charge or charges, with the remaining charges not being proceeded with.
- 5.9.4 While the public prosecutor is under a duty to consider any such formal offer from the defence, “plea bargaining” has no place in the practice or procedures of the Prosecution Service.
- 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 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.
- 5.9.7 Counsel instructed to prosecute in accordance with decisions taken by the Prosecution Service may not depart from such decisions without receiving specific instructions to do so. Counsel are also required to comply with the terms of the Code for Prosecutors, which includes the Code of Ethics. These are available in printed form from PPS, or on-line on the PPS website. The relevant addresses are set out at the end of this policy document.

5.10 Sentencing

- 5.10.1 Sentencing is a matter for the court. Prosecutors must not approbate expressly or impliedly the sentence to be imposed by the court. Sentencing is not a straightforward matter. Every case is different and the sentence appropriate to any case must depend on the particular circumstances of that case. A judge, in sentencing a defendant, takes into account any guidance given by the Court of Appeal, identifies any features that



5. Prosecution Decisions

aggravate the offence and any features that mitigate the offence. The judge then decides on a sentence that reflects the need to punish, to deter others, to protect the public and to rehabilitate the defendant.

- 5.10.2 In sentencing, the court must decide on the appropriate sentence from a broad range of penalties. The PPS will make sure the court has the information it needs to sentence appropriately including any relevant information contained in a Victim Impact Report (see below at 5.10.3); correct any misleading or inaccurate information given by the defence; and outline any aggravating features that the court should take into account, specifically a religious, racist, homophobic or disability related motive. If the court is satisfied to the requisite standard that the offence was aggravated by hostility, it must increase the sentence it would otherwise impose.
- 5.10.3 In some cases the judge may request a Victim Impact Report to be prepared. This is a specialist report prepared by an appropriately qualified professional, such as a psychologist or psychiatrist, outlining the impact of the crime on a victim or the family of the victim.
- 5.10.4 In contrast, a Victim Impact Statement, or Victim Personal Statement, is a statement made by a victim or the family of a victim in which they describe the effect the crime has had on them. This can be presented to the judge before sentence is passed. If a victim has prepared a Victim Personal Statement, they can pass it to the prosecutor who will hand it into court.

5.11 Unduly Lenient Sentences

- 5.11.1 The Criminal Justice Act 1988 gives the Director of Public Prosecutions the power to apply for leave to refer an unduly lenient sentence to the Court of Appeal. This Act restricts the use of that power to certain of the more serious offences tried and sentenced in the Crown Court. The Director may not refer any sentence imposed at the Magistrates' Court on the ground that it was unduly lenient.
- 5.11.2 An application to review a sentence must be made within 28 days from the day the sentence was imposed. If the Court of Appeal agrees that the sentence was unduly lenient it may increase the sentence.
- 5.11.3 The Court of Appeal has held that an unduly lenient sentence is one that falls outside the range of sentence that a judge, taking into consideration all relevant factors and having regard to sentencing guidance, could reasonably consider appropriate.
- 5.11.4 Victims, their families, and members of the public can contact the Director directly or through a public or legal representative about a sentence and their concerns. The request should be made to the Director of Public Prosecutions at PPS Belfast Region Headquarters. The contact details are set out at the end of this policy document.

6. Taking Account of the Victim's Views

- 6.1 While the PPS does not represent a victim in the same way a solicitor represents a client, the PPS is committed to ensuring that the interests of victims are considered at every stage of the criminal process.

6.2 Prosecution Decisions

Decisions as to prosecution and mode of trial take into account the interests of the victim in weighing the public interest. Where the victim's perception that the crime is a hate crime is supported by other evidence this will provide a public interest consideration in favour of prosecution. This is outlined in more detail in Section 5. The PPS recognises the impact of non-prosecution on a victim and also the wider community.

6.3 Prosecuting Offences Aggravated by Hostility

The prosecutor must consider whether there is sufficient evidence that the offence was aggravated by hostility to prosecute it as such. The views of the victim will be considered, but there must be sufficient evidence that can be adduced at court before the case can be prosecuted as an offence aggravated by hostility. This is explained in more detail later in this document in Section 9.

6.4 Bail

The views of the victim are also an important factor when determining what submissions should be made regarding the grant or refusal of bail. Whilst the grant or refusal of bail is a matter for the court, the prosecution will bring all relevant matters to the court's attention including information which indicates that there is a likelihood of interference with the victim or a witness. The judge will make a decision about bail after hearing from the prosecution and defence. The court can impose conditions of bail, or remand the defendant in custody. The PPS can appeal in certain circumstances against a decision to grant bail.

6.5 Proceeding with a lesser charge

In some circumstances a decision may be taken not to proceed with the charge directed, or a plea to a lesser offence may be accepted. This might

arise, for example, if new evidence comes to light or evidence ceases to be available. When considering whether this should be done, the prosecutor must explain to the victim why this has happened and listen to anything the victim wishes to say. However, sometimes these issues have to be dealt with relatively quickly at court and in some circumstances it is not always possible to speak to the victim at this stage. The PPS will, where possible, endeavour to keep victims informed, and victims may at any stage after the case has been submitted to the PPS by police, contact Community Liaison Teams to obtain information in respect of the case in which they are involved.

6.6 Correcting Inaccurate Information during the Court Hearing

The PPS will challenge incorrect or unfair defence imputations on witnesses in cross-examination and in pleas in mitigation.

6.7 Sentencing

In ensuring that the court has the information it needs to sentence appropriately, the PPS will refer to any relevant information contained in a Victim Impact Report prepared by a specialist at the request of the judge, correct any misleading or inaccurate information given by the defence and outline any aggravating features that the court should take into account, specifically a religious, racist, homophobic or disability related motive. If the court is satisfied to the requisite standard that the offence was aggravated by hostility, it must increase the sentence it would otherwise impose, and state that it is so doing.

A victim, or their family may wish to prepare a Victim Impact Statement, also known as a Victim Personal Statement. This is a statement describing in their own words the impact of the crime on them. This can be sent directly to the court, or passed to the prosecutor to hand in to the judge at court.

6.8 Appeals

A victim will be informed where there is an appeal on a point of law, and their views taken into account where appropriate. The views of the victim will also be taken into account by the Director in referring a sentence to the Court of Appeal on the ground that it is unduly lenient. As stated in Section 5.11.3, an unduly lenient sentence is one that falls outside the range of sentences that a judge, taking into account all relevant facts, including guidance on sentencing from the Court of Appeal, could reasonably consider to be appropriate. It is only if the sentence falls entirely outside the range of sentences that could reasonably be considered appropriate that it can be considered unduly lenient.

7. Services to Victims & Witnesses of Hate Crime

7.1 Helping Victims and Witnesses give evidence

- 7.1.1 An important part of prosecuting a case effectively at court is ensuring that the witnesses called can give their evidence as well as they possibly can. The victim is often the key witness in any criminal case. Unless the defendant pleads guilty it will usually be necessary for the victim to give evidence at court. The PPS recognises that many victims and witnesses will find this a traumatic experience. Assistance and support is available from a number of organisations.
- 7.1.2 The PPS is committed to providing appropriate and timely information and services to victims and witnesses, from the point at which the PPS assumes responsibility for a case until the case is concluded. However, it must be noted that for reasons of confidentiality and other legal restrictions it may not be possible to release all case-related information that a victim or witness may wish to receive.
- 7.1.3 The PPS has established dedicated Community Liaison Teams (CLTs) for Magistrates' Court and Youth Court cases, to check a witness's availability for court and to provide information to victims and witnesses who contact them. Once a case reaches the Crown Court, services will be provided by PPS in conjunction with police.
- 7.1.4 The PPS also works closely with other agencies to help ensure that information provision schemes works effectively.

