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## Public understandings of hate crime: Ireland, north and south

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# Public Understandings of Hate Crime: **Ireland, North and South**

**Amanda Haynes, Jennifer Schweppe,  
Kevin J. Brown, and Ross Macmillan**



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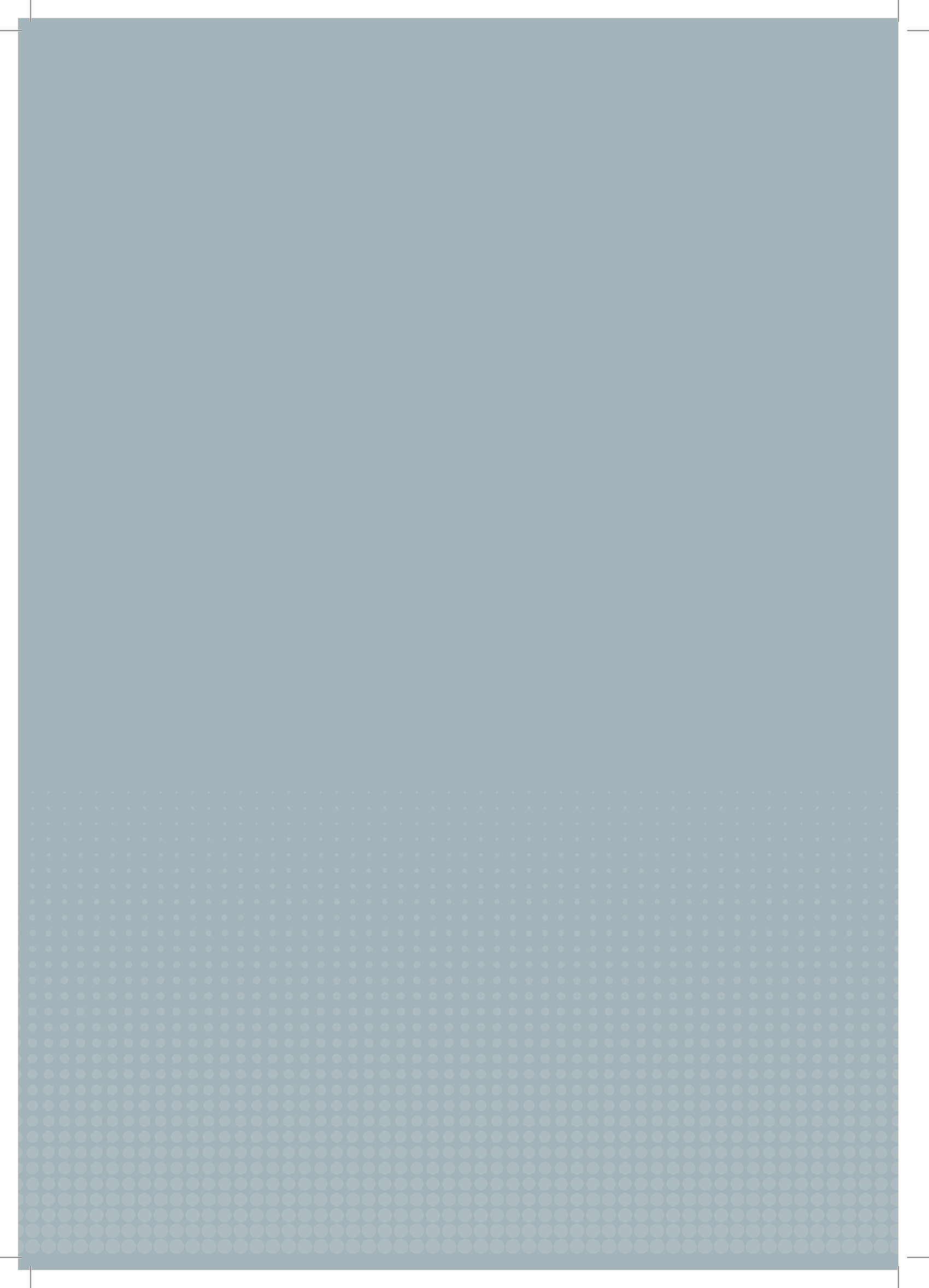


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Thaighde in Éirinn



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**2023**

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# Table of Contents

<b>Executive Summary</b>	<b>6</b>
— Summary Recommendations	7
— Acknowledgements	8
<b>Introduction to the PUHC Project</b>	<b>9</b>
— A note on terminology	11
— Methodology	11
— Survey data	11
— Qualitative data	13
<b>1 Hate crime north and south: Legal frameworks, prevalence and manifestations</b>	<b>14</b>
— Introduction	14
— Hate crime in Northern Ireland	14
— Prevalence – reported and recorded hate crime	15
— Law reform processes in Northern Ireland	16
— Hate crime in the Republic of Ireland	16
— Prevalence – reported and recorded hate crime	17
— Law reform processes in the Republic of Ireland	17
<b>2 Hate crime beliefs</b>	<b>18</b>
— Introduction	18
— Harms of hate	18
— Hate crime and the freedom of expression	20
— Hate crime as a social problem	21
<b>3 Effectiveness of legislative responses to hate crime</b>	<b>25</b>
— Introduction	25
<b>4 Effectiveness of criminal justice responses to hate crime</b>	<b>28</b>
— Expert participants responses to findings on effectiveness	29
<b>5 Fact-checking public knowledge of hate crime in the criminal justice process</b>	<b>31</b>
— Introduction	31
— Presence of hate crime legislation	31
— Police reporting and recording of hate crime	32
— Prosecuting and sentencing hate crime	33
— Hate crime and criminal records	34
— PUHC Expert participant responses	34

<b>6</b>	<b>The stigma of a hate crime conviction</b>	<b>36</b>
—	Introduction	36
—	Impact of a conviction for hate crime on employability	36
—	Impact of a conviction for hate crime on social distance	38
—	PUHC expert participant responses	39
<b>7</b>	<b>Legal responses to hate crime</b>	<b>40</b>
—	Introduction	40
—	The range of identity groups included in legislation	40
—	The legal test in hate crime legislation	43
—	PUHC expert participant responses	45
<b>8</b>	<b>Social distance, prejudice, and political spectrum across the island of Ireland</b>	<b>46</b>
—	Introduction	46
—	Social distance – neighbour	46
—	Social distance – family member	48
<b>9</b>	<b>Conclusions and recommendations</b>	<b>50</b>
—	Recommendations	52
—	– All-island Community of Practice in Countering Hate	52
—	– Redirection and Rehabilitation Programme	52
—	– Cross-border Public Information Campaign	52
—	– Public Education Campaign	52
—	– All-island programme for fostering intergroup contact	52
—	– PUHC 2.0	53
—	– Public Understandings of Hate Speech	53
—	– Public Understandings of Hate Crime: Next Steps	53
	<b>Bibliography</b>	<b>54</b>
	<b>About the ECSH</b>	<b>60</b>

# List of Figures

<b>Figure 1:</b> Hate crimes are more likely to have a psychological effect on victims than non-hate crimes of a similar nature .....	18
<b>Figure 2:</b> Hate crimes spread fear and isolation among minority communities .....	19
<b>Figure 3:</b> Punishing hate crime more severely than non-hate crimes is a violation of the freedom of expression .....	20
<b>Figure 4:</b> Hate crimes are rare .....	21
<b>Figure 5:</b> The amount of hate crime in your jurisdiction has increased or decreased .....	22
<b>Figure 6:</b> How serious a problem is hate crime in your jurisdiction .....	22
<b>Figure 7:</b> Overall summary of hate motivated crimes in Northern Ireland as recorded by the PSNI (2021/22 and 2022/23) .....	23
<b>Figure 8:</b> Hate crime is a very serious/serious problem for which of the following groups .....	24
<b>Figure 9:</b> Hate crime legislation sends a message that society does not tolerate hate crime .....	25
<b>Figure 10:</b> Hate crime legislation prevents hate crime from happening .....	26
<b>Figure 11:</b> Harsh punishment of hate crime offenders will decrease the likelihood of future hate crimes .....	27
<b>Figure 12:</b> The police respond to hate crime effectively .....	28
<b>Figure 13:</b> The courts respond to hate crime effectively .....	29
<b>Figure 14:</b> The jurisdiction has hate crime legislation .....	31
<b>Figure 15:</b> You can report a crime to the police as a hate crime .....	32
<b>Figure 16:</b> The police can record a crime as a hate crime .....	32
<b>Figure 17:</b> A suspect can be charged with a hate crime .....	33
<b>Figure 18:</b> The sentence for a crime can be increased to take account of evidence that it was a hate crime .....	33
<b>Figure 19:</b> An offender can have a hate crime offence on their record .....	34
<b>Figure 20:</b> Effect of hate crime on employability .....	37
<b>Figure 21:</b> Effect of hate crime on social distance .....	38
<b>Figure 22:</b> Which groups should be protected by hate crime legislation .....	41
<b>Figure 23:</b> Sentencing hate crime .....	42
<b>Figure 24:</b> Legal test in hate crime legislation .....	43
<b>Figure 25:</b> Average comfort with neighbour across a range of identity groups .....	46
<b>Figure 26:</b> Average comfort with neighbour .....	47
<b>Figure 27:</b> Average comfort with family member across a range of identity groups .....	48
<b>Figure 28:</b> Average comfort with family member .....	49



# Executive Summary

The Public Understandings of Hate Crime: Ireland, North and South project, is funded by the Irish Research Council New Foundations programme and the Department of An Taoiseach Shared Island initiative. Responding to increases in recorded hate crime as well as policy attention to this pressing social issue, this research provides a timely investigation into the beliefs of the general population with respect to hate crime legislation, and attitudes to some of those communities often included in such legislation as “protected groups”. The findings are based on a survey distributed simultaneously in the Republic of Ireland and Northern Ireland from 16-22 February 2023. In the Republic of Ireland, a sample of 1,000 respondents was achieved, and weighted for age, sex and region to align with the population. In Northern Ireland, the sample – also of 1,000 respondents – was additionally weighted for social grade.

This report “Public Understandings of Hate Crime: North and South (PUHC)” is the first output of the project. The report provides baseline data regarding the public’s understanding of the construct of hate crime, its dimensions, and its distinguishing features on both sides of the border. It further establishes the public’s perception of the prevalence of hate crime on the island of Ireland, the physical and emotional harms of hate crime, the impact on minority communities, extant reporting mechanisms, and the role of legislation in addressing hate crime. Finally, it measures levels of prejudice against individuals due to their racialised identity, ethnicity, religion, sexuality, gender identity, disability, community background (in Northern Ireland) as well as other commonly targeted identities. With a view to further informing the work of the Shared Island Unit, the research finally explores attitudes of people in the Republic of Ireland to those from Northern Ireland, and to those from Nationalist/Republican and Unionist/Loyalist backgrounds specifically.

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## Key findings include:

- In both Northern Ireland and the Republic of Ireland, the public understand and appreciate both the direct and indirect harms of hate.
- Across both jurisdictions we see a clear appreciation among the general public of the direct and indirect harms of hate crime. The majority of the public in both parts of the island appreciate the fact that hate crimes are more likely to have a psychological effect on their victims, and that hate crimes spread fear and isolation among minority communities.
- Only a minority on both sides of the border – less than a fifth – are of the view that punishing hate crime more severely than non-hate crimes is a violation of freedom of expression.
- In both jurisdictions a majority view hate crime as a serious and growing problem in their own jurisdiction.

- The majority of the public in both jurisdictions appear to appreciate the symbolic value of hate crime legislation.
- In both jurisdictions only a minority of the public regard the police or courts' current response to hate crime as effective.
- There are concerning shortfalls in public knowledge regarding the current legal position with respect to hate crime in both jurisdictions.
  - The majority of the public are misinformed about the availability of hate crime charges to police and prosecutors.
  - Half of those in Northern Ireland and a majority of those in the Republic are misinformed regarding the availability of sentence enhancement to the courts.
  - A majority of respondents in Northern Ireland are not aware that a hate crime conviction will not appear on the convicted person's criminal record.
- The label of hate crime offender is associated with additional stigma beyond that attached to the already marginalising label of convicted offender in both jurisdictions.
- There is a high level of public support for the protection of a broad range of characteristics in both jurisdictions.
- Of the commonly used legal tests, the highest levels of support are for the motivation and discriminatory selection models in both jurisdictions.
- The majority of the public in both jurisdictions support sentence enhancements in both jurisdictions.
- There is a continuing need to develop mutual understanding across the border and to share bridge building successes.

## Summary Recommendations

Following analysis of both survey and qualitative data, a number of core recommendations can be made to support the development of a Shared Island from the perspective of empowering diversity in society, promoting the safety of minoritised communities, and raising awareness of both the harms of hate and the means by which the criminal justice process can address hate. Such recommendations include:

### Countering Hate CoP

A community of practice for cross border knowledge transfer and collaborative learning in respect to addressing hate on the island of Ireland.

### Redirection and Rehabilitation

A network of practitioners, policy-makers and scholars working on understanding, developing and evaluating alternatives to punitive approaches to addressing hate crime. To collectively develop good practice models in restorative justice options for hate crime offending and rehabilitative programmes.

**Public Information Campaign**

A public information campaign to address gaps in public understandings of hate crime and criminal justice responses should be prioritised across both jurisdictions.

**Diverse Ireland Public Education Campaign**

Educational campaign using PUHC data to counter divisive domestic and international hate rhetoric by evidencing popular support for diversity and inclusion.

**All-island Programme for Fostering Intergroup Contact**

Further social cohesion within and across borders by enhancing intergroup contact in particular with the island's transgender and Traveller communities and between people from diverse community backgrounds north and south.

**PUHC 2.0**

Further iteration of the PUHC survey and the eventual conduct of the research on a longitudinal basis.

**Public Understandings of Hate Speech**

Adaptation of the PUHC methodology to research public understandings of hate speech, with particular emphasis on public perception of what constitutes criminalised hate speech.

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The team also wish to express their gratitude to the policy-makers and civil society experts who gave of their time to participate in the mapping exercise which forms part of the research data for this project.

Over the course of this research, a number of research interns at the European Centre for the Study of Hate, University of Limerick, supported this research for which we are extremely thankful: Ashna Ephraim, Isabelle Murphy, Róise McHugh, and Bríd McSharry. We are also extremely grateful to Professor Mark Walters for his advice on the development of the survey.

# Introduction to the PUHC Project

The term “hate crime” is used to describe a particular manifestation of criminality experienced by individuals because of their personal characteristics or status. At the time of writing there is no internationally accepted definition of the term “hate crime” and its meaning changes across jurisdictions, sometimes understood to incorporate criminalised hate speech, with other jurisdictions taking a more limited understanding. The Council of Europe draft definition of a hate crime is, “a criminal offence committed with a hate element based on one or more ... personal characteristics or status” (Council of Europe Committee of Experts on Hate Crime, 2023), and the OSCE/ODIHR defines hate crime as “criminal offences committed with a bias motive” where the criminal offence already exists in the ordinary criminal law of that jurisdiction (Organisation for Security and Cooperation in Europe 2009). Regardless of the intricacies of the definition, hate crime is accepted to be harmful to society as a whole, as well as to the direct individual targeted and their community (cf Keel et al 2022; Lantz and Kim 2019; Paterson, Brown and Walters 2019; Peršak 2022). As succinctly synthesised by OSCE/ODIHR (2018, p8): “Hate crimes affect the security of individuals, communities and societies as a whole. Effective responses to hate crimes are necessary to prevent them from posing a serious security challenge. In extreme situations, hate crimes can lead to conflicts within and across national borders.”

Hate crime policy and legislation is one of the key means by which states can and do respond to hate crime victimisation. Internationally, the number of jurisdictions with hate crime laws has continued to increase since the 1990s (Walters 2022). In light of such developments, this research provides a timely investigation into the beliefs of the people of the Republic of Ireland and Northern Ireland with respect to hate crime legislation, and their attitudes towards some of those minority communities which hate crime legislation seeks to ‘protect’ the legislative ‘protection’ of some commonly targeted minorities. It provides a nuanced understanding of what types of legislative approaches the public support, as well as their expectations of criminal law responses to hate crime.

