Professor Kevin J. Brown's response to the Consultation on the Criminal Justice (Sentencing etc.) Bill

Brown, K. J. (2026). *Professor Kevin J. Brown's response to the Consultation on the Criminal Justice (Sentencing etc.) Bill*.

Document Version:
Publisher's PDF, also known as Version of record

Queen's University Belfast - Research Portal:
Link to publication record in Queen's University Belfast Research Portal

Publisher rights
Copyright 2026 The Author. All Rights Reserved.

General rights
Copyright for the publications made accessible via the Queen's University Belfast Research Portal is retained by the author(s) and / or other copyright owners and it is a condition of accessing these publications that users recognise and abide by the legal requirements associated with these rights.

Take down policy
The Research Portal is Queen's institutional repository that provides access to Queen's research output. Every effort has been made to ensure that content in the Research Portal does not infringe any person's rights, or applicable UK laws. If you discover content in the Research Portal that you believe breaches copyright or violates any law, please contact openaccess@qub.ac.uk.

Open Access
This research has been made openly available by Queen's academics and its Open Research team. We would love to hear how access to this research benefits you. – Share your feedback with us: http://go.qub.ac.uk/oa-feedback

Download date:09. Nov. 2026

Response to the Consultation on the Criminal Justice (Sentencing etc.) Bill

For the Committee for Justice for the Northern Ireland Assembly

Professor Kevin J. Brown

Professor of Criminal Law, Queen's University Belfast

k.brown@qub.ac.uk

22 May 2026

Guidance Note

Nature and Context of the Submission

This document is a formal consultation response submitted to the Justice Committee of the Northern Ireland Assembly in connection with its scrutiny of the Criminal Justice (Sentencing etc.) Bill. It was submitted in a personal academic capacity by Professor Kevin J. Brown, Professor of Criminal Law at Queen's University Belfast, drawing on research in criminal law and sentencing, including collaborative research conducted with Dr Faith Gordon on behalf of the Commissioner for Older People for Northern Ireland.

The submission addresses three proposed amendments to the Bill, each supported by detailed legal analysis, comparative material, and proposed legislative drafting. It engages directly with the text of the Bill as introduced and with the Department of Justice's published consultation documents, Way Forward document, and Explanatory and Financial Memorandum.

The Three Proposed Amendments

Part 1A: Restructuring the Proportionality Test

The submission identifies a fundamental deficiency in clause 1(4) of the Bill, which provides, for the first time in Northern Ireland, a statutory definition of proportionate sentencing. The definition makes no express reference to the harm caused by the offence, including its impact on victims and the wider community, nor to the culpability of the offender in committing it. In their place, the Bill uses the broader and less precise formulations of 'the circumstances of the offence' and 'the character and circumstances of the offender'.

The submission argues that this formulation departs without justification from the framework already applied by the Northern Ireland courts, as reflected in the Magistrates' Courts Sentencing Guidelines and the consistent practice of the Court of Appeal. It also departs from the approach taken in England and Wales under section 63 of the Sentencing Act 2020, the Scottish Sentencing Council's Sentencing Process guideline, and the framework identified in the Department of Justice's own 2019 Sentencing Review consultation document, which explicitly identified culpability and harm as the two parameters of seriousness.

The proposed amendment replaces clause 1(4) with a clean two-limb seriousness test based on harm and culpability, and introduces a new clause 1(4A) locating aggravating and mitigating factors within the proportionality assessment but separately from and subsequent to the seriousness assessment, with an express prohibition on double counting. This mirrors the structured approach of the NI Magistrates' Courts Sentencing Guidelines and the Scottish Sentencing Council's eight-step sentencing process.

Part 1B: Including Denunciation among the Purposes of Sentencing

The submission identifies the absence of denunciation from the list of purposes of sentencing in clause 1(2) as a significant omission. Denunciation — the articulation by the court of the

wrongfulness of the offender's conduct — is an established function of sentencing, grounded in the theoretical concept of censure developed in the academic literature. Courts routinely express condemnation in their sentencing remarks, yet the statutory framework provides no express recognition of that function.

The submission proposes the addition of a new purpose at clause 1(2)(f): 'the denunciation of unlawful conduct'. It demonstrates that this formulation is well established across comparable jurisdictions, including the Criminal Code of Canada (section 718(a)), the New Zealand Sentencing Act 2002 (section 7(1)(e)), multiple Australian jurisdictions, and the Scottish Sentencing Council's Principles and Purposes of Sentencing guideline (2018).

Part 2: Including Age as a Protected Characteristic in Clause 33

The submission advances the case for adding age as a protected characteristic under clause 33 of the Bill, which provides for aggravation by hostility based on a protected characteristic. Age is not currently included among the protected characteristics, which are limited to race, religion, sexual orientation and disability.