7.2 Services Before a Case Reaches Court

Provision of Information

- 7.2.1 The PPS recognises the importance of information provision and is committed to ensuring that victims are kept informed of the progress of the case in which they are involved.



7. Services to Victims & Witnesses of Hate Crime

Victims are kept informed of the progress of the case at certain stages in the prosecution process. These include:

- a letter at the time of charge in cases of death;
- a letter on receipt of an indictable case file from police;
- a letter notifying the victim of the decision whether or not to prosecute;
- if the decision is not to prosecute, a letter setting out an explanation of the reason/s for that decision;
- a letter indicating when the witness is required to attend court to give evidence (their availability having been ascertained in advance);
- a letter notifying the victim of the outcome of the case.

In addition, if the victim or witness wishes, his or her contact details will be passed to Witness Service or Young Witness Service (the services they offer are listed at section 7.3).

In addition three separate 'Victim Information Schemes' managed by PBNI, the NIPS and the DOJ respectively have been implemented in recent years. These operate at the post-sentencing stage and are outlined later (at section 7.6). The PPS can on request provide information about these Schemes.

In addition, in each PPS region, dedicated teams of staff in the CLTs, can provide information to assist with any queries a victim or witness may have.

Arranging Dates for Hearing

- 7.2.2 The PPS seek to ensure that regard is had to the convenience of witnesses when the court is fixing the date for a contest or trial. Witnesses will be contacted and consulted about what dates they are available to give evidence. In Magistrates' Court and Youth Court cases, this is done by PPS; in the Crown Court by the police in conjunction with PPS.
- 7.2.3 A "Requirement to Attend" is sent by the PPS to the witness and they are asked to return a pro forma indicating their intention to attend. A leaflet explaining the support available from Witness Services is enclosed with this letter. The victim or witness is given the opportunity to opt-out of having their details passed on to Witness Services.
- 7.2.4 Every attempt is made to arrange a hearing date that is convenient to witnesses to attend court to give evidence and they are given as much notice as possible when the date is fixed.
- 7.2.5 Victims are also notified of the date of an appeal to the County Court or Court of Appeal, where possible.

Avoiding Unnecessary Delay

- 7.2.6 The PPS is currently working with its criminal justice partners to improve the progress of cases through the criminal justice system. In Magistrates' Court cases CLTs are responsible for ascertaining witness availability. In Crown Court cases this is done by the investigating police officer. This is checked in advance of cases being listed for hearing. As a result, trials are more likely to go ahead on the date fixed, without the need for adjournments. Adjournments may also be sought by the defence for a variety of reasons, for example the availability of defence witnesses and time needed to prepare their case. The decision in respect of any adjournment is ultimately a matter for the judge.
- 7.2.7 The PPS contributes to the work of an inter-agency group set up by the Criminal Justice Board to identify areas of delay in the criminal justice system and to take action to address them.
- 7.2.8 The PPS is also a member of the inter-agency steering group on hate crime, which provides a forum for co-ordinating inter-agency working in this area.

Consultations

- 7.2.9 The PPS holds consultations with witnesses in cases where appropriate. These are required to consider in more detail the evidence set out in the witness statement and an assessment of a witness's ability to give evidence at court in an effective manner. They also provide an opportunity to discuss any concerns the witness may have.
- 7.2.10 The PPS will ensure that consultations are properly organised and conducted in a professional manner with sensitivity, courtesy and understanding.
- 7.2.11 The first face-to-face point of contact between the PPS and a victim or witness is often at a consultation. The witness must not be left to find their own way to the consultation room. The PPS will arrange with the investigating police officer to bring the witness to the consultation room having collected them from home or a police station, or location acceptable to the witness. If two or more witnesses travel to the consultation together, the police officer will be asked by the PPS to remind the witnesses not to discuss details of the case, so as to avoid any allegation that accounts have been tailored in order to be consistent.
- 7.2.12 The consultation will be held, where possible, in a properly equipped consultation room. It will be held at a time and venue to take into account the comfort and convenience of the witness.

7. Services to Victims & Witnesses of Hate Crime

- 7.2.13 At the beginning of the consultation the public prosecutor will explain to the witness the identity and role of all persons present and the purpose of the consultation. Where it is a pre-decision consultation, it is essential that the witness be told that no decision has yet been made regarding whether or not a prosecution will be brought.
- 7.2.14 The consultation will be conducted in a manner appropriate to the case and where necessary the manner of questioning employed and the purpose of the questions asked must be explained to the witness.
- 7.2.15 The witness must be treated with sympathy, sensitivity, courtesy and understanding at all times, although on occasions it may be necessary to ask forceful or probing questions.
- 7.2.16 A police officer must remain present throughout the consultation. In some cases, for example in the case of a female victim, where the consultation requires discussing matters of a personal nature, the public prosecutor should consider whether it is appropriate to have another female present, if the victim would otherwise be the only female present. In such cases, it may also be appropriate to ask a female police officer to attend.
- 7.2.17 The public prosecutor should also consider whether or not it is appropriate for a parent to accompany a child witness: this will depend on the circumstances of the case, including an assessment of whether the child is likely to feel supported or inhibited in the presence of a parent.
- 7.2.18 A victim or witness may wish to have a relative or friend present. Whether or not this is appropriate will depend on all the circumstances but, provided the relative or friend is present only to give support to the witness, their presence should be allowed.
- 7.2.19 A witness is entitled upon request to arrange to have a solicitor present during the consultation to advise.
- 7.2.20 Legal or evidential difficulties must be explained to the victim or witness and the public prosecutor will inform them that they will be notified by letter as to whether a prosecution will be brought and an indication given as to when a decision is likely to be made.
- 7.2.21 Where counsel has been briefed they should conduct the consultation, however the public prosecutor responsible for the case will introduce the consultation and make it clear that the role of counsel is to advise. The prosecution decision will be taken by the public prosecutor.



Giving of Reasons

- 7.2.22 The victim may query the decision not to prosecute, and may ask for reasons. The giving of reasons for not prosecuting is a complex issue. In many cases the reason for not prosecuting is a technical one, such as the unavailability of a particular proof which is essential to establish the case. A balance is struck between the proper interests of the victim and other concerns, such as damage to the reputation or other injustice to an individual, the danger of infringing upon the presumption of innocence or other human rights and the risk of jeopardising the safety of individuals.
- 7.2.23 The policy of the PPS is to give reasons for decisions for no prosecution in all cases albeit in the most general terms. For example, in a case where there is a technical defect such as the unavailability of evidence to prove an essential aspect of the case, the PPS would normally indicate that it has concluded that there was insufficient evidence to afford a reasonable prospect of a conviction. In a case in which the evidence was sufficient but the decision was taken not to prosecute, for example, given the age and infirmity of the prospective defendant, the reason given would be that it was not in the public interest to prosecute.
- 7.2.24 The propriety of applying this general policy is examined and reviewed in every case where a request for the provision of detailed reasons is made. In such cases the PPS will consider what further information may reasonably be given balanced against the factors which militate against providing detailed reasons together with any other considerations which seem material to the particular facts and circumstances of the case.
- 7.2.25 In a range of more serious cases, including hate crime, where the decision is taken not to prosecute, detailed reasons for the decision will, where possible, be given to the victim without request. The PPS will write to the victim explaining the decision and drawing the attention of the victim to the availability of the review mechanism. Where the victim asks for a meeting, PPS will seek to facilitate this.