Northern Ireland’s criminal justice system has a longer history of naming and addressing the problem of hate crime than that of the Republic of Ireland. Jarman (2017) notes that the police in Northern Ireland have been recording racist hate incidents since 1996 and homophobic incidents since 2000, with hate crime legislation being introduced in the 2000s. The *Criminal Justice (No 2) (Northern Ireland) Order 2004* provides for sentences to be increased where an offence has been proven to be motivated by hostility against a protected characteristic or where the offender demonstrated hostility against a protected characteristic during

the commission of the offence, or directly before or after. The characteristics currently protected in Northern Ireland are race, religion, sexual orientation and disability. Northern Ireland has also legislated to create “stirring up” offences, and criminalised sectarian and other prohibited chanting at certain sports events (Schweppe 2021, Walters 2022). By contrast, in the Republic of Ireland, while the police began recording racist crimes with a discriminatory motivation in 2002 (Haynes and Schweppe 2017), legislation is still awaited. Northern Ireland then offers useful learning to the Republic of Ireland. In particular, examining beliefs about and attitudes towards hate crime legislation in Northern Ireland provides insights into popular understandings of criminal justice hate crime measures in a jurisdiction in which law and policy has had the time to become embedded in practice. Given that the introduction of hate crime legislation is often justified by the stated intention of sending a clear message regarding the social and legal unacceptability of targeting minorities for their identity (Mason 2014), it is arguably especially important that the public demonstrate comprehension of hate crime provisions.

This “Public Understanding of Hate Crime: Ireland, North and South” report aims to provide data regarding:

- insights into popular attitudes towards hate crime provisions;
- gaps in public knowledge about and understanding of hate crime policy and legislation, and priority areas for policy communication that might be addressed nationally and/or on a cross-border basis;
- commonalities and differences in the populations’ attitudes to diversity and to criminal justice measures to address hate crime.

These aims speak to the remit of the Department of An Taoiseach’s Shared Island initiative, the strategic partner to this project along with the Irish Research Council. The Shared Island Initiative “harness the full potential of the Good Friday Agreement to enhance cooperation, connection and mutual understanding on the island and engage with all communities and traditions to build consensus around a shared future” (Government of Ireland 2022).

Hate crime is first and foremost an attack on the fundamental rights of those targeted including “the right to human dignity, [and] the right to equality of treatment” (FRA 2022, p3). Hate crimes limit the equal participation of targeted communities in society (Walters 2022; Holness 2021; Walters et al 2020). They are an obstacle not only to social cohesion but also to economic development. Where hate crime goes unaddressed, “it can alienate targeted groups, foster inter-community hostility and distrust, and undermine the effectiveness of law enforcement and the criminal justice system” (Council of Europe 2022). With respect to the particular aims of the Shared Island project, a safe and inclusive society is also advantageous for the attraction, retention and optimisation of valuable talent (Badgett et al 2019).

On an island where intolerance has played such a fundamental role in our history and division, it is appropriate that we should seek to understand and combat these challenges collectively. For that reason, it is intended that this project will lay the foundations for national and cross-border interventions, including state-led evidence-informed policy measures, effective public education campaigns in relation to combating prejudice, and the work of human rights and civil society organizations supporting targeted communities.

## A note on terminology

In compiling this Report we have used the terms “Republic of Ireland” and “Northern Ireland”: while recognising the inaccuracy of the former from a constitutional perspective, these descriptors serve a useful means of clearly distinguishing the two jurisdictions.

## Methodology

This project used a mixed methodology. The primary tool utilised is a survey instrument, developed by the researchers and disseminated by research companies on both sides of the border. Following this, a seminar was held with experts in the area of hate crime in which preliminary survey data was presented and a discussion facilitated.

## Survey data

The Public Understandings of Hate Crime (PUHC) survey ran simultaneously in the Republic of Ireland and Northern Ireland from 16th-22nd February 2023. In the Republic of Ireland the survey was disseminated on behalf of the research team by Amárach, a research company headquartered in Dublin. In Northern Ireland the instrument was disseminated by LucidTalk (NI) under the direction of Amárach. In both jurisdictions the surveys were completed online using pre-existing panels. In the Republic of Ireland, a sample of 1,000 was achieved, and was weighted by age, sex and region to align with the population. In Northern Ireland, a sample of 1,000 was also achieved, and was weighted by age, sex, region and social grade to align with the population. Weights for the Republic of Ireland and Northern Ireland were provided by Amárach. The survey was approved by the University of Limerick Faculty of Arts, Humanities and Social Sciences Research Ethics Committee, reference 2022-01-02-AHSS.

The PUHC survey instrument probes the public’s understanding of the construct of hate crime, its dimensions, and its distinguishing features, on both sides of the border on the island of Ireland. It further addresses the public’s awareness of the prevalence of hate crime in both jurisdictions, the physical and emotional harms of hate crime, its impact on minority communities, extant reporting mechanisms, the public’s expectations regarding the role of legislation in addressing hate crime, and attitudes towards options for legislative reform. Finally, it measures social distance on the basis of racialised identity, religion, sexuality, gender identity, disability, community background (in Northern Ireland), as well as other commonly targeted identities. With a view to further informing the work of the Shared Island unit, the research finally explores attitudes of people south of the border to those from Northern Ireland and, in Northern Ireland, to those from different community backgrounds.

In Northern Ireland, the term ‘community background’ refers to the demographic and cultural background of individuals or groups based on their perceived or self-identified community affiliation. The communities in Northern Ireland are primarily divided along religious and national identity lines, with the two main communities being the Unionist/Loyalist community, which is predominantly Protestant and identifies with Britishness, and the Nationalist/Republican community, which is predominantly Catholic and identifies with Irishness. In this report we label the communities as ‘Catholic Background’, ‘Protestant Background’ or ‘Neither’ in keeping with the terminology most commonly used in Northern Ireland including by the Equality Commission for Northern Ireland (2016). The concept of community background takes into account various factors, including religious affiliation, cultural traditions, political views, and historical allegiances. These factors have shaped the social, political, and cultural landscape of Northern Ireland and have often been associated with tensions and conflicts between the communities. It is important to note that while community background is often used as a way to understand the divisions in Northern Irish society, it should not be seen as a definitive or exclusive identity for individuals. Many people in Northern Ireland may identify with multiple communities or may choose not to align themselves with any particular community background. The understanding and perception of community background can vary among individuals and can evolve over time as societal attitudes and dynamics change (Coakley 2021).

The PUHC survey also gathered data on trust in state institutions, social distance, left-right political identification, minority status, age, gender, and education as potentially meaningful points of differentiation within the sample. As the first output from this research project, this report prioritises reporting key descriptive statistics.

The PUHC survey instruments provide respondents with a definition of hate crime, located prior to the first question. This provided respondents with a common and comprehensible definition allowing for a shared understanding. Drawing on the OSCE (2009) definition of a hate crime, the term was defined for survey respondents as follows:

**“Hate crimes are crimes (like assault, theft, vandalism etc) which are committed against a victim because of prejudice, bias or hate against their identity or personal characteristics.”**

Aspects of the PUHC survey design were informed by the work of Cabaldue et al. (2018) and Bacon et al. (2021) who pioneered the development of a scale to measure beliefs about hate crime. Cabaldue and colleagues originated the Hate Crime Beliefs Scale with a view to better understanding how beliefs about hate crime legislation, offenders, and victims shape public support for or opposition to hate crime legislation, as well as to understand beliefs that may inform

legal decision-making. The researchers developed and tested a pool of fifty scale items. Bacon et al. (2021) adapted Cabeldue et al's (2018) US-oriented Hate Crime Belief Scale to a UK context. Bacon et al. (2021) altered some of the wording of the original scale items to reflect the UK context and additional items were introduced to address culturally significant groups and groups whom they considered underrepresented in the original study, that is Muslims, Jews and people with disabilities. The first iteration of the PUHC survey dates to 2021 and was developed by Haynes, Schweppe and Macmillan, adapting the Hate Crime Belief Scale to Ireland. That survey instrument was disseminated in the Republic of Ireland only by Amarách in April 2021, jointly funded by the European Centre for the Study of Hate and the Department of Sociology at the University of Limerick.

Recognising the value of a comparative and cross-border approach to the research, the team, joined by Dr Kevin J. Brown of Queen's University Belfast, applied for and secured funding to conduct a second iteration of the survey on an island-wide basis. The second iteration of the PUHC survey includes additions and alterations to the original instrument based on an evaluation of the data acquired in 2021. In addition, the wording of questions was localised to both the Republic of Ireland and Northern Ireland contexts. Variation between the wording of items was kept to a minimum to ensure the comparability of data. Values may not add to 100% due to rounding.

### **Qualitative data**

The qualitative data presented in the Report was gathered from criminal justice policy, professional and civil society experts with a particular remit or expertise in the area of hate crime (hereafter referred to as PUHC expert participants). Identified using a purposive sampling strategy, these experts were brought together in June 2023 and were presented with some preliminary findings from the PUHC survey after which they were facilitated in discussing the implications of the findings. Particular emphasis was placed in these discussions on challenges to addressing hate crime on the island of Ireland, the existence and effectiveness of measures to address those challenges, and shortcomings or gaps in our current responses.

Responses were recorded as fieldnotes and then subjected to thematic analysis. In order to facilitate frank and open discussion, the Chatham House Rule governed the proceedings, and the identity of those who participated in the seminar and data collection instance remains confidential. This element of the research was approved by the University of Limerick Faculty of Arts, Humanities and Social Sciences Research Ethics Committee, reference 2023-05-04-AHSS.



# 1 Hate crime north and south: Legal frameworks, prevalence and manifestations

## Introduction

The island of Ireland represents a useful case for studying popular beliefs, myths and misinformation with respect to the phenomenon of hate crime, hate crime legislation, and those minority communities included within the scope of such legislation. Legislation to address hate crime has been in place in Northern Ireland since 2004, through the *Criminal Justice (No. 2) (Northern Ireland) Order 2004*. At the time of writing there is no hate crime legislation in place in the Republic of Ireland. In Northern Ireland an independent review of Hate Crime Legislation reported in 2020 recommending significant changes to the law in the jurisdiction (Marrinan 2020). In the Republic of Ireland, a Bill to introduce hate crime legislation was published shortly after the PUHC survey was disseminated, and at the time of writing is before the Houses of the Oireachtas (*Criminal Justice (Incitement to Violence or Hatred and Hate Offences) Bill 2022*). The different legal, social, and cultural contexts both sides of the border provide opportunities for important insights into how these shape public beliefs and knowledge about hate crime and support for measures to address it.

## Hate crime in Northern Ireland

In Northern Ireland the primary hate crime provisions are contained within the Criminal Justice (No. 2) (Northern Ireland) Order 2004 (hereinafter “the Order”). The Order aims to ensure that individuals who are proven to have committed crimes aggravated by hostility towards listed protected characteristics (race, religion, sexual orientation, or disability) receive a more severe sentence upon conviction (Marrinan 2020). The Order requires a court to treat the underlying base offence as aggravated (more serious) and state so in open court if it is proven that the base offence was motivated by hostility towards one of the protected characteristics, or if the offender exhibited hostility towards one of those characteristics at the time of the crime or immediately before or after it. Unlike some jurisdictions, such as England and Wales, the legislation does not operate to increase the maximum penalty for the base crime if hostility is proven (Marrinan 2020). The sentencer must still pass a sentence which is within the maximum range for that offence.

### ***Prevalence – reported and recorded hate crime***

The primary source of statistics on hate crime in Northern Ireland is the police. The Police Service of Northern Ireland (PSNI 2023a) regularly publishes statistics on the levels of and trends in police recorded crimes and incidents with a hate motivation. For the purpose of PSNI statistics a hate crime is defined as “any criminal offence which is perceived, by the victim or any other person, to be motivated by hostility or prejudice towards someone based on a personal characteristic” (2022, p20). Not all hate motivated incidents reported to the PSNI will be recorded as a crime, as what has occurred in the incident may not meet the criteria for a crime being recorded (PSNI 2022). The limited nature of hate crime and public order legislation in Northern Ireland means that incidents that would be recorded as a crime in other jurisdictions may not meet the threshold to be recorded as such in Northern Ireland. Hate incident data published by the PSNI covers both hate crimes and those incidents reported to the police that don’t meet that threshold. The vast majority of recorded incidents relate to hatred based on racist hostility or sectarianism (PSNI 2022, 2023b). The PSNI also record hate motivated incidents and crimes targeting sexual minorities, those with disabilities, members of minority faith groups and transgender people. The general trend over the last decade has seen increases in recorded incidents. In the year 2021/22, the PSNI (2022) recorded 1,334 racist incidents, 1,067 sectarian incidents, 462 homophobic incidents, 65 transphobic incidents, 68 faith/religious hate incidents and 123 disability hate incidents. Whilst in the 12 months from 1st April 2022 to 31st March 2023, there were recorded 1,221 racist incidents, 1,238 sectarian incidents, 435 homophobic incidents, 72 transphobic incidents, 46 faith/religious hate incidents and 139 disability hate incidents (PSNI 2023b).

The Public Prosecution Service of Northern Ireland also publish regular data on their handling of cases involving hate crime (PPSNI 2023). Their data provide information on the prosecutorial review and decision-making stage as well as court outcomes. For the year 2022/23, the PPSNI reported receiving 419 files involving hate crime. This was an increase of 75 on 2021/22. The number of cases involving violent offences increased by 17.4%, from 236 in 2021/22 to 277 in 2022/23. The PPSNI issued 473 prosecutorial decisions in 2022/23, an increase of 9.2% from 2021/22. The majority of the 296 decisions in 2022/23 related to offences which were either aggravated on the basis of race (119) or religion (including sectarian motivations) (88). Sixty-five decisions related to offences aggravated on the basis of sexual orientation. The remaining decisions related to offences aggravated on the basis of disability or multiple motivations.

When it comes to the court stage, during 2022/23, 31 defendants were dealt with through indictable prosecution in the Crown Court (PPSNI, 2023). None of the 24 defendants convicted during 2022/23 was recorded as having received an enhanced sentence due to the aggravating feature of the offence(s) involved. A total of 211 defendants were dealt with through summary prosecution in the Magistrates’ and Youth Courts during 2022/23, a 24.1% increase on 2021/22 (170). The overall conviction rate was 72%. 40 (26.3%) of the 152 defendants convicted in the Magistrates’ Court during 2022/23 were recorded as having received an enhanced sentence due to the aggravating feature of the offence(s) involved.

### **Law reform processes in Northern Ireland**

In June 2019, the Department of Justice appointed Judge Desmond Marrinan to conduct an independent review of hate crime legislation in Northern Ireland and provide a report with recommendations for the Minister of Justice. Judge Marrinan established a Committee of Experts from across the island of Ireland and Britain to assist him in his task (Marrinan 2020). To gauge public and stakeholder opinions, a public consultation was conducted and published in January 2020. The final report of the Review with recommendations was published in December 2020. The report found significant shortcomings in the current legislative framework for tackling hate and made recommendations to improve matters (Marrinan 2020).

The recommendations made by Judge Marrinan are significant and include introducing a new legislative framework for tackling hate crime and hate speech under a consolidated new Hate Crime and Public Order (Northern Ireland) Bill. The legislative definition of hate crime would change under Judge Marrinan's recommendations with the definition expanded. Under the proposed definition "a hate crime will include criminal acts perpetrated against individuals or communities with protected characteristics based on the perpetrator's hostility, bias, prejudice, bigotry or contempt against the actual or perceived status of the victim or victims" (Marrinan 2020, Recommendation 1). Judge Marrinan recommended that the list of protected characteristics in Northern Ireland – race, religion, disability and sexual orientation - should be amended to incorporate age, "sex/gender" (sic) and variations in sex characteristics, with the protected characteristic of sex/gender to be defined as inclusive of transgender identity (Marrinan 2020, Recommendation 9) .

Since the publication of the report there has been significant political instability in Northern Ireland which has contributed to a delay in reaching a decision on which if any of the recommendations to enact. Given Northern Ireland's system of government through power-sharing, any future legislative reform will need to attract broad consensus across the political spectrum.

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### **Hate crime in the Republic of Ireland**

There is no hate crime legislation in operation in the Republic of Ireland at the time of writing (October 2023). The only piece of cognate legislation, the Prohibition on Incitement to Hatred Act 1989 lists protected categories as "race, colour, nationality, religion, ethnic or national origins, membership of the travelling community (sic) or sexual orientation."

With respect to criminal justice practice in addressing hate crime, while there is no policy regarding the prosecution of hate crime (Haynes and Schweppe 2017), decisions of the Court of Criminal Appeal have explicitly stated that when there is a hate element to a crime, this can be treated as an aggravating factor through the operation of judicial sentencing discretion. In *DPP v Elders*

(2014), the Court of Criminal Appeal observed that “a racist dimension’ should be considered an aggravating factor in sentencing”, and in *DPP v Cummins* (2018) the court referred to “racist overtones” present during the commission of the offence. In *DPP v Collins* (2016) the trial judge seems to have taken into account the fact that the offence “may have been racially motivated”. Birmingham J on appeal stated that the trial judge was prompted to do this by a sentence in the probation report which quotes their client as saying “he (that is the accused) says he watched two foreign nationals cross the road to his girlfriend.” By reference to this sentence the judge said that he felt that it was highly probable that the attack had “some element of racism to an unspecified degree” (2016, para [15]).