The submission draws on empirical research by the author and Dr Faith Gordon, including collaborative research conducted on behalf of the Commissioner for Older People for Northern Ireland, to demonstrate that age-based hostility offending is a real and documented phenomenon. It addresses and rebuts the argument that age should be dealt with through the vulnerability aggravator rather than a hostility-based provision, demonstrating that the two aggravators capture different and complementary wrongs. It draws on the early Scottish experience following the commencement of age provisions under the Hate Crime and Public Order (Scotland) Act 2021, which confirms that cases do come forward and can be prosecuted effectively. The submission also presents public opinion data from Northern Ireland demonstrating substantial support for extending protection to age.

The proposed amendment is consistent with the recommendation of the Independent Review of Hate Crime Legislation in Northern Ireland led by Desmond Marrinan (2020), which recommended that age should be added as a protected characteristic.

Part 1 – Sentencing Framework

A. Clarifying the assessment of proportionality: recognising culpability and harm in defining seriousness

In plain terms, the Bill defines proportionate sentencing without mentioning victims, the harm they suffered, or the offender's culpability. This amendment makes all three explicit. This amendment is not about making sentences harsher. It is about making the law transparent.

The Bill introduces, for the first time in Northern Ireland, a statutory definition of what proportionate sentencing means. That is a significant step. Yet the definition in clause 1(4) makes no mention of two concepts that lie at the heart of any principled sentencing framework: the harm caused by the offence, including its impact on victims and the wider community, and the culpability of the offender in committing it. A statutory definition of proportionate sentencing that is silent on both harm and culpability is not merely incomplete. It fails to reflect what sentencing is fundamentally about and who it is meant to serve.

In their place, clause 1(4) refers to the circumstances of the offence and the character and circumstances of the offender. These are broad and imprecise formulations. The circumstances of the offence does not name harm. It leaves the impact on victims implicit at best. The character and circumstances of the offender imports the offender's personal history and wider circumstances, which bear on the appropriate sentence but not on the gravity of what was done. Neither formulation reflects the framework that Northern Ireland courts already apply in practice, which is built around culpability and harm as the two primary determinants of seriousness.

Notably, neither the Department's consultation on sentencing principles nor its 2021 Way Forward document addressed how proportionality should be defined or what the seriousness assessment should contain.[1] The formulation in clause 1(4) appears to have emerged from the drafting process without ever being put to public consultation, and the Explanatory and Financial Memorandum offers no justification for it.[2]

The absence of any justification is particularly striking given the Department's own published position. In its 2019 Sentencing Review consultation document, the Department stated explicitly that "for sentencing purposes the seriousness of an offence is determined by two main parameters: the culpability of the offender and the harm caused or risked being caused by the offence." [3] The Bill defines seriousness without mentioning either.

The proposed amendment addresses the deficiencies. Clause 1(4) is restructured around harm and culpability, the concepts that should lie at its heart and that the courts already apply. A new clause 1(4A) gives aggravating and mitigating factors their proper place within the proportionality assessment, separately from and subsequent to the assessment of seriousness,

---

[1] Department of Justice (2021) Sentencing Review Policy Consultation Report and Way Forward. DOJ.
[2] Department of Justice (2026) Criminal Justice (Sentencing etc) Bill: Explanatory and Financial Memorandum. DOJ. https://www.niassembly.gov.uk/assembly-business/legislation/2022-2027-mandate/primary-legislation-bills-22-27-mandate/criminal-justice-sentencing-etc-bill/efm---as-introduced/
[3] Department of Justice (2019) Sentencing Review Northern Ireland, Chapter 10, fn 11. DOJ. https://consultations.nidirect.gov.uk/doj/sentencing-review-northern-ireland/user_uploads/chapter-10--driving-offences-causing-death-or-serious--injury-22.10.19.pdf

with an express requirement that factors already reflected in the seriousness assessment are not counted again.

Proposed Legislative Amendment

It is proposed that clause 1(4) be replaced and a new clause 1(4A) inserted as follows:

1(4) In subsection (3)(a), proportionate means proportionate to the seriousness of the offence, or the combination of the offence and one or more offences associated with it, taking into account—

> (a) the harm caused by the offence, including any harm caused, intended to be caused, or which might foreseeably have been caused, to any victim and, where appropriate, to the wider community, and
>
> (b) the degree of culpability of the offender in committing the offence.

1(4A) In determining whether a sentence is proportionate for the purposes of subsection (3)(a), a court must also take into account any aggravating or mitigating factors not already considered in the assessment of seriousness under subsection (4).