7.3 Services at Court

Meeting the Prosecutor

- 7.3.1 The prosecutor will introduce him or herself to the witness prior to the contest or trial and answer any queries they may have about what to expect in court.



7. Services to Victims & Witnesses of Hate Crime

Where the defendant has indicated a plea of guilty, no witnesses will be called by the prosecution and therefore victims, witnesses, family members and other interested parties should make themselves known to the prosecutor or PPS staff if they require further information about a case.

- 7.3.2 In conjunction with NI Courts and Tribunals Service and Witness Services, wherever possible, the PPS will try to ensure that separate accommodation facilities are made available for witnesses called by the PPS.
- 7.3.3 A victim or witness will be offered the opportunity to go to a designated Victim Support room, where one is available. This is a room separated from the public waiting area, where the victim will not risk encountering the defendant.
- 7.3.4 A witness who has made a written statement will be allowed to read that statement before giving evidence to refresh his or her memory. Where the evidence has been recorded on video and is to be used as evidence-in-chief, arrangements can be made for the witness to refresh his or her memory by watching the video recording before the hearing.
- 7.3.5 The prosecutor will apply to the court for the release of a witness who has given evidence and who is no longer required.
- 7.3.6 Where the accused changes his plea to guilty, this will be explained to the witness. The witness should then be released as soon as possible.
- 7.3.7 If the trial does not proceed for the offence originally directed this will be explained to the victim or witness and anything the victim says will be taken into consideration.
- 7.3.8 If the victim or witness has any questions after the trial, the PPS representative or counsel will attempt to answer these queries, and also explain the verdict or the sentence imposed.
- 7.3.9 For there to be a conviction in a criminal court, the prosecution has to prove the defendant's guilt beyond a reasonable doubt.
- 7.3.10 This is a very high standard of proof and there are many reasons why a defendant may not be convicted. Witnesses should not assume that a defendant has been acquitted because their evidence has not been believed.
- 7.3.11 The victim is often the key witness in any criminal case. Unless the defendant pleads guilty it will usually be necessary for the victim to give evidence at court. We recognise that many victims and witnesses will find this a traumatic experience. Assistance and support is available from a number of organisations (see Annex 1).

- 7.3.12 In some cases the court may agree to allow a witness to give evidence with the help of 'Special Measures' legislation. The Criminal Evidence (Northern Ireland) Order 1999 has been implemented to ensure that in appropriate cases, children or other vulnerable and intimidated victims and witnesses have these 'special measures' available to them to assist them in giving their evidence as effectively as they can (see Section 8).

Other measures relating to the Hearing

- 7.3.13 The following measures will be used by PPS, where appropriate, to reduce the stress or trauma of victims and witnesses:

- removing the address of a victim or witness from the papers to be disclosed to the defence, where that address is not material to an issue in the case;
- seeking to agree witness statements with the defence so that the witness need not attend in person;
- directing the attendance of only those witnesses who are essential to prove the case;
- ensuring that those responsible for listing cases have the necessary information in relation to witness availability and convenience;
- informing the court that any mis-statement of fact in the defence plea in mitigation which impacts adversely upon a victim or witness is not accepted by the prosecution and if necessary invite the court to hear evidence on those facts;
- furnishing the court with up-to-date medical or other reports or information in relation to victims of violence or sexual offences. This includes Victim Impact Reports, prepared by a specialist at the request of the court.

- 7.3.14 Legal applications are outlined in Section 8.

Witness Service and Young Witness Service

- 7.3.15 There are two witness support schemes available in courts in Northern Ireland: one for adult witnesses (the Witness Service) provided by Victim Support NI; and one for younger witnesses under the age of 18 (the Young Witness Service) provided by NSPCC.

- 7.3.16 Witness support will be available before, during and after the trial to help keep victims and witnesses informed and supported.

- 7.3.17 In September 2003 Victim Support NI launched the Witness Service and the NSPCC launched the Young Witness Service in all Crown Courts. The services aim to support victims and witnesses before, during and after the experience of attending court to give evidence. A pilot was launched in Belfast Magistrates' Court in June 2004.

7. Services to Victims & Witnesses of Hate Crime

- 7.3.18 Both the Criminal Justice Review and the Criminal Justice Inspectorate recommended that this be developed to cover all courts.
- 7.3.19 The Witness Service (for adults) is now operating in all courts across Northern Ireland.
- 7.3.20 Referrals to the Witness Service are made with the consent of the witness. It is important that the referral to the Witness Service is made as far in advance as possible in order that pre-trial support can be offered and delivered in an effective manner. This is done in Magistrates' and Youth Court cases by informing the victim or witness of the service in the same correspondence enclosing the "Requirement to Attend Court" and offering an opt-out to the victim or witness if they do not want their details passed to Witness Service. In Crown Court cases the opt-out system does not operate, but witnesses can request PPS or police to make a referral, or they can self-refer. Where the victim's or witness's details are passed to Witness Service, their specially trained staff endeavour to make contact in advance of the court date to offer assistance. The services they offer are set out below.

i) Witness Service

- 7.3.21 The aim of the Witness Service is to support witnesses and victims, along with their families and friends to deal with attending court and giving evidence. The Witness Service normally contacts the victim or witness before the court hearing to offer its services. Trained volunteers offer confidential services free of charge, as follows:
- 7.3.22 Pre-trial support and preparation includes:
- the opportunity to talk to someone;
 - a pre-trial familiarisation and informative visit to court; and
 - information on court layout.
- 7.3.23 Support during the trial includes:
- a quiet place to wait during their time in the court building;
 - company into the courtroom if appropriate;
 - preparation for a possible verdict and other potential outcomes;
 - practical help, for example, assistance with expenses forms;
 - support and practical help for any persons accompanying witnesses; and
 - access to those in a position to answer specific questions about the case.



7.3.24 Support following the trial includes:

- an opportunity to talk about the experience of giving evidence following the case; and
- referral onwards for further help if appropriate.

7.3.25 The Witness Service does not:

- discuss the details of the case with witnesses; nor
- provide transport to and from court for witnesses.

ii) The Young Witness Service

7.3.26 The NSPCC Young Witness Service ('YWS') is a free, independent and confidential service, provided by a team of social work staff and trained volunteers. The service offers support to young witnesses and their parents/carers before, during and after any trial. It is available in all Crown Courts in Northern Ireland and a pilot is currently being rolled out to Magistrates' and Youth Courts. At present it is available in some, but not yet all Magistrates' and Youth Courts, but it is envisaged it will ultimately be available in all courts in Northern Ireland.