### **Prevalence – reported and recorded hate crime**

Despite the absence of legislation, since 2004 An Garda Síochána have had the capacity to record what were initially described as “crimes with a discriminatory motive” and since 2020, as “hate related discriminatory motives”. The working definition used by An Garda Síochána (2021) to record hate crimes is “Any criminal offence which is perceived by the victim or any other person to, in whole or in part, be motivated by hostility or prejudice, based on actual or perceived age, disability, race, colour, nationality, ethnicity, religion, sexual orientation or gender” (An Garda Síochána 2021). In 2021, the first calendar year during which these new recording practices were utilised, 389 crimes were recorded as having a hate related discriminatory motive. In 2022, 510 crimes were recorded as having a hate related discriminatory motive (An Garda Síochána 2023).

### **Law reform processes in the Republic of Ireland**

Until this decade, successive Irish governments resisted international criticisms of the Republic of Ireland’s lack of hate crime legislation (Haynes and Schweppe 2016). The Irish State has been the subject of criticism from a range of international organisations, including the United Nations Human Rights Committee, the United Nations Committee on the Rights of the Child and the European Commission Against Racism and Intolerance (see generally Haynes and Schweppe 2016). Despite frequent and increasingly vocal calls from civil society and the academy, as well as from some politicians, the State remained intransigent on the question of introducing hate crime legislation until relatively recently (see further Haynes and Schweppe 2016). In 2020, for the first time, a programme for government identified hate crime as a priority area for government action. The programme recognised the particular impact of hate crime on its victims and committed to introducing legislation using an aggravated offences model within 12 months of the formation of government (Programme for Government 2020). The *General Scheme of the Criminal Justice (Hate Crime) Bill 2021* was published in April 2021 and considered by the All-Party Oireachtas Justice Committee in November 2021. That Committee published its report in April 2022 (Joint Committee on Justice 2022), with the text of the *Criminal Justice (Incitement to Violence and Hatred and Hate Crime Offences) Bill 2022* being published in September 2022. A Bill Digest was published in November 2022, and the Bill is traversing the legislative process at the time of writing (Oireachtas Library 2022).

## 2 Hate crime beliefs

### Introduction

This section presents key findings of the PUHC research regarding popular beliefs about the phenomenon of hate crime. These include findings regarding the alignment of public beliefs with common scholarly and policy justifications for either supporting or opposing the introduction of hate crime legislation.

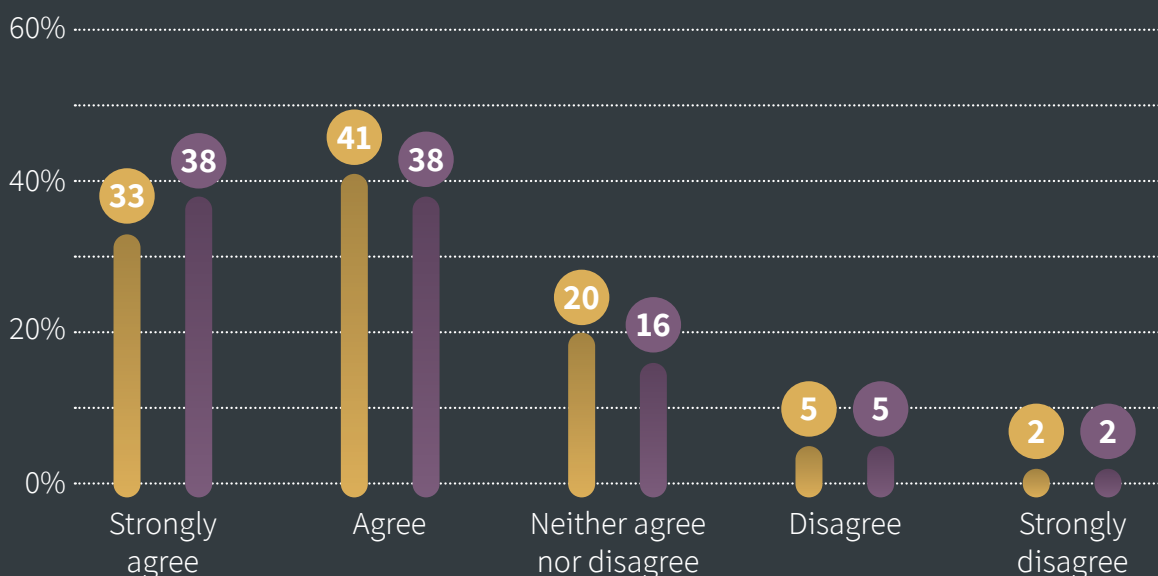
### Harms of hate

One of the key justifications for introducing hate crime legislation is that hate crimes “hurt more” than non-hate crimes of a similar nature (Iganski 1999; Perry and Lawrence 2009). Compared to the effects of crimes without a hate element, victims of hate crime have been found to suffer more psychological effects which last for a longer period of time (CSEW 2017-2020). The PUHC survey probed the public’s awareness of the additional harms associated with hate crime. Figure 1 presents findings regarding levels of public agreement with the statement that “Hate crimes are more likely to have a psychological effect on victims than non-hate crimes of a similar nature”.

Figure 1

**Hate crimes are more likely to have a psychological effect on victims than non-hate crimes of a similar nature**

■ ROI ■ NI



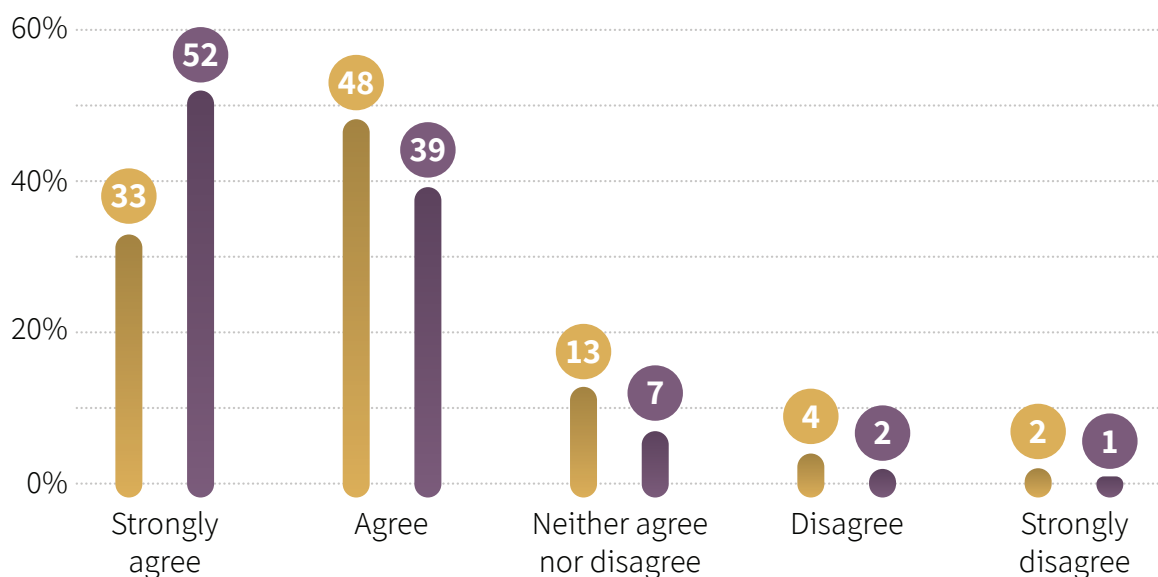
Across both jurisdictions, a majority of respondents (74% in the Republic of Ireland and 76% in Northern Ireland) agreed or strongly agreed with the statement that hate crimes are more likely to have a psychological effect on victims than non-hate crimes of a similar nature. On both sides of the border, only 7% disagreed or strongly disagreed with the statement.

Research also shows that members of minority communities with commonly targeted identities manifest the psychological harms experienced by direct victims of hate crime, even where they themselves have not been victimised (see eg Walters et al 2019; Perry and Alvi 2012). Hence, hate crimes are understood not only to harm their direct victims but also to create indirect victims through their impact on the wider identity community. We tested respondents' awareness of the indirect or "ripple" effects of hate crime by asking them to express their level of agreement or disagreement with the statement, "Hate crimes spread fear and isolation among minority communities."

Figure 2

**Hate crimes spread fear and isolation among minority communities**

ROI NI



As shown in Figure 2, a clear majority of respondents in both jurisdictions – 81% in the Republic of Ireland and 91% in Northern Ireland – agreed or strongly agreed that hate crimes spread fear and isolation among minority communities.

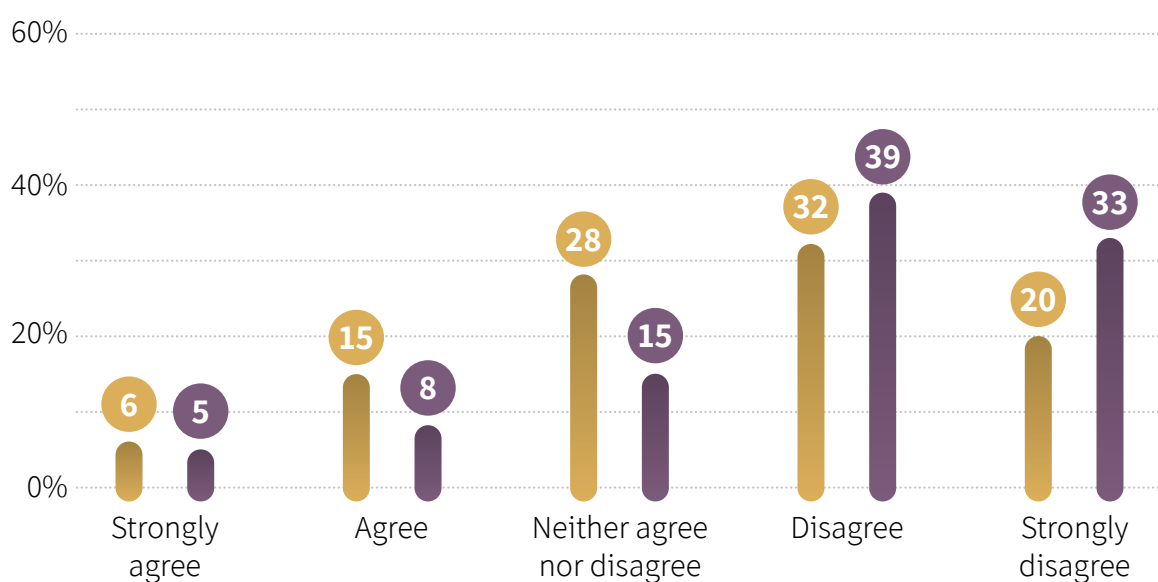
## Hate crime and freedom of expression

A common argument that is mounted against the introduction or expansion of hate crime legislation is the view that it is an infringement of the right to freedom of expression (Bleich 2011). Adapting a statement from the hate crime beliefs scale (Cabeldue et al 2018; Bacon et al 2021), we asked respondents if they believe that punishing hate crime more severely than non-hate crimes is a violation of the freedom of expression.

Figure 3

***Punishing hate crime more severely than non-hate crimes is a violation of the freedom of expression***

■ ROI ■ NI



As we see in Figure 3, a majority in both jurisdictions disagreed or strongly disagreed that punishing hate crime more severely is a violation of the freedom of expression (52% in Republic of Ireland versus 72% in Northern Ireland). However, the percentage of respondents expressing middle-range views is higher in the Republic of Ireland than in Northern Ireland indicating higher levels of ambivalence or uncertainty.

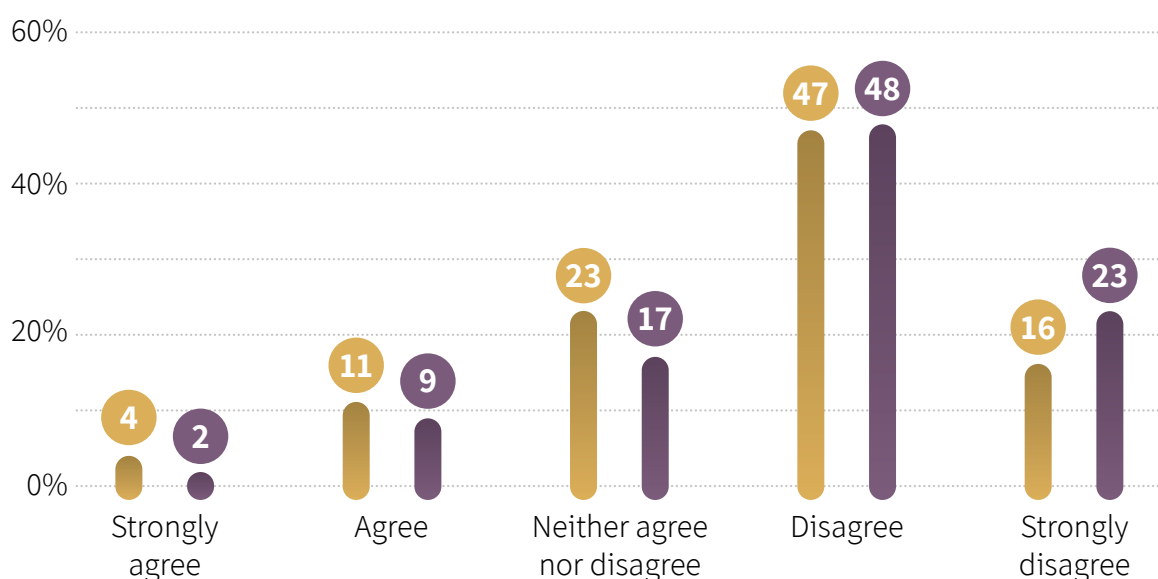
## Hate crime as a social problem

Another common argument for not introducing or prioritising hate crime legislation is that hate crime is not prevalent in society. Again, using an item from the hate crime beliefs scale (Cabeldue et al 2018), we asked respondents to express their level of agreement or disagreement with the statement that hate crimes are “rare.”

Figure 4

**Hate crimes are rare**

■ ROI ■ NI



As we can see from Figure 4, the majority of respondents in both the Republic of Ireland (63%) and Northern Ireland (71%) strongly disagreed or disagreed with this statement. Only a small minority (15% in the Republic of Ireland and 11% in Northern Ireland) agreed or strongly agreed that hate crimes are rare.

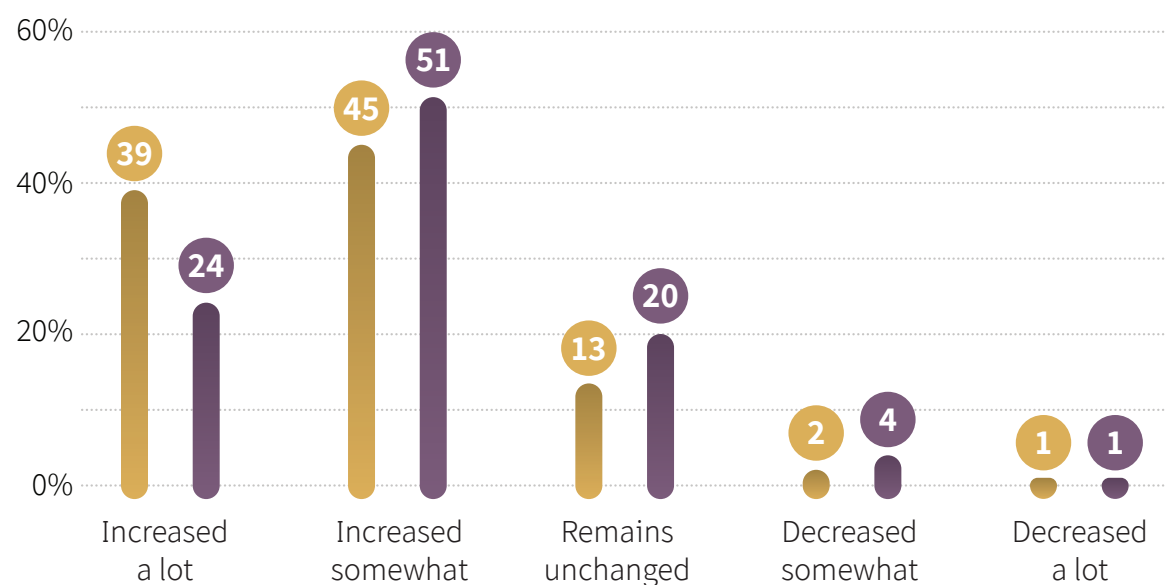
Respondents were also asked their views on whether levels of hate crime in their jurisdiction have changed over time – that is, whether it has increased or decreased over the past five years. As Figure 5 shows, the majority of respondents in both jurisdictions believe that hate crime has increased during this period. In the Republic of Ireland, 39% of respondents believe that it has increased a lot. In Northern Ireland almost a quarter of respondents share this belief.