Supporting Rationale

The absence of any express reference to harm in clause 1(4) is not a minor drafting oversight. Harm caused to victims and communities is one of the two primary determinants of the seriousness of an offence, the other being the culpability of the offender. That is the framework applied by the Magistrates' Courts Sentencing Guidelines for Northern Ireland, which identify culpability and harm as the two elements of the starting point for any sentencing exercise, defining harm as the effect or intended effect of the offending, including its physical, psychological and financial impact on victims and, where appropriate, on the wider community.[4] It is the framework applied consistently by the Court of Appeal across a range of offence categories.[5]

That this is the correct framework is confirmed by the Department's own published position. In its 2019 Sentencing Review consultation document, the Department stated that "for sentencing purposes the seriousness of an offence is determined by two main parameters: the culpability of the offender and the harm caused or risked being caused by the offence."[6] The Bill's definition of seriousness reflects neither parameter. The Committee is entitled to ask why.

The substitution of "character and circumstances of the offender" for culpability is equally problematic. Culpability is a legal concept capturing the nature and degree of the offender's fault in committing the offence.[7] "Character and circumstances of the offender" is a much

---

[4] Judiciary NI (2024) Magistrates' Courts Sentencing Guidelines: Introduction and General Principles. Judiciary NI. https://www.judiciaryni.uk/magistrates-courts-sentencing-guidelines-introduction-and-general-principles-0

[5] See for example, R v ZB [2022] NICA 69, R v Hegarty [2022] NICA 55 and R v Robinson [2022] NICA 30.

[6] Department of Justice (2019) Sentencing Review Northern Ireland, Chapter 10, fn 11. DOJ. https://consultations.nidirect.gov.uk/doj/sentencing-review-northern-ireland/user_uploads/chapter-10--driving-offences-causing-death-or-serious--injury-22.10.19.pdf

[7] Ashworth, A. (2015) Sentencing and Criminal Justice (6th edn). Cambridge University Press; von Hirsch, A. and Ashworth, A. (2005) Proportionate Sentencing: Exploring the Principles. Oxford University Press; Department of Justice (2019) Sentencing Review Northern Ireland, Chapter 10, fn 11.

broader formulation that imports the offender's personal history, background and wider circumstances. These are matters that bear on the appropriate sentence but not on the gravity of the offence itself. The Bill's formulation does not keep the offender-related component of the seriousness assessment tethered to the offence. Culpability does.

The comparative picture strongly supports the proposed restructuring. Section 63 of the Sentencing Act 2020 in England and Wales requires a court assessing seriousness to consider the offender's culpability and any harm caused, intended to be caused, or which might foreseeably have been caused. The Scottish Sentencing Council's Sentencing Process guideline, approved by the High Court of Justiciary and applicable to all sentencing decisions in Scotland, places the assessment of seriousness at Step 1, determined by culpability and harm, and expressly states that harm includes the impact on any victim or victims.[8] The Council itself noted that the guideline was designed to give greater prominence to harm caused to victims as a key part of the overall assessment of seriousness. Council of Europe Recommendation No. R (92) 17 on consistency in sentencing confirms at Principle A that proportionality requires that the sentence be kept in proportion to the seriousness of the current offence. The Bill departs from that consistent body of practice without justification.

The separation of seriousness from aggravating and mitigating factors also matters in practice. A court should not be able to count the same factor twice. Once when assessing the seriousness of the offence, and again when adjusting the sentence upwards or downwards. If, for example, the severity of harm to the victim is already reflected in the seriousness assessment under clause 1(4), it should not then be treated as a separate aggravating factor under clause 1(4A). The Bill as currently drafted, by placing both seriousness and aggravating factors within the same provision, creates precisely that risk. Clause 1(4A) addresses it by requiring a court to take into account only those aggravating and mitigating factors not already considered in the seriousness assessment — a requirement that is expressly built into the NI Magistrates' Courts Sentencing Guidelines and the Scottish Sentencing Council's sentencing process.[9]

The proposed amendment does not alter the principle of proportionality or the purposes of sentencing. It gives the proportionality principle a clearer, more principled and more transparent content, one that expressly recognises the harm done to victims and communities, replaces an imprecise formulation with the legally established concept of culpability, aligns with established NI judicial practice, and reflects the structured approach to sentencing taken in comparable jurisdictions.

[8] Scottish Sentencing Council (2018) The Sentencing Process. Scottish Sentencing Council. https://www.scottishsentencingcouncil.org.uk/media/jtbhlsre/the-sentencing-process-guideline-d.pdf

[9] Judiciary NI (2024) Magistrates' Courts Sentencing Guidelines: Introduction and General Principles. Judiciary NI. https://www.judiciaryni.uk/magistrates-courts-sentencing-guidelines-introduction-and-general-principles-0; Scottish Sentencing Council (2018) The Sentencing Process. Scottish Sentencing Council. https://www.scottishsentencingcouncil.org.uk/media/jtbhlsre/the-sentencing-process-guideline-d.pdf

B. Recognising the communicative function of sentencing: denunciation

Clause 1(2) of the Bill sets out the purposes of sentencing but does not include **denunciation of unlawful conduct** among them. This is a significant omission. Denunciation is the articulation by the court of the wrongfulness of the offender's conduct and is an established and recognised function of sentencing.[10] Courts routinely express censure or condemnation in their sentencing remarks. The failure to reflect that function in the statutory framework means that an important dimension of what sentencing does, and why it matters, is left without express recognition.