7.3.27 The PPS passes contact details of witnesses to YWS where consent is given to do so. Again the PPS advises the victim or witness of the availability of this service in its correspondence enclosing the "Requirement to Attend Court" documentation in Magistrates' and Youth Court cases. The parent, guardian or person with parental responsibility for the child or young person has the opportunity to opt-out of having their details passed to the YWS. Where the details are passed to YWS, their specially trained staff make contact and explain the services they offer. These are summarised below (at section 7.3.3.14). In Crown Court cases the witness can request the PPS or police to make a referral.

7.3.28 The services YWS offers include:

- explaining the court layout and what happens at court;
- a visit to see the court before the trial;
- trying to help with any worries about going to court;
- showing young witnesses ways to stay calm;
- providing support at court for families and supporting the young witness in the TV link room or the courtroom;
- a quiet and safe place to wait during their time in the court building;
- preparation for a possible verdict and other potential outcomes;
- support at sentencing.



7. Services to Victims & Witnesses of Hate Crime

- making sure that the police, the prosecutor, the court and lawyers are aware of the needs and wishes of the young witness;
- advice to parents and carers on how best to support their child;
- an opportunity to talk about the experience of giving evidence following the case;
- onward referral to help from other agencies.

7.3.29 YWS is independent and does not talk to young witnesses and their parents or carers about evidence in the case.

7.3.30 The Witness Services rely largely on the PPS and police for referrals and case information (although, especially in the case of young witnesses, the referral may already have been made by police at an earlier stage in the case). Arrangements have been agreed and put in place to ensure timeliness of referrals and that appropriate information is passed to the witness service. A data-sharing protocol has been executed between the PPS and Victim Support, and PPS and NSPCC to ensure such information is transferred and kept securely.

7.3.31 The NSPCC also conducts a needs assessment on each child or young person they assist and any relevant information they obtain is passed to the prosecutor at court. The prosecutor will take account of the contents of the needs assessment in the conduct of the case, including dealing with any disclosure duty which may arise.

7.4 Assistance for Victims or Witnesses with a Disability

7.4.1 The definition of disability covers a wide range of physical conditions, mental health conditions, sensory, hidden, learning and acquired disabilities. Statistics indicate that people with disabilities report a higher level of harassment including criminal acts than the rest of the population. Such attacks have a major effect on disabled people and adversely affect their quality of life. As hate crimes, such attacks are treated in accordance with this policy.

7.4.2 The police will identify to the PPS, victims or witnesses with disabilities to enable an assessment to be made about any applicable measures that may be needed to assist with matters such as physical access to buildings, assistance with giving evidence by special measures or the need for another person to aid communication, for example a sign language interpreter.

7.4.3 In addition to these measures that can be made available in appropriate cases, PPS staff treat every person they come into contact with as an

individual and are sensitive to their needs. The PPS is committed to training its staff in this regard and will engage with specialist agencies for this purpose as appropriate.

- 7.4.4 In terms of physical access, the PPS offices are designed and constructed to facilitate access for people with mobility needs. The PPS will make appropriate arrangements to facilitate a person's access to the PPS offices for the purposes of attending a consultation. An audit of PPS offices has recently been conducted to identify any additional improvements required to enhance accessibility for people with a disability, for example, audio loops are to be fitted to PPS offices to assist people with hearing loss.
- 7.4.5 Consultation presents an opportunity for the victim or witness to meet the prosecutor and discuss any concerns a person with a disability may have about the court process.
- 7.4.6 In addition the PPS, depending on the nature of the disability and the views of the person concerned, will consider making application for appropriate special measures to maximize the quality of the evidence which can be given in court.
- 7.4.7 The PPS will also refer the victim or witness to Victim Support's Witness Service, unless the individual does not wish to do so. The services Witness Service, or Young Witness Service offer are outlined above.
- 7.4.8 When a case goes to court, the PPS will work in conjunction with NI Courts and Tribunals Service to make the necessary arrangements to ensure ease of access for wheelchair users, or people with other disabilities who may need assistance in accessing the court to give evidence.

7.5 Interpreter Provision

- 7.5.1 In recent years there has been a significant increase in the number of people in Northern Ireland who do not speak English as their first language. This has required public services to make improved arrangements for providing interpreting and translating services.
- 7.5.2 In the case of victims and witnesses for whom English is not their first language, the PPS will seek advice from police as to their capability to give and understand oral evidence in English or whether the witness requires the use of an interpreter. The PPS will attempt to ensure that the interpreter engaged is familiar with the particular dialect or regional variation of the foreign language which the witness uses.

7. Services to Victims & Witnesses of Hate Crime

- 7.5.3 In circumstances where English is not the first language of the victim or witness, the PPS must consider carefully whether or not it is necessary to hold a consultation where the evidence of that victim or witness is likely to be central to the prosecution case.
- 7.5.4 The PPS is working with police and NI Courts and Tribunals Service to improve the provision of interpreters at court. At the investigation stage, the police will make arrangements for interpreter services; when the case goes to court, the PPS will work with NICTS to ensure an interpreter is available for the court appearances. The PPS will make sure that appropriate arrangements are made to have an interpreter available for a prosecution witness for the court proceedings when one is needed.
- 7.5.5 Interpreters must be independent of the witness's family and of the investigation.
- 7.5.6 In addition to the above situations, interpreters or translators may be required for:
- translation of correspondence, when required;
 - meetings with victims when no prosecution is directed.
- 7.5.7 The PPS will make arrangements for the provision of sign language interpreters for witnesses who are deaf or hard of hearing.
- 7.5.8 A contract is in place for the provision of face-to-face interpretations services for foreign languages and for sign language.

7.6 Services Available after Sentencing

- 7.6.1 Services are available from other agencies to assist at the post-sentencing stage.
- 7.6.2 Victim Support offer advice and assistance before during and after the experience of giving evidence at court; and NSPCC is available for young witnesses. Other agencies can also offer assistance. Some useful contact details are listed at the end of this policy document.
- 7.6.3 In addition three separate victim information schemes have been implemented managed by Probation Board Northern Ireland, Northern Ireland Prison Service and the Northern Ireland Office respectively. These operate at the post-sentencing stage as follows.



i) Probation Board for Northern Ireland – Victim Information Scheme

7.6.4 PBNI Victim Information Scheme became operational on 25 October 2005. It is a statutory scheme provided for by the Criminal Justice (NI) Order 2005.

7.6.5 Its objective is to ensure that victims receive information, on request, to explain what it means when someone is sentenced to an Order which requires supervision by PBNI.

7.6.6 The Scheme is available to any person (or agreed representative) who has been the direct victim of a criminal offence for which the offender received a probation supervised sentence.

In applicable cases, PPS will notify the victims of the existence of the Scheme and the contact telephone number for it.

7.6.7 A protocol has been established to ensure its effective operation. The four parties to the protocol supporting the operation of the scheme are PBNI, PSNI, PPS and NI Prison Service.

7.6.8 If following conviction the perpetrator of the offence receives a probation supervised sentence, the victim of the offence will be advised about the Victim Information Scheme.

7.6.9 The PPS co-operates by providing to PBNI the information required to assist them in operating the scheme.

7.6.10 The VIS operates as follows:

- general information can be provided about PBNI's supervision of offender;
- information can be provided in writing, by phone, or in person with a PBNI Victim Liaison Officer;
- information can be provided, if appropriate, about any organisation which may be able to offer specific support.