Figure 5

**The amount of hate crime in your jurisdiction has increased or decreased**

■ ROI ■ NI

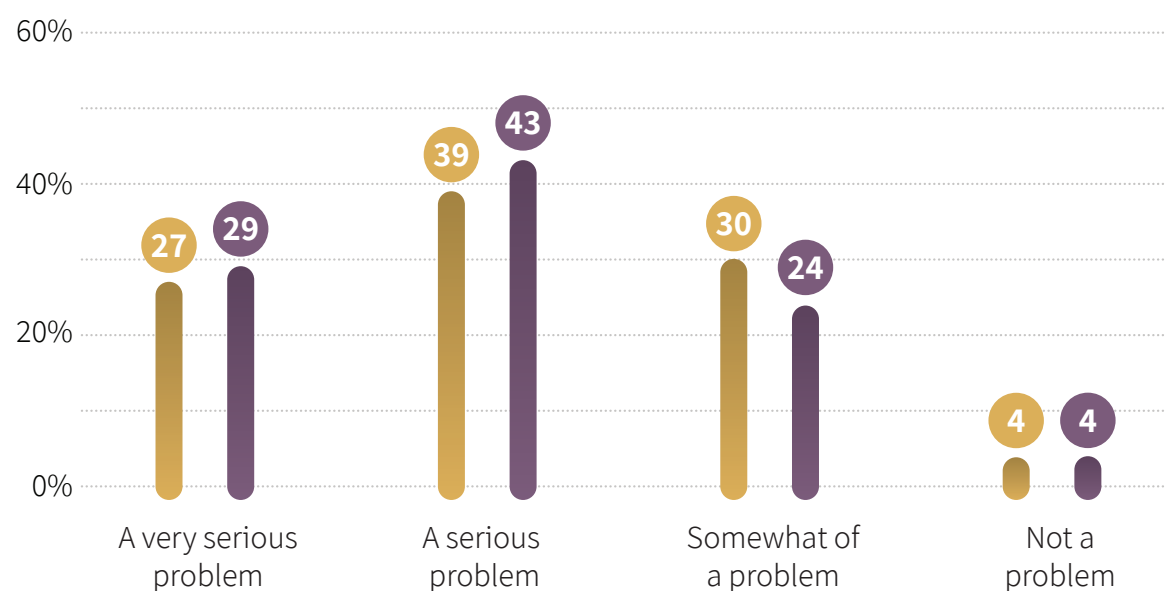


In addition to probing beliefs about the prevalence of hate crime, we specifically asked the public whether they perceived hate crime to present a serious problem - first generally and then as experienced by a range of commonly protected categories.

Figure 6

**How serious a problem is hate crime in your jurisdiction**

■ ROI ■ NI



Responding to the question “how serious of a problem is hate crime?”, the majority of respondents in both jurisdictions expressed the belief that hate crime is a serious or very serious problem - 66% in the Republic of Ireland and 72% in Northern Ireland (see Figure 6).

We then asked respondents how serious a problem they believe hate crime to be for each of a range of commonly protected identity categories (OSCE/ODIHR 2020). In the Republic of Ireland police statistics on discriminatory motives do not clearly distinguish data relating to crime and non-crime incidents and individual crimes may be associated with more than one discriminatory motivation. With this caveat in mind, published statistics for 2022 show race as the most common police recorded discriminatory motive (recorded 198 times), followed by sexual orientation (135 times), nationality (130), colour (47), ethnicity (44), gender (including gender identity) (25), and religion (20) (An Garda Síochána 2022).

In Northern Ireland, PSNI data for April '22 to March '23 shows sectarian crime to be the most commonly recorded form of hate crime (921 crimes), followed by racist (880), homophobic (290), disability (102) transphobic (39) and faith/religion (33) (see Figure 7).

Figure 7

**Overall summary of hate crimes in Northern Ireland as recorded by the PSNI (2021/22 and 2022/23)**

Motivation	Crimes		
	Apr'21-Mar'22	Apr'22-Mar'23	change
<b>Racist</b>	933	880	-53
<b>Homophobic</b>	337	290	-47
<b>Sectarian</b>	780	921	141
<b>Disability</b>	93	102	9
<b>Faith/Religion</b>	54	33	-21
<b>Transphobic</b>	42	39	-3

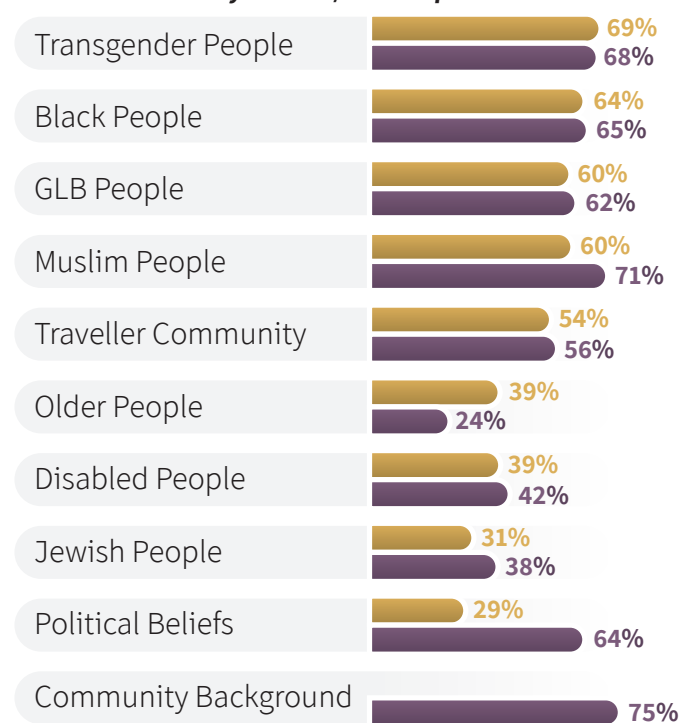
It is important when interpreting police recorded data to consider the relative size of the impacted populations. For example, most of the 1.9 million people resident in Northern Ireland belong to one of the two communities relevant to statistics on sectarianism, whilst other hate/discriminatory motivations target significantly less populous identity groups. The recent review of hate crime legislation in Northern Ireland estimated there is approximately a 1 in 31 chance of being the victim of a reported racial hate incident compared to approximately 1 in 1,777 chance of being a victim of a reported sectarian hate incident (Marrinan 2020).

In addition, An Garda Síochána and PSNI statistics pertain only to crimes that have been reported to and recorded by the police, therefore not including the significant amount of such incidents that go unreported. A 2009 study found that, in Northern Ireland, 64% of LGB people did not report homophobic crimes to the PSNI (O'Doherty 2009). A study by Haynes and Schweppe (2017) found that of 57 anti-transgender crimes reported to the Transgender Equality Network Ireland as occurring in the Republic of Ireland from 2014-2016, only six were identified as having been reported to An Garda Síochána.

Figure 8 shows the cumulative percentage of respondents who believe that hate crime is either a very serious problem or a serious problem for each group.

Figure 8

**Hate crime is a very serious/serious problem for which of the following groups** ■ ROI ■ NI



As can be seen from Figure 8, in both jurisdictions a majority of respondents believe that hate crime is a serious or very serious problem for transgender people; Black people; gay, lesbian and bisexual people; Muslim people; and people of Traveller ethnicity. In both jurisdictions less than half of respondents believe that hate crime is a very serious or serious problem for older people; disabled people; or Jewish people. In Northern Ireland a majority of respondents regard hate crime against people on the basis of their political beliefs as being a very serious or serious problem. In the Republic of Ireland less than a third of respondents share this belief. The difference is to be expected given that political tensions have been a source of conflict and violence in Northern Ireland in a way they have not been in the Republic. Three quarters of respondents in Northern Ireland believe that hate crime on the basis of community background is a very serious or serious problem.

# 3 Effectiveness of legislative responses to hate crime

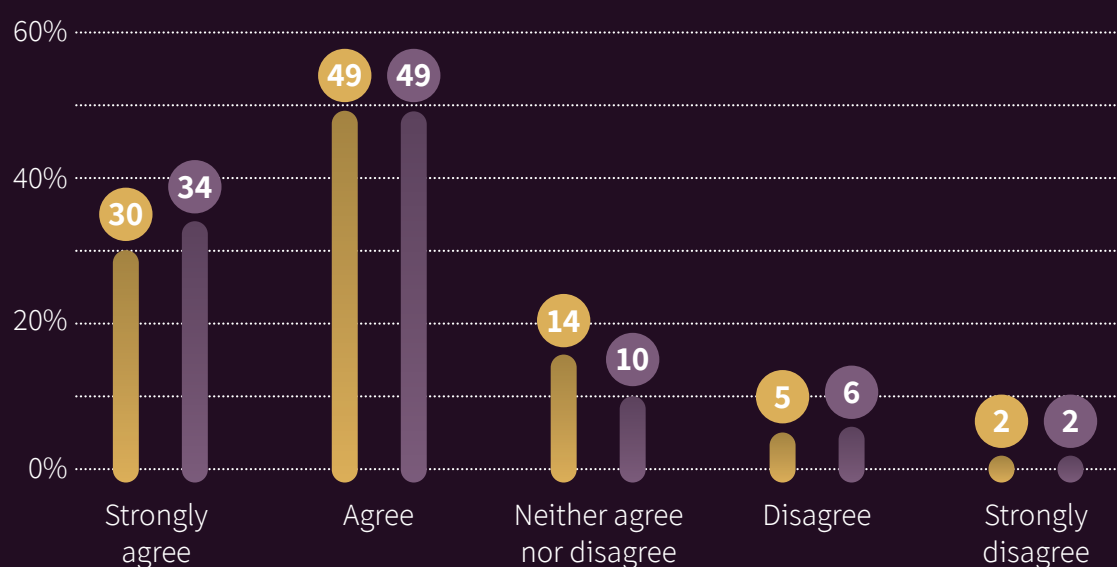
## Introduction

This next chapter of the report examines public perceptions of the effectiveness of criminal justice responses to hate crime. Iganski (1999) documented three categories of public expectations of racially-aggravated hate crime offences in the UK: deterrent effects; the advancement of social cohesion; and more effective criminal justice responses to individual racist hate crimes. Both Iganski and Mason et al (2016) highlight the potential for public frustration if expectations are unrealistic, unfulfilled or both. Here, we examine (a) public perceptions of hate crime legislation in Northern Ireland, and (b) expectations of hate crime legislation in the Republic of Ireland.

The first statement presented to respondents examines evaluations of the symbolic function of hate crime legislation. Respondents were asked to express their level of agreement or disagreement with the statement, “Hate crime legislation sends a message that society does not tolerate hate crime”.

Figure 9

**Hate crime legislation sends a message that society does not tolerate hate crime** ■ ROI ■ NI



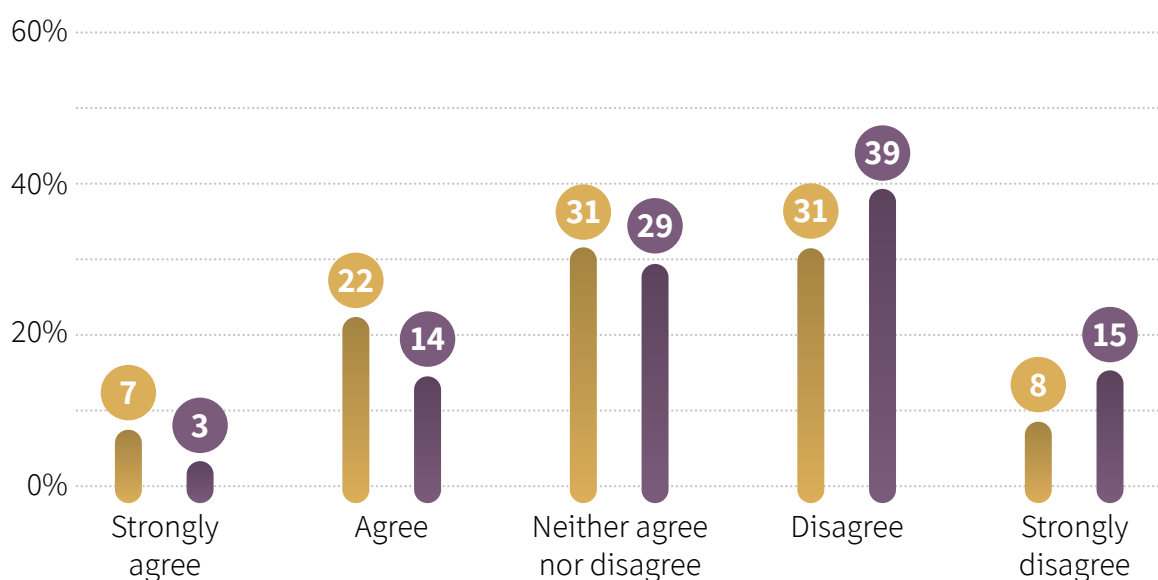
A large majority of respondents in both the Republic of Ireland and in Northern Ireland either agreed or strongly agreed with this statement (see Figure 9).

The next statement examines public perceptions of the effectiveness of hate crime legislation as a general deterrent. Respondents were presented with the statement “Hate crime legislation prevents hate crime from happening”. Figure 10 shows that, in both jurisdictions, the public have low expectations for the deterrent effects of hate crime legislation. In the Republic of Ireland, 39% of respondents disagreed or strongly disagreed that hate crime legislation prevents hate crime from happening. In Northern Ireland, where such legislation has been in place for almost two decades, this figure increases to 54%.

Figure 10

**Hate crime legislation prevents hate crime from happening**

■ ROI ■ NI

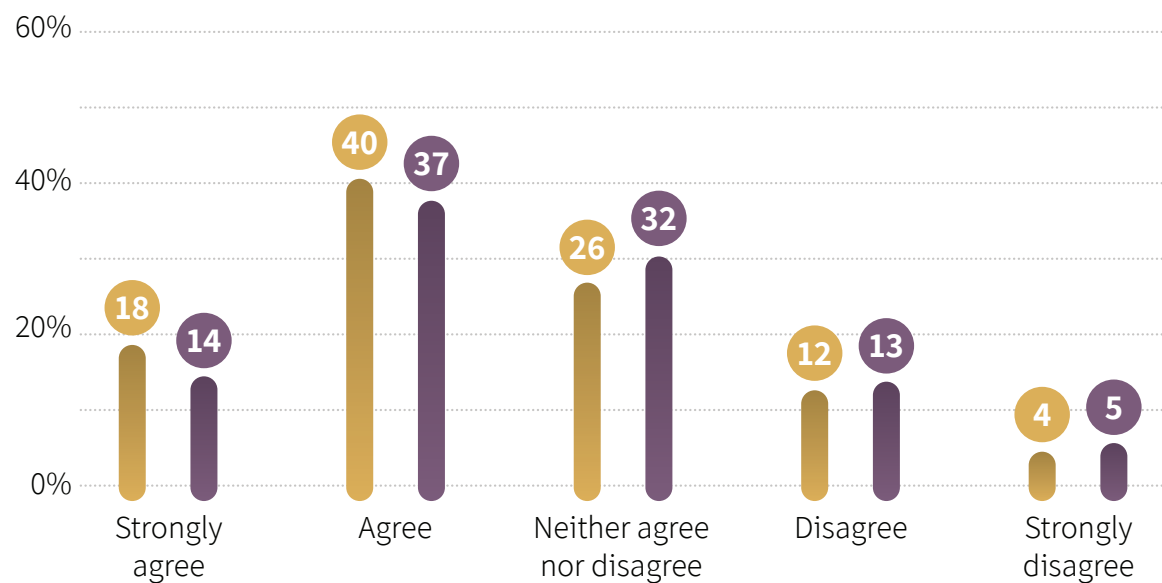


Finally, we explored public perceptions of the impact of harsh punishment on the likelihood of future hate crimes. Mason (2014) explains that hate crime legislation is associated with harsher penalties which are justified as proportionate given the additional harms associated with hate crimes. Respondents were asked to express their level of agreement with the statement, drawn from Cabeldue et al's (2018) hate crimes belief scale, "Harsh punishment of hate crime offenders will decrease the likelihood of future hate crimes".

Figure 11

**Harsh punishment of hate crime offenders will decrease the likelihood of future hate crimes**

■ ROI ■ NI



The majority of respondents on both sides of the border agreed or strongly agreed with this statement, 58% in the Republic of Ireland and 51% in Northern Ireland. These findings indicate that the majority of the public in both jurisdictions clearly recognise the symbolic function of hate crime legislation. The public are less convinced of the deterrent function of hate crime, or the effects of punitiveness.