7.6.11 For reasons of confidentiality the scheme cannot provide any personal information about the offender.

ii) Northern Ireland Prison Service – Victim Information Scheme

7.6.12 The Northern Ireland Prison Service has introduced a Victim Information Scheme which enables a victim to find out when the offender in the case they were involved in is due to be released from prison at the end of their



7. Services to Victims & Witnesses of Hate Crime

sentence or on temporary release. Police currently have responsibility for informing victims about the scheme in applicable cases, but PPS staff can help answer any queries a victim may have about it.

- 7.6.13 A victim may make representations to the prison authorities about an offender who is eligible for temporary release.
- 7.6.14 Participation in the Scheme is entirely voluntary. A victim does not have to receive this information and they can opt out of the Scheme at any stage if they change their mind. If a victim wishes to receive information about a prisoner's release date or to contribute to the temporary release process they should contact the NIPS Victim Information Scheme directly. The contact details are listed in Annex 1.

iii) Mentally Disordered Offenders – Victim Information Scheme

- 7.6.15 The Northern Ireland Office administers a Scheme to provide victims of offences committed by mentally disordered offenders with information. The Scheme operates where the court has made a defendant the subject of a Hospital Order with a Restriction Order, or where a defendant is given a transfer direction and a restriction direction while he/she is serving a sentence of imprisonment. The Scheme applies only to mentally disordered offenders sentenced in Northern Ireland.
- 7.6.16 Under the Scheme, victims of mentally disordered offenders, who wish to, will receive information about:
- the granting of leave of absence to the offender;
 - the discharge, conditional or absolute of the offender; and
 - any relevant conditions which the offender is subject to.
- 7.6.17 Participation in the Mentally Disordered Offender Information Scheme is entirely voluntary. It is for the victim to choose if they wish to obtain this information or contribute to the process of granting leave of absence or discharge. The contact number for the Scheme is provided at Annex 1 of this document.

In addition to the services outlined in this chapter, there are legal applications which the PPS will make as appropriate having regard to the factual information available. In every case the court will make a determination as to whether the particular relief sought can be granted.

8. Legal Applications to assist Victims & Witnesses of Hate Crime at Court

8.1 Special Measures

- 8.1.1 The court has to strike a balance under Article 6 of the European Convention on Human Rights between protecting the defendant's right to a fair trial, and ensuring that witnesses who give evidence in a case are enabled to do so to the best of their ability.
- 8.1.2 If the victim is 'vulnerable' or 'intimidated', legislative provisions exist to provide 'special measures' for that victim giving evidence; such as having their evidence-in-chief video recorded and used at trial; having their cross-examination conducted via live link from a room outside the court room; screening from the defendant; removal of wigs and gowns from lawyers and the judiciary; and aids to communication. The main legislation governing special measures in Northern Ireland is the Criminal Evidence (Northern Ireland) 1999.
- 8.1.3 Public prosecutors are trained in these special measures to ensure that applications are made in appropriate cases where the victim or witness comes within the statutory definitions of vulnerable or intimidated.
- 8.1.4 The legislation makes special provision for child witnesses. Child witnesses in appropriate cases will have a video recorded statement admitted as their evidence-in-chief and may give further evidence or be cross-examined via a live TV link.
- 8.1.5 In summary, special measures are available to help the following witnesses, defined by legislation as:

Vulnerable Witnesses

- children under 17 years (proposed to be changed to 18 years);
- persons who may be considered vulnerable because of incapacity, such as physical or mental disorder.

Intimidated Witnesses

- witnesses whose evidence is likely to be affected because they are afraid or distressed about giving evidence. This may often be the case for victims and witnesses of hate crime;
- victims of sexual crime are presumed to be eligible for special measures if they want them. This area of the law is currently under review.

- 8.1.6 The PPS ask the court to allow the appropriate measures in all cases in which they are available and required. The granting by the court is not automatic and it is the judge who makes the final decision based on

8. Legal Applications to assist Victims & Witnesses of Hate Crime at Court

whether the granting of the special measure is likely to maximise the quality of the evidence given by the witness in terms of its accuracy, completeness and coherence. The evidence in support of an application for special measures may be provided by the Investigating police officer or a doctor.

- 8.1.7 Ideally, early decisions should be taken about special measures to assist victims and witnesses. However, where there is a change of circumstances it is possible to apply at a later stage in proceedings.

8.2 Providing Anonymity for Victims & Witnesses & No Publicity Orders

- 8.2.1 The PPS is aware that the issue of anonymity is of particular concern to many victims and witnesses of hate crime. Generally, it is a fundamental principle of our criminal justice system that those accused of crimes are entitled to know the names of their accusers. In addition, most criminal proceedings are held in public; therefore, that information relating to the identity of individuals usually finds its way into the public domain.
- 8.2.2 There are however two types of application that the PPS can in appropriate cases seek to protect the identity of a victim or witness, namely 'Anonymity Orders' and 'No Publicity Orders'. The law lays down strict procedures and conditions that must be satisfied in order for these Orders to be made.
- 8.2.3 In addition to the types of applications noted below it should be noted that, unless required for evidential purposes, a witness's address should never be disclosed in open court.
- 8.2.4 Furthermore victims of serious sexual offences are entitled as a matter of law to anonymity in the press, even if their details have been given in court. The relevant provisions are contained in the Sexual Offences (Amendment) Act 1992. Reporting restrictions are also available for children and young people. The relevant provision is Article 22 of the Criminal Justice (Children) (Northern Ireland) Order 1998.

8.3 Reporting Restrictions (or "No Publicity Orders")

- 8.3.1 Section 46 of the Youth Justice & Criminal Evidence Act 1999 as implemented by the Youth Justice & Criminal Evidence Act 1999 (Commencement No 1) (NI) Order 2004 allows the PPS in specified circumstances to apply for an order preventing the reporting of certain details of witnesses in the media that may lead to their identification. This applies to adult witnesses, that is witnesses over the age of 18. There are other reporting restrictions in respect of children as indicated in the previous paragraph.



- 8.3.2 A procedure is set out which the court must follow when considering such an application and must determine whether a witness is eligible and, as with special measures, whether the Reporting Restriction will be likely to improve the quality of the witness's evidence.
- 8.3.3 The factors the court must consider include the following:
- the nature of the alleged circumstance of the offence;
 - the witness's age;
 - if relevant, the social cultural and ethnic origins of the witness and the domestic and employment circumstances and any religious beliefs or political opinion;
 - any behaviour towards the witness on the part of the defendant, members of his family or associates, or any other person who is likely to be a defendant or witness in the proceedings;
 - the views expressed by the victim.
- 8.3.4 Once these factors are determined, the court will consider:
- whether it would be in the interests of justice to make an Order;
 - the Public Interest in avoiding a substantial and potentially unreasonable restriction on the reporting of proceedings.
- 8.3.5 The defence are entitled to object to the application.
- 8.3.6 Where an Order is made, the effect is that no matter relating to that witness during his lifetime shall be included in any publication if it is likely to identify him as a witness in the proceedings.
- 8.3.7 The effect of such an Order, if granted, is that the information shall not be published, not that it shall not be disclosed in court. It is not therefore a substitute for an anonymity order – these are explained in the following paragraph.

8.4 Witness Anonymity

- 8.4.1 It is a long established principle that, subject to certain exceptions, the defendant in a criminal trial is entitled to be confronted with his accuser in court. However this is subject to the Coroners and Justice Act 2009 which provides a statutory framework for witness anonymity.
- 8.4.2 The Act sets out a number of conditions that must be met for a court to make an Order for witness anonymity.
- 8.4.3 An application for a witness anonymity Order should only be made, when, after a full consideration of all available alternatives, it is considered that the

8. Legal Applications to assist Victims & Witnesses of Hate Crime at Court

conditions set out in the Act apply. The Prosecutor must be able to establish by sufficient evidence or information, any fear or concern expressed by the witness that they, or any other person, would suffer death or injury, or that there would be serious damage to property or that there would be real harm to the public interest, if they were identified to the defendant, and that such concerns are reasonable.

- 8.4.4 The court in deciding whether to grant an Order will consider issues including; the credibility of the witness; whether the evidence of that witness is the sole or decisive evidence in the case; and whether there is reason to believe that the witness has a tendency, or motive, to be dishonest.
- 8.4.5 Where it is clear that the credibility of a witness may be in issue, the prosecutor must consider the relative importance of the witness's evidence to the prosecution case. Where it remains the sole or decisive evidence, careful consideration must be given as to whether the defendant will be able effectively to cross-examine an anonymised witness.
- 8.4.6 Each case must be decided on its own facts.
- 8.4.7 These are important matters and may potentially impact on the right to a fair trial. Any application for a witness anonymity order must be authorised by the senior lawyer in charge of casework in the PPS.
- 8.4.8 Where an Order is granted, the prosecutor has a duty to disclose to the defence any information (bearing in mind the anonymity) which may assist the defence to effectively cross-examine the anonymous witness. This is in addition to the ordinary duty to disclose any evidence or information which may assist the defence or is capable of undermining the prosecution case.

8.5 Other Legal Measures

- 8.5.1 Other applications will be made by the PPS where appropriate to reduce the stress or trauma of victims and witnesses, and in recognition of the impact of the crime on the victim.
- 8.5.2 These include:
- in some limited circumstances the law allows the prosecutor to read the victim or witness's statement instead of calling them as a witness. This is a decision for the court and it will only be allowed where certain criteria are met. It may be difficult in some cases to satisfy the court that this is appropriate as it means that the defence cannot cross-examine that witness;
 - applying to the court for compensation where appropriate – the prosecutor will fully carry out his responsibility under Article 14 (c) of the Criminal Justice (NI) Order 1994 to make representations regarding compensation where appropriate, relating both to the appropriateness of compensation and to quantum;
 - applying for ancillary orders upon conviction such as a restraining order.

9. Offences Aggravated by Hostility

9.1 The distinction between perception-based hate crime and offences aggravated by hostility is outlined in Section 2.

The matters outlined in Sections 6, 7 and 8 relate to all hate crime. Certain hate crimes are also offences aggravated by hostility. This Section sets out the considerations relating to these cases.

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

9.2.1 The Criminal Justice (No. 2) (Northern Ireland) Order 2004 provides for enhanced sentencing for offences aggravated by hostility. The test for this is distinct from the Lawrence perception-based test.

9.2.2 It is important to note that while the police identify cases submitted to the PPS where the 'perception test' is met (that the victim or some other person believes the offence was **motivated by hate**); the evidence based test is different. It requires sufficient objective evidence of hostility which is offender-motivated, rather than perception-based.

9.2.3 What the public prosecutor must determine when considering the case is whether there is evidence to the requisite standard that it was **aggravated by hostility** on the grounds of race, religion, sexual orientation or disability. It is important to note that he or she must consider all cases, not only the ones the police have identified.

9.2.4 Article 2 of the 2004 Order requires the court when sentencing an offender to consider the seriousness of an offence.

9.2.5 Where an offence is aggravated by hostility the court **must** treat the aggravation as a factor that increases the seriousness of the offence, and state in open court that the offence was so aggravated.

9.2.6 Article 2(3) defines an offence as 'aggravated by hostility' if: '...either at the time of the offence, immediately before or after its

9. Offences Aggravated by Hostility

commission, the offender demonstrates hostility to the victim based on the victim's membership of a racial, religious or sexual orientation group, or on the victim's disability or presumed disability;

or

'... the offence is motivated, wholly or partly, by hostility towards members or presumed members of a group – either a racial, religious or sexual orientation group, or the victim's disability or presumed disability.'

9.3 Offences Aggravated by Hostility - Test for Prosecutors

- 9.3.1 The test to be applied is whether, based on the available evidence that can be adduced before the court there is a reasonable prospect that the court will find proved that the offence was aggravated by hostility beyond reasonable doubt, i.e. hostility based on one of the 4 specified categories, namely the victim's actual or perceived religion, race, sexual orientation or disability.
- 9.3.2 If the hostility is also based on other factors, this is immaterial in the court's consideration of the racial, religious, disability or sexual orientation hostility involved (Article 2(4)).
- 9.3.3 Article 2(5) defines racial, religious and sexual orientation groups. It also defines disability.
- 9.3.4 **Racial group** has the same meaning as in the Race Relations (Northern Ireland) Order 1997, i.e. 'a group of persons defined by reference to colour, race, nationality or ethnic or national origins, and references to a person's racial group refer to any racial group into which he falls'. Racial group includes the Irish Traveller community and the Roma Traveller Community.
- 9.3.5 **Religious group** is defined as meaning a group of persons defined by reference to religious belief or lack of religious belief.
- 9.3.6 **Sexual orientation group** is defined as meaning a group of persons defined by reference to sexual orientation.
- 9.3.7 The Order defines **disability** as any physical or mental impairment.
- 9.3.8 Article 2(5) also defines membership of racial, religious or sexual orientation groups as including association with members of those groups. It provides that when an issue of 'presumed' membership is involved, this means presumed by the offender.



- 9.3.9 Article 4 increases the penalties for a list of offences, largely offences of violence, but also including offences of fear and harassment.
- 9.3.10 The term **motivated by hostility** is not defined. It may be difficult to prove in practice; background evidence could be important if relevant to establish motive. Where the test for prosecution is met, prosecutors will work with police to ensure that appropriate enquiries are made to obtain evidence to inform the court for the purpose of sentencing under the Criminal Justice (NI) Order 2004.

9.4 Working With Police

- 9.4.1 Public prosecutors cannot solely be reliant on the police making an initial identification of hate crime for the purposes of prosecuting a case as aggravated by hostility.
- 9.4.2 Prosecutors need to be vigilant to make sure that they consider the possibility of a case being aggravated by hostility. Where necessary they must ask police to obtain further information to help them decide if a case can properly be prosecuted as aggravated by hostility. Certain information may be available and more detail may be required in a form that can be presented to the court as evidence. In some cases the public prosecutor may require police to follow other avenues of enquiry. This may include seeking information or evidence from other agencies and third parties.
- 9.4.3 Public prosecutors should consider the following:
- Was anything said or done at the relevant time to indicate hostility?
 - Is there information available from other agencies which may assist eg Social Services, the Housing Executive?
 - Does the defendant have a relevant criminal record which would be admissible in evidence?
 - Are there in place any relevant ancillary orders or civil injunctions which would be admissible in evidence?
 - Would the defendant's membership of a relevant group be admissible in evidence on this issue?
 - Is there bad character evidence available?
- 9.4.4 It is PPS Policy that **all** relevant cases (summary & indictable) are marked prominently to indicate to the prosecutor at court that there is evidence that the offence has been aggravated by hostility.
- 9.4.5 The marking is to indicate that there is evidence (to the required standard that the offence has been aggravated by hostility) which should be adduced before the court.