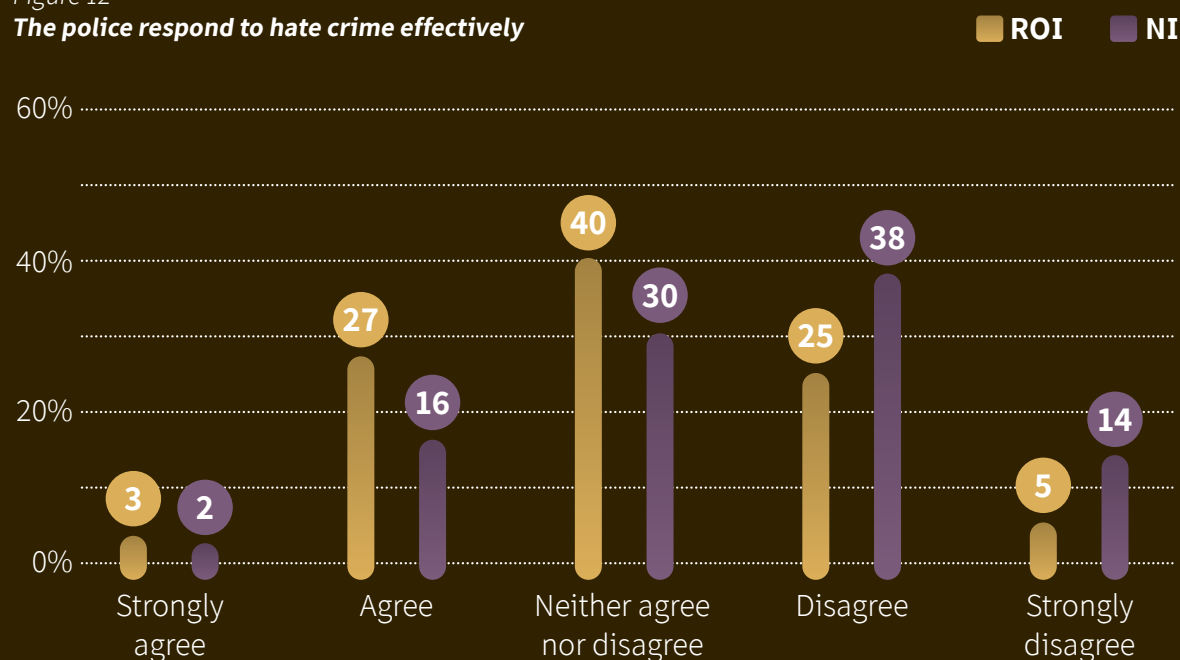
## 4 Effectiveness of criminal justice responses to hate crime

Whether there is hate crime legislation in place or not, a criminal justice system can address the hate element of a crime (Schweppe et al 2018). This can be through, for example, police recording of hate crime, investigation of the hate element, and statements by the court during sentencing which address a hate element. For this reason, we assessed how the public in both jurisdictions views the effectiveness of the current response of police and judges to hate crime. The Enhancing Stakeholder Awareness and Resources for Hate Crime Victim Support project (EStAR 2022) notes that concerning low levels of police reporting among hate crime victims internationally is contributed to by some victims' perceptions of the futility of engaging with the criminal justice system.

Respondents were first presented with the statement "The police respond to hate crime effectively".

Figure 12

**The police respond to hate crime effectively**

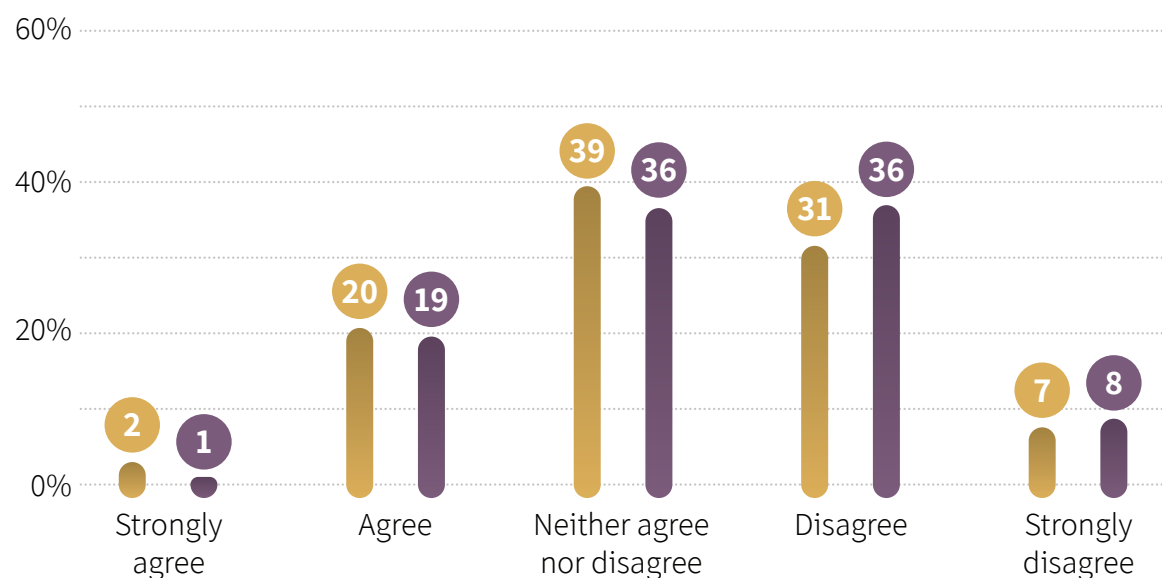


In both jurisdictions only a minority of the public agree or strongly agree that the police respond to hate crime effectively. The contrast between the percentage agreeing in each jurisdiction is striking. In the Republic of Ireland 30% of respondents agree or strongly agree that the police respond to hate crime effectively. That figure drops to just 18% in Northern Ireland (see Figure 12).

Figure 13

**The courts respond to hate crime effectively**

■ ROI ■ NI



With respect to public perceptions of the courts' responses, just a fifth of respondents in both jurisdictions (22% Republic of Ireland and 20% Northern Ireland) agreed or strongly agreed that the courts are effective in responding to hate crime (see Figure 13).

### Expert participants responses to findings on effectiveness

The findings above were presented to PUHC expert participants, who discussed them in small groups and then reported back to the group as a whole. The prompts participants were asked to respond to were: "What does an "effective" response from criminal justice agencies (police and the courts) look like? How can criminal justice agencies (police, prosecutors, and the courts) produce an "effective" response?"

There was general agreement that, regardless of what an "effective response" means, legislation on its own will not provide an adequate response to hate crime. PUHC expert participants described the need for institutional responses, from the point of accurately recording hate crime by the police, to detection, prosecution and conviction. Restorative justice measures were highlighted as a particularly important means of ensuring that victims feel the system is providing an effective response to them. PUHC expert participants were also of the view that the education of both criminal justice agencies and the public is important, and that it is important to also include victim support and those working in law enforcement in the conversation.



Lack of trust, and the need for criminal justice agencies to earn the trust of victims of hate crime was highlighted. One group was of the view that the criminal justice response should be built in such a way as to earn the trust of victims of hate crime; another was of the view that transparency of processes is of significant importance – once people understand the decision-making processes with respect to their case, that can be fostered. Equally, the need for transparency was discussed more generally, with the need for awareness to be fostered within and from criminal justice institutions.

The importance of measuring the responses to hate crime across the criminal justice system was highlighted as a significant means of monitoring its effectiveness. An increase in recorded hate crime is not necessarily the product of an increase in the prevalence of hate crime, but rather an important indicator of increased reports from victims, and accurate recording practices. Disaggregated statistics evidencing the recording, prosecuting, and sentencing of hate crime are important to assist in determining where the hate element is being “disappeared” in cases. All data, it was stated, should be disaggregated by minority group.

It was agreed that an action plan should accompany legislation.

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# 5 Fact-checking public knowledge of hate crime in the criminal justice process

## Introduction

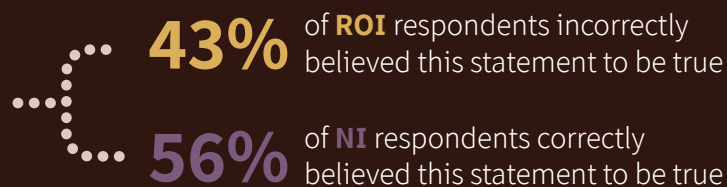
PUHC probed public knowledge of current criminal justice responses to hate crime. The findings presented in this section describes public knowledge of and misinformation regarding the existing criminal justice responses to hate crime in their own jurisdictions. The PUHC survey presented respondents with seven statements about criminal justice responses to hate crime, asking them to identify which were true. These statements probe public knowledge regarding the presence of hate crime on the statute book, the police response to hate crime, sentencing hate crime, and whether hate crime can appear on the criminal record of an offender. Our findings show some considerable confusion and lack of awareness amongst the general public on these issues. Further research is required to determine whether this confusion reflects low levels of knowledge of the criminal justice process generally, or just hate crime specifically.

## Presence of hate crime legislation

The first of the seven statements with which respondents were presented was “This jurisdiction has hate crime legislation.” This statement tests the public’s awareness of the presence or absence of hate crime legislation in their jurisdiction. For clarity, while there is legislation to address hate crime in Northern Ireland, there is no such legislation in the Republic of Ireland. Respondents were asked to select only those of the seven statements which they believe to be true.

Figure 14

“The jurisdiction has hate crime legislation”



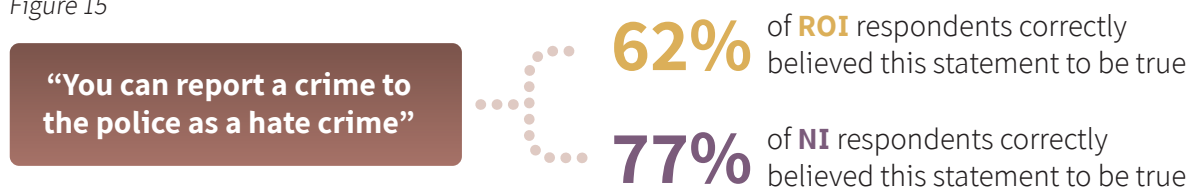
In both jurisdictions almost half of respondents answered this question incorrectly. There is no hate crime legislation in the Republic of Ireland, yet 43% of respondents believe that there is; there is hate crime legislation in Northern Ireland, and 44% of the population are not aware of this fact (see Figure 14).

### **Police reporting and recording of hate crime**

The second and third statements presented test the public's knowledge of whether, in their jurisdiction, the police will accept complaints relating to hate crime and have the administrative capability to flag a recorded crime as a hate crime. This recording capability is independent of the existence of hate crime legislation on the statute books in both jurisdictions: in the Republic of Ireland, An Garda Síochána have been recording 'discriminatory motives' since 2004; and in Northern Ireland, the PSNI record hate crimes targeting more identity groups than are provided for in the jurisdiction's legislation.

Two statements were presented to respondents in this respect. The first statement presented to respondents was, "You can report a crime to the police as a hate crime." This statement is true in both jurisdictions.

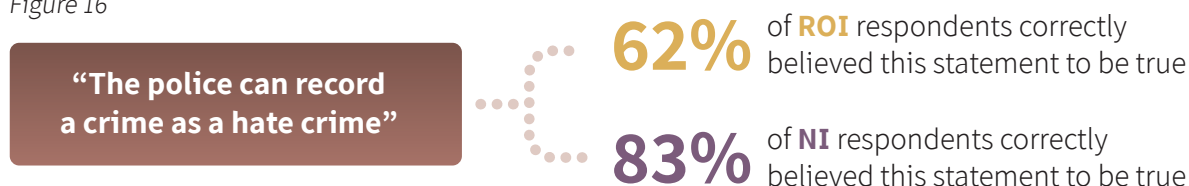
Figure 15



A majority of respondents in both jurisdictions answered this question correctly, though a larger percentage of the public in Northern Ireland are aware of this fact. In the Republic of Ireland, 38% of respondents answered this question incorrectly, while in Northern Ireland, 23% of respondents were incorrect in their answer (see Figure 15).

The second statement presented to respondents was "The police can record a crime as a hate crime." Again, this statement is true in both jurisdictions. Again, a majority of respondents in both jurisdictions answered this question correctly, though again a larger percentage of the public in Northern Ireland were aware of this fact: In the Republic of Ireland, 38% of respondents answered incorrectly, while only 17% of respondents in Northern Ireland were incorrect in their answer (see Figure 16).

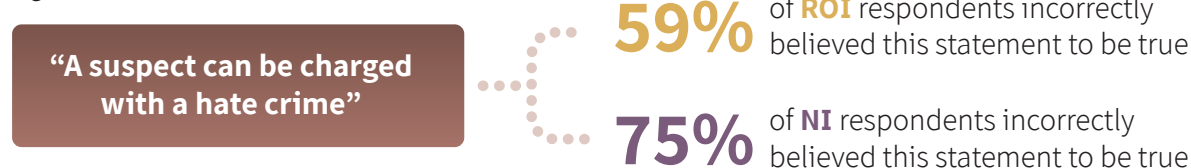
Figure 16



### Prosecuting and sentencing hate crime

We also probed respondents' awareness of the availability of substantive hate crime offences in their jurisdiction. In the Republic of Ireland, in the absence of legislation, there are no substantive hate crime offences on the statute books; in Northern Ireland, where legislation uses an aggravated sentencing model, this is equally the case (Schweppe 2021). To test respondents' awareness of this in an accessible manner, we presented them with the statement "A suspect can be charged with a hate crime".

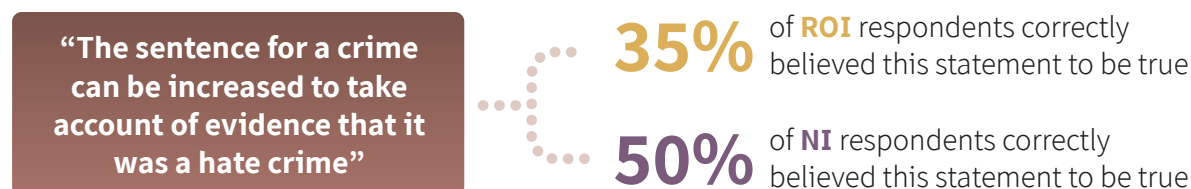
Figure 17



Even though the above statement is untrue in both jurisdictions, a majority of respondents in both jurisdictions responded affirmatively – and therefore incorrectly – with three-quarters of respondents in Northern Ireland believing that this was the case; and 59% of those in the Republic of Ireland believing the statement to be true (see Figure 17).

Respondents were next presented with the statement "The sentence for a crime can be increased to take account of evidence that it was a hate crime." This statement, which tests the public's awareness of the availability of aggravated or enhanced sentencing provisions, is true in both jurisdictions. In the Republic of Ireland, even in the absence of legislation, it is possible for the sentencing judge to aggravate a sentence for a range of reasons, including the presence of a hate element; indeed, for a long period of time this was the basis for the Irish State rejecting the need for the introduction of hate crime legislation in that jurisdiction (Haynes and Schweppe 2016). In Northern Ireland, the 2004 Order uses a sentencing model to address hate crime (see above, section 1).

Figure 18



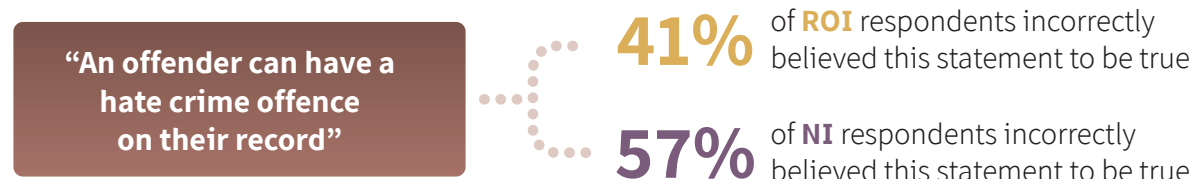
Although the above statement is true in both jurisdictions, a significant majority of respondents in the Republic of Ireland answered this statement incorrectly, and only half of respondents in Northern Ireland were aware that this is the case (see Figure 18).