9. Offences Aggravated by Hostility

- 9.4.6 The public prosecutor who takes the decision as to prosecution shall record if he or she is satisfied to the required evidential standard that the offence has been aggravated by hostility.
- 9.4.7 Where counsel is briefed to prosecute, counsel shall be instructed that there is evidence to the requisite standard that the offence was aggravated by hostility which should be adduced before the court.
- 9.4.8 The prosecutor will record on the PPS electronic Case Management System that a case has been prosecuted in court as aggravated by hostility.

Court Service record the outcome of cases at court.

9.5 Offences Aggravated by Hostility - At Court

- 9.5.1 If the defendant disputes that the offence was aggravated by hostility, whether or not there has been a plea of guilty, the prosecution must call witnesses who can give evidence about the hostility and the defence will be able to cross-examine them before the court makes a decision.

10. Monitoring and Training

10.1 Monitoring

- 10.1.1 The police identify cases to the PPS where the Lawrence definition is met. Public prosecutors make a determination as to whether a case was aggravated by hostility, taking all the available evidence into account and record their decision.
- 10.1.2 Not every incident that is reported amounts to a crime, and even when a crime can be proved, there may be insufficient evidence to prove to a court that it was aggravated by hostility. Where there is sufficient evidence to show that it was aggravated by hostility, the PPS will inform the court of this, or in a contest adduce such evidence.
- 10.1.3 The number of cases considered by public prosecutors to be aggravated by hostility is published every year in the PPS Annual Report. The use of Information Technology through the new Causeway Data Sharing System will be used to more effectively record hate crime and offences aggravated by hostility as they progress through the criminal justice system.
- 10.1.4 The monitoring of cases is not an end in itself. The PPS monitors cases to help ensure that it handles cases in accordance with this policy.

10.2 Training

- 10.2.1 **PPS Staff**
This Hate Crime Policy will be promoted within the organisation to ensure that it is implemented in an effective manner. Training will be provided to all relevant staff. This will help equip prosecutors in identifying and handling sensitively cases of hate crime. Public prosecutors are also trained in the application of special measures and the other matters outlined in this policy.
- 10.2.2 **Independent Counsel**
Counsel instructed on behalf of PPS must have a clear understanding of its policy on prosecuting cases of hate crime. All counsel on the PPS panel are required to act in accordance with this policy. They are also required to comply with the Code for Prosecutors and the Code of Ethics.

10.3 Quality Assurance

- 10.3.1 There will be a Quality Assurance evaluation of the operation of the PPS Hate Crime Policy to ensure that it is being properly applied. This will be conducted periodically.



11. Conclusion

- 11.1 The PPS is committed to improving the manner in which hate crime cases are dealt with in the criminal justice system so that victims and witnesses can have confidence in the way in which it takes decisions and progresses cases. The PPS will continue to work with its criminal justice partners and other relevant agencies to help develop and maintain best practice.
- 11.2 The PPS will continue to monitor how it deals with hate crime cases and will publish information annually about cases where it has determined that there is evidence that an offence was aggravated by hostility.
- 11.3 The conduct of investigations is a matter for the police. The PPS will take such steps as are necessary to bring relevant lines of enquiry to the attention of the investigator.
- 11.4 The PPS provides prosecutorial advice to police and takes decisions in accordance with the Test for Prosecution. The PPS will adduce evidence of aggravation by hostility where available.
- 11.5 The PPS will apply for special measures where appropriate to assist victims and witnesses of hate crimes to give evidence.
- 11.6 The PPS will challenge any assertions made by the defence in mitigation that are inaccurate, misleading or derogatory.
- 11.7 Where a sentence imposed in the Crown Court for certain serious offences appears to be unduly lenient, that case can be referred to the Court of Appeal by the Director. The Director will refer cases where there is a reasonable prospect that the Court of Appeal will find the sentence imposed to be unduly lenient and it is in the public interest for the referral to be made.
- 11.8 The PPS recognises and welcomes the valuable advice and support and practical help and information which is offered to victims and witnesses of hate crimes by support agencies. The PPS will continue to work with other criminal justice agencies to ensure that timely and appropriate services are delivered to victims and witnesses of hate crimes.

11. Conclusion

- 11.9 The PPS publishes this document to help victims, witnesses and the general public to understand the work of PPS and how it deals with hate crime cases.
- 11.10 The PPS will review this policy on a regular basis.

Further Information

Copies of our public documents can be obtained by contacting:

Public Prosecution Service

Belfast Chambers

93 Chichester Street

Belfast BT1 3JR

Tel: 028 90 897100

Fax: 028 90 897030

Textphone: 028 90 897011

e-mail: info@ppsni.gsi.gov.uk

Annex: Contact Details

Listed below are the contact details of the organisations mentioned in this document:

CJINI

6th – 7th floor
14 Great Victoria Street
Belfast
BT2 7BA
Tel: 028 90 258000
Fax: 028 90 258033
Email: www.cjsni.gov.uk

Independent Assessor of Complaints for PPS

Londonderry House
21 Chicester Street
Belfast
BT1 4JD

NSPCC

Block 1
Jennymount Business Park
North Derby Street
York Road
Belfast
BT15 3HN

And

NSPCC

17-21 Bishop Street
Londonderry
BT48 6PR
Tel: 028 71 279555



Northern Ireland Courts and Tribunals Service

Laganside House
23-27 Oxford Street
Belfast
BT1 3LL
Tel: 028 90 328594
Website: www.courtsni.gov.uk

Department of Justice

Massey House
Stormont Estate
Belfast
BT4 3SG
Tel: 028 90 527123
Text phone: 02890 378085

Northern Ireland Prison Service

General Enquiries: 028 90 525065
Website: www.niprisonservice.gov.uk

Northern Ireland Prison Service Victim Information Scheme

Room 306
Dundonald House
Upper Newtownards Road
Belfast
BT4 3SU
Tel: 0845 2470002
E-mail: info@niprvis.gov.uk
Website: www.niprvis.gov.uk

Mentally Disordered Offenders Victim Information Scheme

Criminal Law Branch
Massey House
Stormont Estate
Belfast
BT4 3SX
Tel: 028 90 527612



Police Service of Northern Ireland

65 Knock Road
Belfast
BT5 6LE
Tel: 028 90 650222 or 0845 600 8000
Crimestoppers 0800 555 111
Website: www.psni.police.uk

Probation Board for Northern Ireland

80 – 90 North Street
Belfast
BT1 1LD
Tel: 028 90 262 400
Fax: 028 90 262 470
Text phone: 028 90 262490
Email: info@pbni.org.uk

Probation Victim Information Scheme

Victims Unit
Imperial Buildings
72 High Street
Belfast
BT1 2BE
Tel: 028 90 321972
Fax: 028 90 321973
Email: victimsunit@pbni.gsi.gov.uk
Website: www.pbni.org.uk/victims

Public Prosecution Service

Belfast Chambers
93 Chichester Street
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BT1 3JR
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Email: info@ppsni.gsi.gov.uk
Website: www.ppsni.gov.uk

PPS Regional Offices:

Community Liaison Branch Belfast Region (Headquarters)