## **Hate crime and criminal records**

Finally, we tested respondents' awareness of how their jurisdictions address one of the most contentious issues in debates on criminal law responses to hate crime, that is whether the convicted person's criminal record should identify them as having committed a hate crime (see eg, Dunbar et al, 2005; Galop, 2016; Vuolo, 2017). In particular, research points to a diversity in the character of hate motivations, including in terms of level of commitment to bias or hateful ideologies, the relative influence of other motivations including peer pressure, and the degree to which offending is instrumental versus reactive (cf Dunbar et al 2000; McDevitt et al 2002; Jensen et al 2021). Legislative formulations which do not distinguish between, for example, crimes motivated by hate, and crimes in which hate is demonstrated, arguably further complicate the question of whether a criminal record of hate crime offending aligns with the principle of fair labelling.

It is not possible in either the Republic of Ireland or Northern Ireland for a criminal record check to reveal that an individual has been found guilty of a hate crime. Indeed, Justice Marrinan's (2020, p.119) review of hate crime legislation in Northern Ireland highlighted "the absence of any mechanism for recording a criminal record that a sentence was aggravated by hostility" as a shortcoming of the current system. Under the proposed sections 17-19 of the *Criminal Justice (Incitement to Violence or Hatred and Hate Offences) Bill 2022*, those convicted of aggravated offences, which use either the motivation or demonstration test, will have a hate crime conviction on their criminal record.

Figure 19



While a majority of those in the Republic of Ireland – 59% - were aware of the absence of such a mechanism in that jurisdiction, a majority of respondents in Northern Ireland – 57% - were not aware of this fact (see Figure 19).

## **PUHC Expert participant responses**

The findings presented in this section were reviewed by our PUHC expert participants who were then facilitated to discuss the questions "What does the general public need to understand about hate crime legislation by way of an information campaign?" and "How do we effectively communicate with the general public about hate crime?" The questions posed were specific to the phenomenon of hate crime, but in some cases participants chose to additionally reference hate speech in their answers.

There was general agreement among the expert participants that the clarity of public understanding of hate crime is a matter of importance. The public need, participants agreed, to know there is a clear difference between hate crime and hate speech, and to understand that difference. Participants operating in the Republic of Ireland held that members of the public should be made aware that the jurisdiction currently lacks legislation.

With respect to Northern Ireland's current legislative framework, and any future legislation introduced in the Republic of Ireland, expert participants held that the public should be made aware of the purpose and scope of legislation which addresses criminalised hate speech, the purpose and scope of hate crime legislation, and the difference is between the two.

It was agreed that a public awareness campaign is required. Expert participants proposed that this campaign would have the aim of informing the public about the scope and purpose of legislation to address hate crime and extreme hate speech, but would also have the function of educating those working in criminal justice institutions about their jurisdiction's legislative framework. It was further proposed that the public should be made aware of the limits of legislative and more specifically criminal justice responses: hate crime legislation is just one tool to address hate crime. One group recommended that the scope of current and newly introduced legislation and its (expected) operation should be clearly articulated and explained to minority communities so as to manage expectations. Another group of expert participants were of the view that the public should be informed as the training provided to criminal justice practitioners.

Two groups highlighted that, as minority communities will be among the targets of this public awareness campaign, the delivery of the message must be carefully calibrated, to ensure that it does not retraumatise or trigger victims. One suggestion was to focus on the victim of hate crime being supported after the event, rather than replaying the incident.

One group of expert participants provided detailed proposals for dissemination strategies, and was of the view that it should be a multi-media campaign including social media, billboards, and print and broadcast media. The importance of involving civil society in the development of these campaigns was highlighted, though it was noted that civil society should not be responsibilised for realising the campaign.

Finally, while most of the discussion focused on the need for a public education campaign, expert participants also perceived a need for training across and within criminal justice institutions, as well as for those who engage in victim support. The provision of education in schools also received support.

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# 6 The stigma of a hate crime conviction

## Introduction

Though the question as to whether a conviction for a hate crime should appear on the criminal record of a convicted person is hotly contended, parties to this debate generally concur that the label of hate crime offender is stigmatising. The difference between the levels of social or public stigma associated with a criminal conviction generally and a hate crime conviction specifically is however an issue which is underexplored in the international literature. The PUHC team have developed measures to probe this matter.

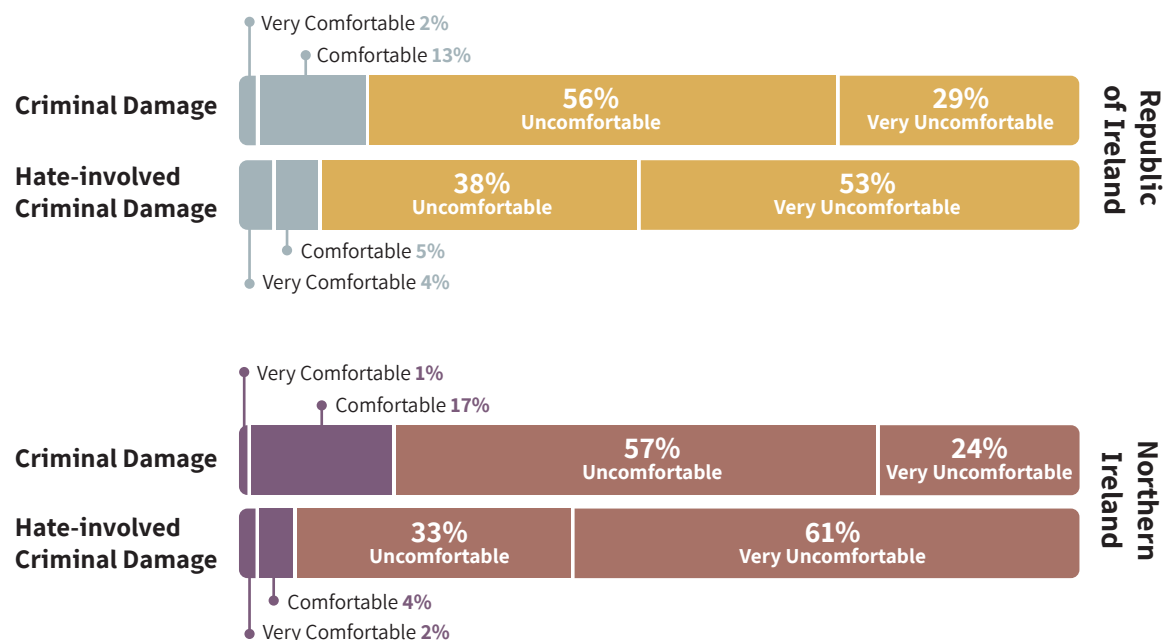
## Impact of a conviction for hate crime on employability

In both the Republic of Ireland, through the operation of the *National Vetting Bureau (Children and Vulnerable Persons) Act 2012*, and Northern Ireland, through the operation of the Rehabilitation of Offenders (Northern Ireland) Order 1978 and Part V of the Police Act 1997, there are a range of roles for which police vetting or disclosure is a legal requirement. To evaluate the relative employability of a person with a hate crime conviction, we asked respondents how willing they would be to employ a person with (a) a criminal conviction and (b) a conviction for the same offence which was a hate crime. In order to ensure the equivalence of the base offence, we chose to name it, selecting criminal damage.

Specifically, survey respondents were asked two questions, first: “If you were an employer how comfortable would you be with hiring someone with a conviction for vandalising private property” and second: “If you were an employer how comfortable would you be with hiring someone with a conviction for a hate crime which took the form of vandalising private property”. The four possible responses to each question were very comfortable, comfortable, uncomfortable and very uncomfortable.

Figure 20: **Effect of hate crime on employability**

If you were an employer how comfortable would you be hiring someone with a conviction for:



As shown in Figure 20, in both jurisdictions, a larger majority of respondents are uncomfortable or very uncomfortable with the prospect of employing someone with a conviction for hate crime compared to a conviction for an equivalent non-hate involved crime. In the Republic of Ireland, just 29% stated that they would feel very uncomfortable employing a person with a conviction for criminal damage, increasing to 53% for someone with a conviction for hate involved criminal damage. In Northern Ireland, 24% reported that they would feel very uncomfortable hiring someone with a conviction for criminal damage increasing to 61% for the hate involved version of the same offence.

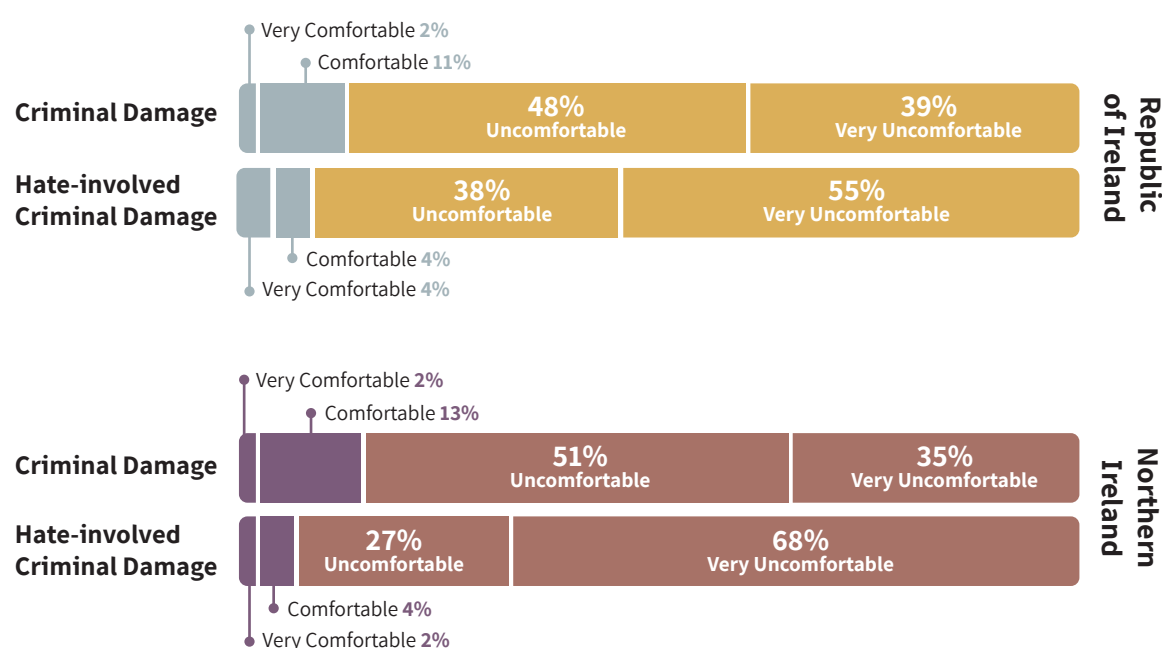


## Impact of a conviction for hate crime on social distance

We then sought to determine the impact of a conviction on social distance (cf Mac Gréil 1977, 1996, 2011) by presenting a question which probes how comfortable respondents would be having a neighbour who was (a) convicted of a crime, and (b) convicted of an equivalent crime committed with a hate element. Again, the base offence was specified as criminal damage.

Figure 21: **Effect of hate crime on social distance**

How comfortable would you be with having a neighbour with a conviction for:



As with employability, across both jurisdictions (see Figure 21), a larger majority of respondents are uncomfortable or very uncomfortable with the prospect of having a neighbour who has been convicted of a hate crime compared to a neighbour who has been convicted of an equivalent non-hate involved crime. For example, while 39% of respondents in the Republic of Ireland were very uncomfortable with the idea of having a neighbour convicted of property damage, the percentage increased to 55% when a hate element was involved. In Northern Ireland, the increase was even larger, with the percentage nearly doubling from 35% to 68%.

## **PUHC expert participant responses**

As before, the findings presented in this section were presented to PUHC expert participants, who discussed it in small groups and then reported back to the group as a whole. The prompts PUHC expert participants were asked to respond to were: “How can we promote rehabilitation for hate crime offenders?” and “How can we promote reintegration for hate crime offenders?”

In response to these questions, there were extensive discussions with respect to the importance of restorative justice, both from the perspective of the victim and from the perspective of the offender and their rehabilitation. From the perspective of the victim, the importance of involving victims at all stages of the process was highlighted.

The question as to at what stage in the process restorative justice should be engaged was raised, with one group asserting that the Department of Justice in the Republic of Ireland will want to see a lot of convictions under the new legislation to show that the legislation is successful: over time, the group believed, this number would reduce as the legislation has (they anticipate) the effect of reducing the prevalence of hate crime.

As to penalties, groups discussed potential criminal justice responses to an individual convicted of a hate crime, or for whom a sentence aggravation is warranted. While asserting that the harms of hate crime are more significant, and that an enhanced penalty is warranted, one group were of the view that the sentencing range should be wide, with restorative justice available as a key criminal justice response to hate crime offending. In particular, it was proposed that community service orders should be considered as an alternative to custodial sentences.

It was also acknowledged that some people will require custodial interventions, and it was agreed that work should be conducted while the individual is in custody with respect to addressing the hate element of their offending in order to support their integration. The importance of an evidence-based programme for the reintegration of hate crime offenders was highlighted. In particular, reference was made to the need for probation services north and south to learn from one another on this issue.

Finally, in order to promote reintegration in particular, the importance of spent convictions legislation was highlighted.

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# 7 Legal responses to hate crime

## Introduction

In both the Republic of Ireland and Northern Ireland, law reform processes are underway with respect to the introduction of hate crime legislation. Two key decisions which need to be made in this context are first, the range of identity groups included in the legislation, and second, the evidential test used to determine the hate element of a crime (Mason 2014; Walters 2022).

## The range of identity groups included in legislation

One of the key decisions to be made when legislating against hate crime is to determine which groups are included in the range of so-called protected characteristics (Schweppe 2011). The range of groups included in existing legislation in Northern Ireland are race, religion, sexual orientation, and disability, and though there is no legislation in the Republic of Ireland as yet, the Prohibition of Incitement to Hatred Act 1989 addresses itself to hatred against individuals or groups on the basis of their race, colour, nationality, religion, ethnic or national origins, membership of the Travelling community or sexual orientation.

In Northern Ireland and the Republic of Ireland we asked respondents their levels of agreement with the statement “In your opinion, which of the following groups should be protected by hate crime legislation”. On presentation of each group, the responses available were: strongly agree; agree; neither agree nor disagree; disagree; strongly disagree.

Figure 22: Which groups should be protected by hate crime legislation

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■ NI

### Which of the following groups should be protected by hate crime legislation?

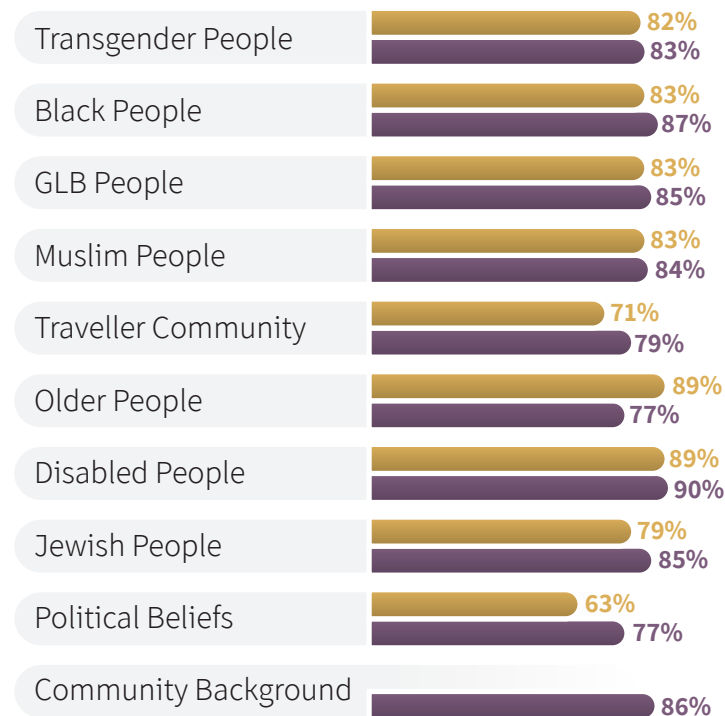


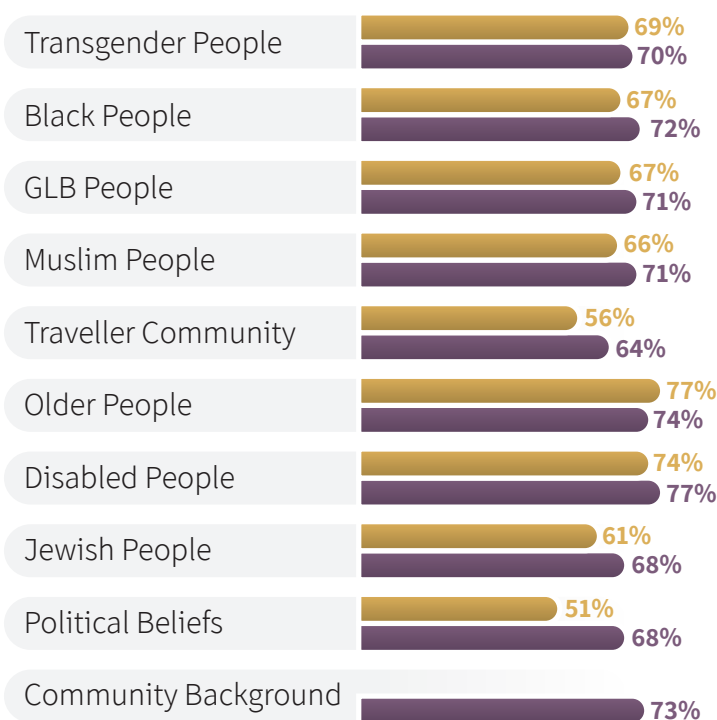
Figure 22 presents, for each identity group, the cumulative percentage of respondents who either agreed or strongly agreed that the category should be protected by hate crime legislation. In both jurisdictions, more than 75% of respondents agreed or strongly agreed that older people, disabled people, GLB people, Black people, Muslim people, transgender people, and Jewish people warranted protection. In the Republic of Ireland, levels of support were somewhat lower with respect to people from the Traveller community (71%) and with respect to political beliefs (63%). In Northern Ireland, 79% and 77% of respondents agreed or strongly agreed with the protection of these groups. The question regarding protection on the grounds of community background was only asked in Northern Ireland and a very strong majority (86%) expressed support for legal protections in this regard.

We also examined the question of public support for a sentence uplift in respect to specific identity groups. Respondents were presented with the statement “Compared to the sentence for regular assault, the sentence for assault motivated by prejudice, bias or hate against the following groups should be”. The options available were “A lot higher”, “A little higher”, “The same”, “A little lower”, “A lot lower”. For each identity category, Figure 23 presents the cumulative percentage of respondents who stated that the sentence should be either a little or a lot higher.

Figure 23: **Sentencing hate crime**

■ ROI ■ NI

**Compared to the sentence for regular assault, the sentence for assault motivated by prejudice, bias or hate against the following groups should be a lot/little higher**

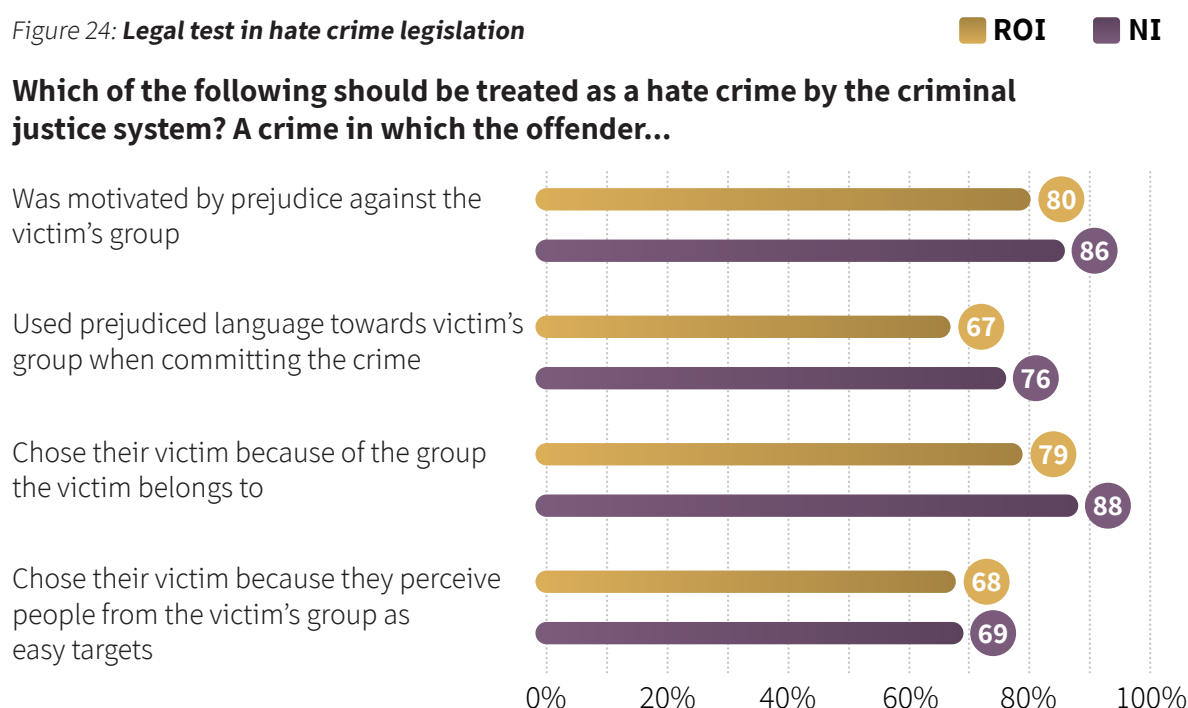


For all named groups, the majority of respondents across both jurisdictions were of the view that crimes motivated by hate, bias or prejudice should be subject to a sentence uplift. Of note, in every case the percentage of respondents supporting a sentence uplift was smaller than the percentage of respondents supporting the protection of the group in hate crime legislation (see Figure 23). Levels of public support for legislative protection are not equivalent to levels of support for more punitive sentences.

## The legal test in hate crime legislation

In drafting legislation, key determinations must be made with respect to the manner in which the hate element is defined. We developed items which assess the level of public support for the three tests most commonly employed in legislation internationally using accessible language: first, the animus model, which incorporates two tests commonly described as the “motivation test”, and the “demonstration test”; and then the the discriminatory selection model (Chalmers and Leverick 2017; Walters 2022). Respondents were asked to respond “yes” only to those statements which they believed to be true, could select yes to as many options as they wished, and could also choose “None of the above” as an option. In Northern Ireland, 0.3% of respondents chose none of the above, and in the Republic of Ireland, 3.7% of respondents chose this option.

Figure 24: **Legal test in hate crime legislation**



The first statement, that the offender “was motivated by prejudice against the victim’s group” is used across a range of common law jurisdictions (see Walters 2022) including Northern Ireland, and is currently included in the Criminal Justice (Incitement to Violence or Hatred and Hate Offences) Bill 2022 in the aggravated offences provisions. It is supported by a large majority of respondents on both sides of the border, with 80% in the Republic of Ireland and 86% in Northern Ireland supporting this model of legislation.

The second option seeks to understand levels of support for the “demonstration test”, which is another way in which the animus model can be incorporated into legislation. Walters (2022, p.182) explains the distinction between the motivation and demonstration test as it is interpreted in England and Wales as follows: “Most cases of this type involve violence or threats of violence

where the victim is denigrated for their group characteristic. While it has been shown that slurs and epithets can be used as proof of hate motivation, what is important under the demonstration test is that the offender has actively expressed identity-based hostility which has occurred as part of a basic offence. Why the offence was committed does not matter in law under such a test.” This test is used in the Northern Ireland 2004 Order, and is currently included in the Criminal Justice (Incitement to Violence or Hatred and Hate Offences) Bill 2022 in the aggravated offences provisions. We operationalise it here by referencing whether the offender used “prejudicial language with respect to the victim’s group when committing a crime.” This proposition enjoys less support from respondents on both sides of the border than the motivation test, with 67% of those in the Republic of Ireland supporting this model, and 76% of those in Northern Ireland supporting this approach.

The third option – where the offender “chose their victim because of the group the victim belongs to” – reflects what is referred to as the “discriminatory selection model”. While this model is not used in Northern Ireland or part of the proposed Bill in the Republic of Ireland, it is a common test used in hate crime legislation internationally (see Walters 2022), and was recommended by Marrinan (2020) for introduction in Northern Ireland. The test has the support of a large majority across both jurisdictions at levels similar to the support for the motivation test, with 79% in the Republic of Ireland supporting the model, and 88% of those in Northern Ireland supporting this approach to legislating against hate.

The fourth option asks if an offender who “chose their victim because they perceive people from the victim’s group as easy targets” should be treated as having committed a hate crime. This item does not reflect a legal test but rather probes public opinion on whether crimes targeting victims because of a perceived vulnerability – a feature of offending against people with disabilities - should be considered a hate crime. This question is a matter of debate in scholarly literature and among practitioners and policy-makers internationally (Mason-Bish 2012). Support here was weaker and similar to that for the demonstration test in the Republic of Ireland, with 68% in the Republic of Ireland and 69% in Northern Ireland supporting the treatment of such offending as a hate crime.

## PUHC expert participant responses

The findings in this section were also presented to PUHC expert participants, who discussed it in small groups and then reported back to the group as a whole. The prompt participants were asked to respond to was: “Should this (the findings presented in Figure 24) impact how the State and/or civil society organisations approach hate crime legislation?”

PUHC expert participants asserted that it is important that the law criminalises those behaviours the society in general believes should be criminalised, but also articulated the important role that legislation has in influencing public attitudes and behaviours. It was suggested that public buy-in at a general level was important, but also argued that the views of the public should not influence the structure of the legislation: rather, the foundation of the legislation should be in human rights, and particularly the rights of those whom the legislation seeks to protect. At the same time participants expressed the opinion that the views of stakeholders (such as victims, advocates and criminal justice professionals) should be taken into account. All that said, the question was asked as to who government and state officials listen to.

Aside from the question as to whether public opinion should impact how the State responds to hate crime legislation, one group sought to emphasise that the objectives of the legislation must be realised in practice, and the focus must be on introducing legislation which works. On this issue, the importance of a review being built into the legislation was highlighted, and the approach of the Westminster parliament was highlighted as an example of good practice.

As to the results themselves, one group was surprised how supportive the public were of hate crime legislation; though another was surprised to see that support for the so-called “demonstration test” was comparatively low and stated that they thought it would be much higher.

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## 8 Social distance, prejudice, and political spectrum across the island of Ireland

### Introduction

This final section contextualises findings with respect to hate crime by providing up to date insights into the landscape of prejudice and tolerance in contemporary Ireland. Building in particular on the work of Mac Gréil (1977, 1996, 2011) we examine prejudice against commonly targeted groups using items adapted from the Bogardus Social Distance Scale (Bogardus 1967; Wark and Galliher 2017).

### Social distance – neighbour

The first item addresses respondents' level of comfort with having members of commonly targeted groups as a neighbour. We first asked respondents, on a scale of 0-10 where 0 is very uncomfortable and 10 is totally comfortable, how comfortable they would be having a someone with the named characteristic as a neighbour. Figure 25 presents the mean or average scores for each group.

Figure 25

**Average comfort with neighbour across a range of identity groups**

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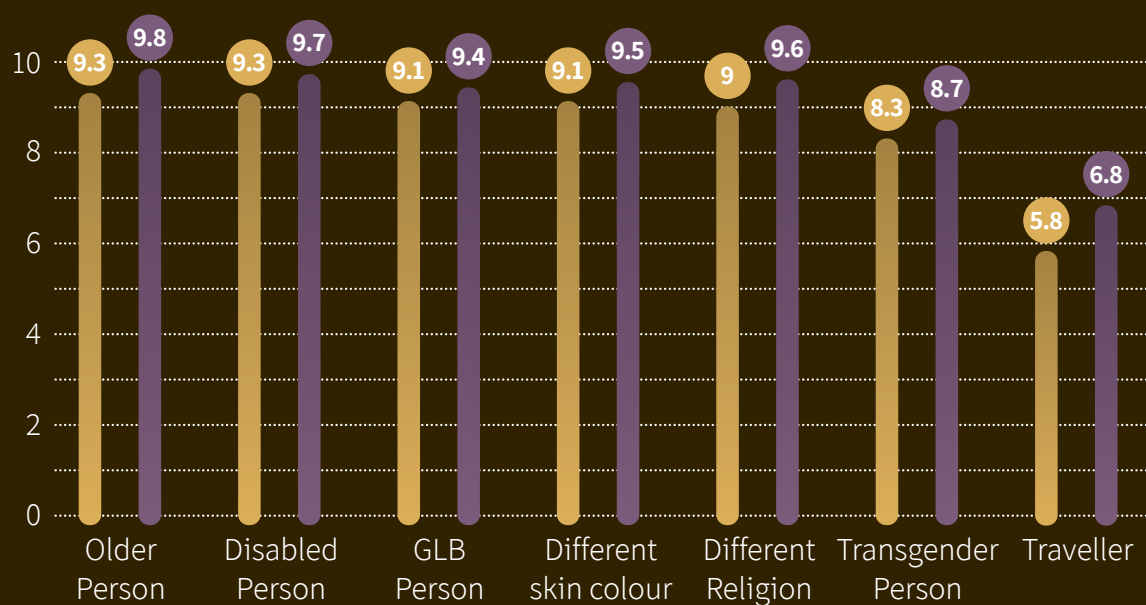
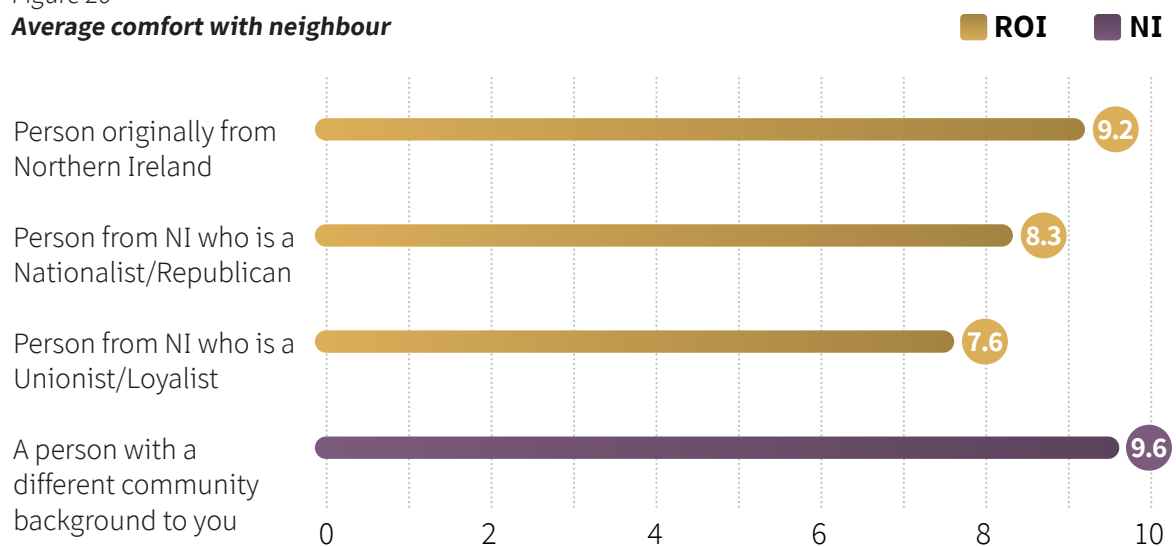


Figure 25 shows generally high levels of comfort - above 9 on a ten-point scale across nearly all categories. There are however two exceptions. Respondents in both the Republic of Ireland and Northern Ireland were, on average, slightly less comfortable with the prospect of having a transgender person as a neighbour (8.3 and 8.7, respectively) and considerably less comfortable with having someone of Traveller ethnicity as a neighbour (5.8 in the Republic of Ireland and 6.8 in Northern Ireland).

In the Republic of Ireland, we also asked how comfortable respondents would be having someone from Northern Ireland as a neighbour, and then someone with a political identity in Northern Ireland as a neighbour. We asked a similar question of survey respondents in Northern Ireland with respect to an individual from a different community background than themselves (see Figure 26).

Figure 26

**Average comfort with neighbour**



For respondents from the Republic of Ireland, average comfort was highest in respect to people from Northern Ireland of an unspecified community background followed by people from Northern Ireland who are nationalists/republicans, followed by people who are from Northern Ireland who are unionists/loyalists. In Northern Ireland, average comfort was very high for people “from a different community background” (9.6 on a ten point scale).