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Email: info@ppsni.gsi.gov.uk
Text phone: (028) 90 897145

Community Liaison Branch Southern Region

Newry Chambers
1 Downshire Close
NEWRY
BT34 1FD
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Community Liaison Branch Eastern Region

Lisburn Chambers
Linen Hill House
23 Linenhall Street
LISBURN
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Text phone: (028) 92 625441

Community Liaison Branch Northern Region

Ballymena Chambers
4 Parkway
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Email: info@ppsni.gsi.gov.uk
Text phone: (028) 25 666623

Foyle Chambers

35 Limavady Road
LONDONDERRY
BT47 6LP
Tel: 028 71 340600
Email: info@ppsni.gsi.gov.uk
Text phone: (028) 71 340676

Community Liaison Branch Western Region

Omagh Chambers
2 Townhall Square
OMAGH
BT78 1BL
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Email: info@ppsni.gsi.gov.uk
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Victim Support Northern Ireland

3rd Floor
Annsgate House
70 – 74 Ann Street
Belfast
BT1 4EH
Tel: 028 90 244039
Fax: 028 90 313838

Victim Support Line: 0845 3030900
Email: info@victimsupportni.org.uk
Website: www.victimsupportni.co.uk

Youth Justice Agency

Corporate HQ
41 – 43 Waring Street
Belfast
BT1 2DY
Tel: 028 90 316400
Fax: 028 90 316402/3
Email: info@yjani.gov.uk
Website: www.youthjusticeagencyni.gov.uk
Website: www.youthconferenceserviceni.gov.uk

Contact details of other support organisations:

Disability Action

Tel 028 90 297880
Email: hq@disabilityaction.org
Website: www.disabilityaction.org

Cara-Friend

Tel: 028 90 890202
E-mail: steve@cara-friend.org.uk
Website: cara-friend.org.uk

Chinese Welfare Association

Tel: 028 90 288277
E-mail: contact@cwa-ni.org
Website: www.cwa-ni.org



Belfast Butterfly Club

Tel: 028 92 673720 (Wednesday 8pm-10pm only)
Email: trans@belfastbutterflyclub.co.uk

Multi-Cultural Resource Centre

Tel: 028 90 244639
Email: info@mcrc-ni.org
Website: www.mcrc-ni.org

NI Gay Rights

Tel: 028 90 665257
Email: NIGRA@DNET.CO.UK

Northern Ireland Council for Ethnic Minorities

Tel: 028 90 238645
Email: info@nicem-interpreting.org.uk
Website: www.nicem-interpreting.org.uk

Queer Space

Tel: 028 90 890200
Email: info@queerspace.org.uk
Website: www.queerspace.org.uk

Rainbow Project

Tel: 028 90 319030
Email: info@rainbowproject.org
Website www.rainbow-project.org

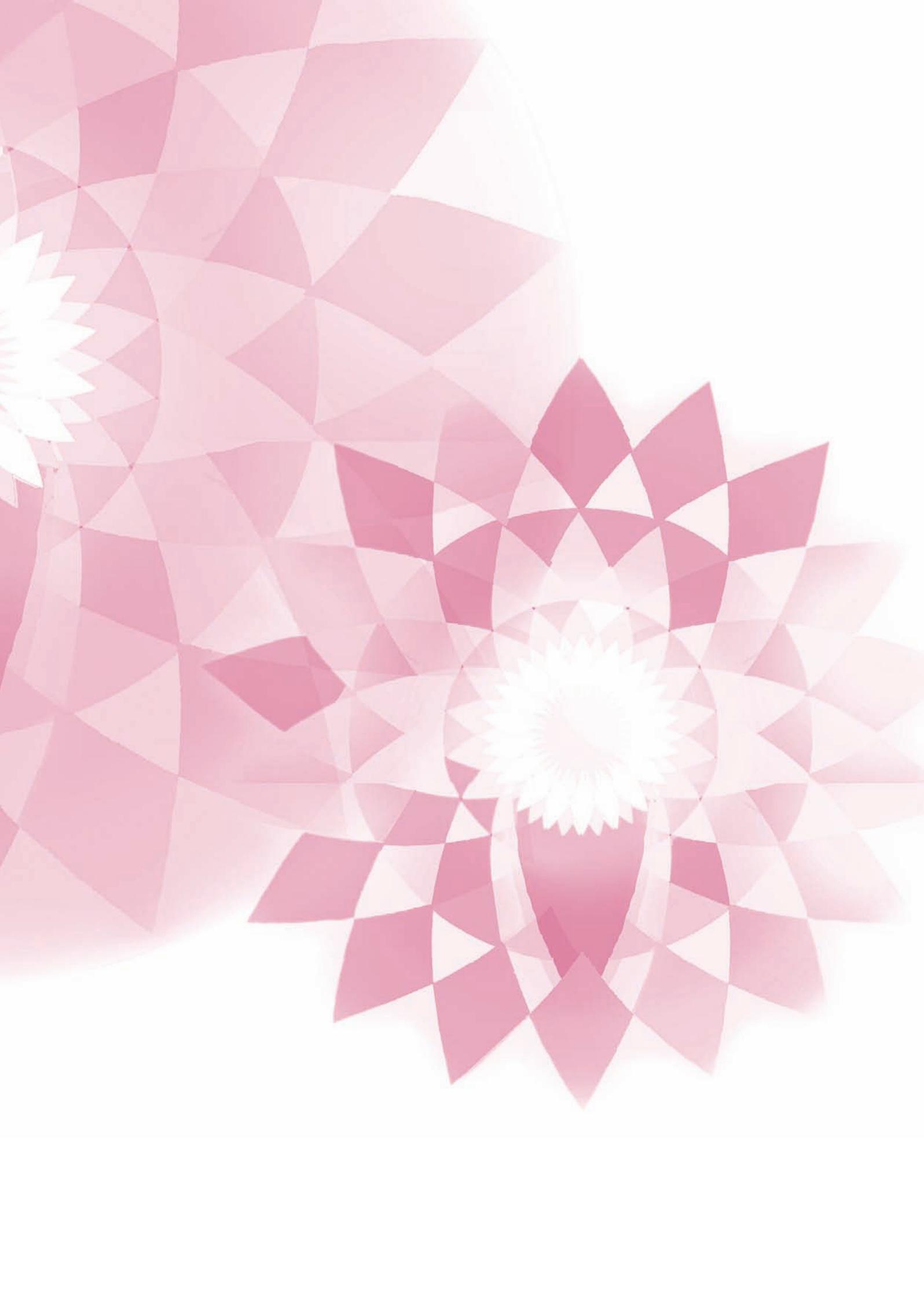
There are many other voluntary and government organisations which may be able to provide help to people affected by hate crime. The organisations listed above will be able to put people in touch with them. Victim Support in particular has a database of organisations offering support services.

Victims of Crime in the Republic of Ireland may wish to contact:

The Crime Victims Helpline

Tel: 1850 211407
Email: info@crimevictimshelpline.ie
Website: www.crimevictimshelpline.ie







For further information about the PPS,
please contact:

Head of Information
Belfast Chambers
93 Chichester Street
Belfast BT1 3JR

Tel: 02890 897100
Fax: 02890 897030
Textphone: 02890 897011
E-mail: info@ppsni.gsi.gov.uk
Website: www.ppsni.gov.uk

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