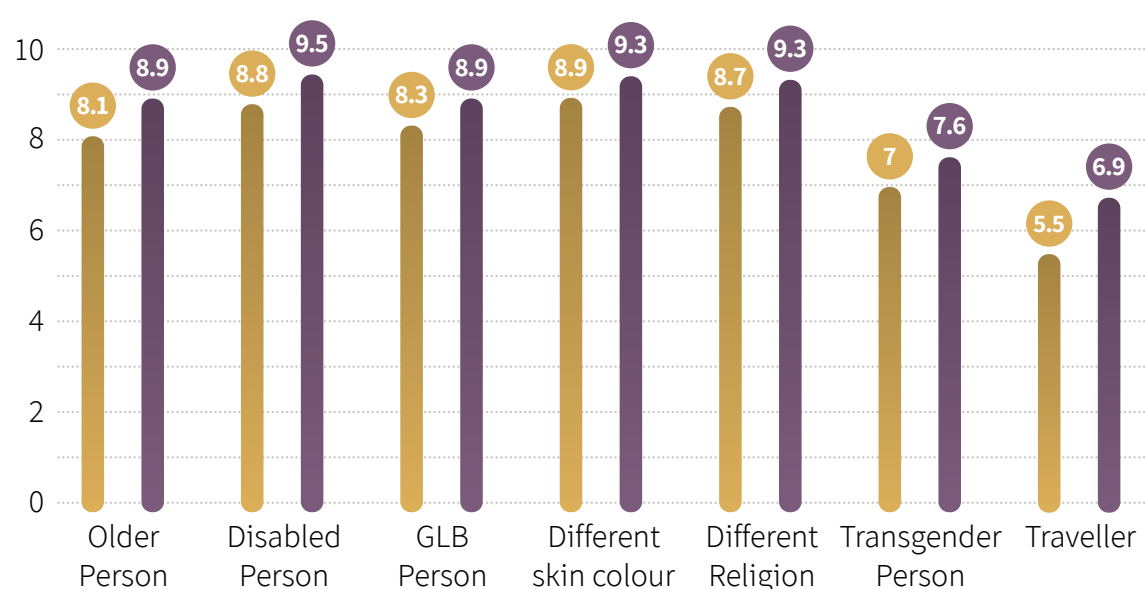
## Social distance – family member

In the tradition of social distance scales, Weaver (2008) discusses entrance to the family as the closest level of social intimacy. We asked respondents, on a scale of 0-10 where 0 is very uncomfortable and 10 is totally comfortable, how comfortable they would be having someone with the named characteristic as a family member (Figure 27).

Figure 27

**Average comfort with family member across a range of identity groups**

■ ROI ■ NI

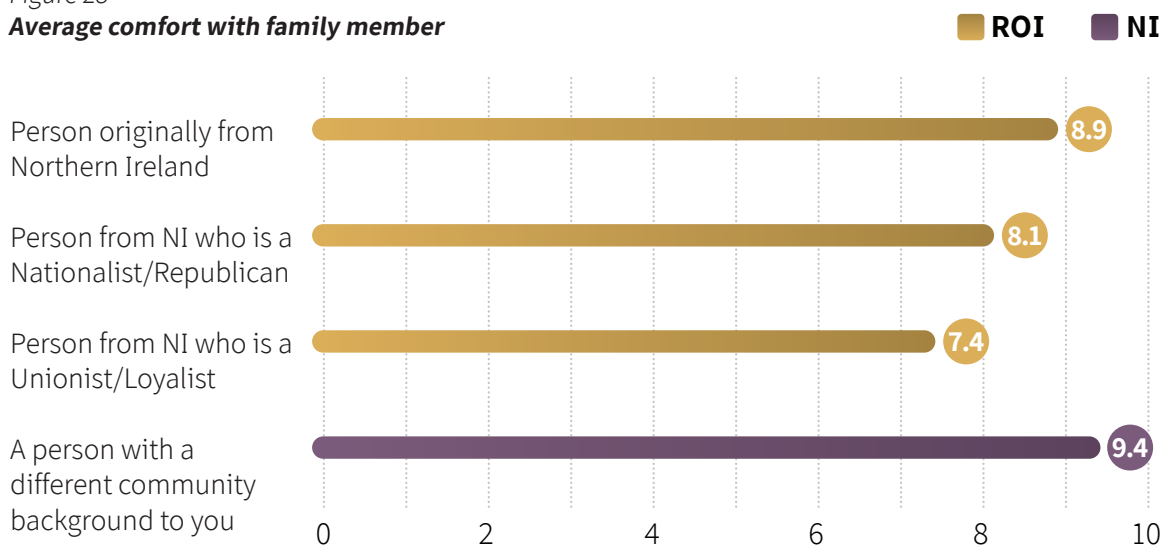


For the most part, as we see in Figure 27, comfort levels remain high, above 8 on a ten point scale across nearly all categories in both jurisdictions and above 9 in three categories in Northern Ireland. In general, the results follow the same basic patterns as in respect to having someone of that identity as a neighbour with the qualification that comfort is lower for each of the groups.

As was the case in respect to the previous social distance item, respondents in both the Republic of Ireland and Northern Ireland were slightly less comfortable with the prospect of having a transgender person (7 and 7.6, respectively) or a person of Traveller ethnicity as a neighbour (5.45 and 6.9 respectively) compared to other groups. Those in the Republic of Ireland, on average, articulate a greater desire for social distance from people of Traveller ethnicity than do respondents in Northern Ireland.

In the Republic of Ireland, we also asked how comfortable respondents would be having someone from Northern Ireland as a family member, and then someone with a political identity associated with Northern Ireland as a family member (Figure 28). We asked a similar question with survey respondents in Northern Ireland with respect to an individual from a different community background than themselves.

Figure 28

**Average comfort with family member**

The same pattern holds as in respect to the item probing comfort with having someone as a neighbour. For respondents from the Republic of Ireland, average comfort was highest in respect to people originally from Northern Ireland with an unspecified community background followed by people from Northern Ireland who are nationalists/republicans, followed by people who are from Northern Ireland who are unionists/loyalists. In Northern Ireland, average comfort was again very high for people “from a different community background” and almost equal to the mean score for having someone of that identity as a neighbour (9.6 compared to 9.4 on a ten point scale).

## 9 Conclusions and recommendations

The *Public Understandings of Hate Crime: Ireland, North and South* research presents crucial findings regarding public understandings of hate crime and its impacts, perceptions of current criminal justice responses to hate crime and options for reform, as well as measuring the impact of a conviction for a hate crime and levels of prejudice in society.

Across both jurisdictions we see a clear appreciation among the general public of the direct and indirect harms of hate crime. The majority of respondents in both parts of the island appreciate the fact that hate crimes are more likely to have a psychological effect on their victims, and that hate crimes spread fear and isolation among minority communities. Only a minority on both sides of the border – less than a fifth – are of the view that punishing hate crime more severely than non-hate crimes is a violation of the freedom of expression. In both jurisdictions a majority view hate crime as a serious and growing problem in their own country.

The majority of the public in both jurisdictions appear to appreciate the symbolic value of hate crime legislation, but have lower expectations for the deterrent effects of associated punitive sanctions. Regardless of the presence or absence of hate crime legislation, public perception of current criminal justice responses to hate crime can be characterised as concerning. In both jurisdictions only a minority of the public regard the police or courts' response to hate crime as effective. Public trust in criminal justice responses is essential to public co-operation including the foundational step of reporting hate crime (EStAR 2020).

PUHC has identified concerning shortfalls in public knowledge regarding the current legal position with respect to hate crime in both jurisdictions. Misinformation, including with respect to the very presence of hate crime legislation on the statute books is in evidence. The majority of the public are misinformed about the availability of hate crime charges to police and prosecutors. Half of those in Northern Ireland and a majority of those in the Republic are misinformed regarding the availability of sentence uplifts to the courts. A majority of respondents in Northern Ireland are also not aware that in that jurisdiction a hate crime conviction will not appear on the convicted person's criminal record. Such fundamental misapprehension of the legal position with respect to hate crime may speak to a wider issue with public knowledge regarding the criminal law. Nonetheless, it is of concern if potential victims', offenders, witnesses and bystanders have yet to be adequately informed about the manner in which they can expect hate crimes to be treated by the criminal justice system, including in a jurisdiction with hate crime laws on the statute books. Such misinformation can also contribute to unrealistic expectations and public frustration with criminal justice responses (Iganski 1999; Mason 2015).

To law reform processes, PUHC contributes original insights into the additional stigma associated with the label of hate crime offender beyond that associated with the already marginalising label of convicted offender. PUHC points to implications for employability and integration which may in turn impact on the potential for the rehabilitation of people who engage in hate involved offending behaviour (Bland et al 2023). PUHC offers reform processes insights into levels of public support for the protection of commonly targeted groups, legal tests and punitive approaches. We find that there is a high level of public support for the protection of a broad range of characteristics; greatest support for the motivation and discriminatory selection models, and majority support for sentence uplifts. It is not our intention that legislative drafting be driven by popular sentiment, and we particularly caution against 'penal populism' in the formulation of hate crime laws and reforms (Pap 2021). On the contrary, we take the view that such findings need to be used cautiously and considered in tandem with the insights we provide into current levels of prejudice against categories. Indeed the groups whom the general public are least willing to protect should be considered as potentially most in need of protection. In this sense, we believe that the information provided by PUHC will be useful to legislators, drafters and policy makers in understanding the challenges and supports at hand in introducing evidence-informed reforms.

In conclusion, the PUHC research demonstrates the value of an all-island approach to educating the public about criminal justice responses to hate crime. The findings evidence many similarities in public information needs across both jurisdictions. Moreover, attitudes towards commonly targeted categories bear strong similarities across both jurisdictions. PUHC findings point to opportunities for cross-border initiatives to foster the valuing of transgender and Traveller communities in particular. In addition, PUHC highlights opportunities to bring the general populations of both parts of the island closer together. The findings evidence the need to continue to develop mutual understanding across the border, and the opportunity for the whole island to learn and benefit from bridge building successes within Northern Ireland.

## **Recommendations**

### ***All-island Community of Practice in Countering Hate***

The qualitative and quantitative findings of the PUHC research point to significant opportunities from cross border knowledge transfer and collaborative learning in respect to addressing hate on the island of Ireland. It is envisaged that this CoP would foster and sustain links between and among State and civil society stakeholders addressing hate on the island.

### ***Redirection and Rehabilitation***

Following from needs and opportunities highlighted by the PUHC expert participants, it is recommended to build within the Countering Hate CoP a network of practitioners, policy-makers and scholars working on understanding, developing and evaluating alternatives to punitive approaches to addressing hate crime. Specifically, it is recommended that this group be resourced to collectively develop good practice models in restorative justice options for hate crime offending and rehabilitation. The research team are aware of the excellent model of collaboration between the probation services north and south which might be built upon.

### ***Cross-border Public Information Campaign***

PUHC findings support the warrant for an all-island public information campaign to address gaps in public understandings of hate crime and criminal justice responses identified by the research. PUHC expert participants expressed the view that the PUHC findings provide the information that is needed to support a public information campaign to both the general public and minority communities, and could be used as a media tool.

### ***Public Education Campaign***

The population of the island of Ireland demonstrate high levels of comfort with difference. The research team assert that PUHC findings can usefully be used by state and civil society stakeholders to help counter the impact of domestic and international hate groups and rhetoric on this island. Using PUHC findings we can reinforce the populations, self-identification as supportive of diversity and inclusion, bolstering the public against divisive forces.

### ***All-island Programme for Fostering Intergroup Contact***

PUHC research points to the presence of ongoing opportunities to further social cohesion within and across borders by building intergroup contact in particular with the island's transgender and Traveller communities and between people from diverse community backgrounds north and south.

***PUHC 2.0***

PUHC expert participants were supportive of the team's stated intention to pursue a further iteration of the survey and the eventual conduct of the research on a longitudinal basis to chart the changes in the views of the populations over time. Expert participants proposed the addition of questions probing how the public's attitudes towards convicted offenders changes if that offender has undergone rehabilitative measures or engaged in restorative justice.

***Public Understandings of Hate Speech***

PUHC expert participants recommended that a similar piece of research be carried out in relation to public understandings of hate speech, with particular emphasis on public perception of what constitutes criminalised hate speech.

***Public Understandings of Hate Crime: Next Steps***

Although the PUHC funding period has concluded, the research team will continue to disseminate the data including, at the behest of the expert participants to the research, to those engaged in law reform processes. The PUHC team will particularly focus on publishing research which disaggregates the data by minority status, and profiling the "moveable middle".



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## Case Law

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# About the ECSH

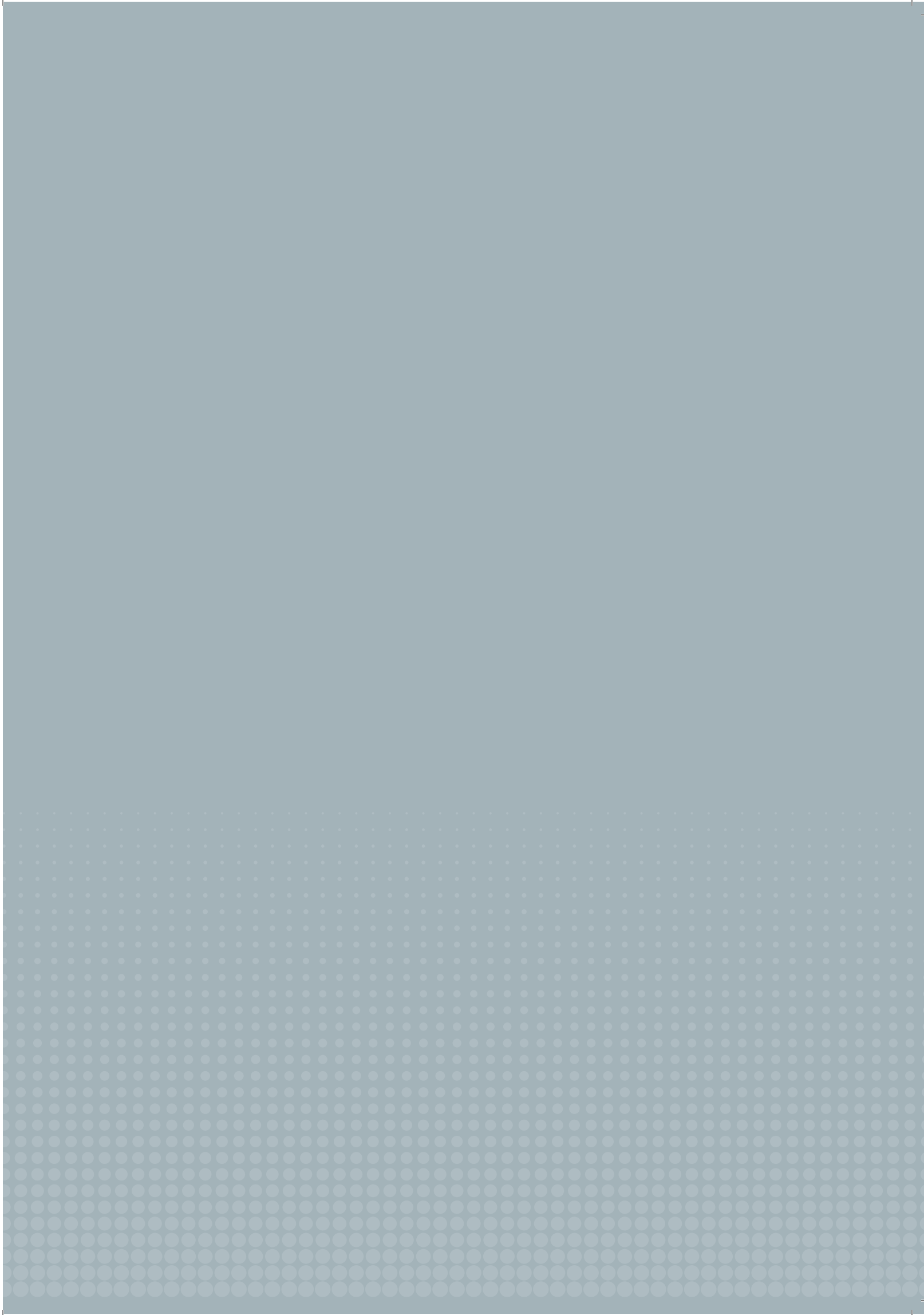
The aim of the European Centre for the Study of Hate ([www.ul.ie/ecsh](http://www.ul.ie/ecsh)) is to understand the hate that excludes and divides and provide the tools to respond to hate effectively. An open, inclusive, and safe society for all is a core aim of the European project. This vision is under threat from the growing influence of those who wish to exclude minorities from society because of who they are or what they represent. Where hate is politicised, cultivated, and spreads across borders, it makes the European way of life unattainable for minority communities. Led by its co-Directors, Professor Amanda Haynes and Professor Jennifer Schweppe, the work of the ECSH is organised by five themes:

- European Understandings of Hate
- Growing Up in an Inclusive Europe
- Criminalising Hate
- Populism, Politics, and Exclusion
- Margins and Marginality

The ECSH operates across multiple levels of orientation, with members working on interrelated topics -from individual prejudice (micro) to community impact (meso) to structural and legal contexts (macro). Members of the Centre are drawn from the disciplines of business, sociology, law, musicology, education and psychology. The ECSH advances evidence-informed dialogue at European and national levels on challenging hate towards those who are marginalised or stigmatised and is the nexus for research-policy-practice linkages.

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