Proposed Legislative Amendment

Clause 1(2) currently lists five purposes of sentencing at (a) to (e). It is proposed to add:

(f) the denunciation of unlawful conduct.

Supporting Rationale

The inclusion of denunciation would not alter the structure of sentencing or displace any existing purpose. It would not require or justify more severe sentences, nor would it affect the principle of proportionality or the assessment of seriousness. Rather, it concerns how sentences are framed, explained and understood, not how they are calculated. In this sense, it complements existing purposes such as punishment and deterrence without duplicating them.

Giving denunciation express statutory recognition would improve the transparency and legitimacy of the sentencing framework. A court's condemnation of offending behaviour is widely understood to be among the aspects of sentencing most directly meaningful to victims and to the wider public. Where that function is clearly identified in the statute, it is easier to understand why a sentence has been imposed and what it is intended to communicate. Where it is left implicit, sentencing risks appearing technocratic; concerned only with outcomes rather than with the moral significance of the conduct being addressed.

The case for inclusion is supported by experience elsewhere:

- The Criminal Code of Canada (RSC 1985, c. C-46) expressly identifies, at section 718(a), denunciation of unlawful conduct as a purpose of sentencing, defined as the obligation to communicate society's condemnation of the offender's conduct, and links it expressly to the harm done to victims and the community.
- In New Zealand, Section 7(1)(e) of the Sentencing Act 2002 includes as a purpose of sentencing the denunciation of the conduct in which the offender was involved.
- Multiple Australian jurisdictions, including Queensland under the Penalties and Sentences Act 1992 s9 include denunciation as a statutory purpose in equivalent terms.
- The Scottish Sentencing Council's Principles and Purposes of Sentencing guideline (2018), approved by the High Court of Justiciary, includes "expressing disapproval of

[10] Ashworth, A. (2015) Sentencing and Criminal Justice (6th edn). Cambridge University Press; Duff, A. (2001) Punishment, Communication and Community. Oxford University Press; Gormley, J. (2024) 'Reconceptualising the effectiveness of sentencing: four perspectives'. Sentencing Council; Murphy, J.G. (2011) 'Repentance, Mercy, and Communicative Punishment', in Cruft, R., Kramer, M.H. and Reiff, M.R. (eds) Crime, Punishment, and Responsibility: The Jurisprudence of Antony Duff. Oxford University Press.

offending behaviour" as a purpose — a formulation the Council itself acknowledged is intended to represent the concept of denunciation.

These provisions reflect a shared understanding that sentencing is not purely instrumental, concerned only with deterrence, rehabilitation or public protection, but also communicative: it speaks to the offender, to the victim, and to the public about the seriousness with which the law regards the conduct in question. The Bill, as drafted, contains no equivalent provision.

The term "denunciation" is the appropriate formulation. It is legally precise, well established in comparative sentencing law, and directly captures the communicative function in question. The proposed amendment would bring the statutory framework into closer alignment with judicial practice and with the approach taken in comparable jurisdictions.

Part 2 - Why Age Should Now Be Included in Hate Crime Legislation

Age-based hostility offending is a real and documented phenomenon. There is no principled basis for treating it differently from hostility based on race, religion, sexual orientation or disability. Yet that is precisely what the Bill does. Clause 33 provides for a statutory hostility aggravation in respect of those four characteristics, but not age. That matters because a statutory aggravation does something a court's general sentencing discretion cannot: it requires the wrong to be named publicly, recorded on the conviction, and reflected explicitly in the sentence. Where age is not a protected characteristic, that recognition is unavailable, however, clearly the hostility is demonstrated.

This is not a new concern. The independent review of hate crime legislation in Northern Ireland, led by Desmond Marrinan, recommended that age should be added as a protected characteristic.[11] The Commissioner for Older People for Northern Ireland has submitted to this Committee in support of that reform and will appear before it in due course.[12] This submission supports that recommendation and sets out the case for it.

In what follows, I focus on age, reflecting my research expertise in this area. This should not be taken as opposition to the inclusion of other characteristics; rather, it is intended to provide a detailed and evidence-based case for one area where reform is particularly well supported.

1. The legal test is practical and once understood, shows that this behaviour already exists

There is sometimes a misconception that hate crime requires proof that an offence was entirely motivated by hatred, or that a victim must be specifically "targeted" because of their identity. That is not the case. The test is met where the offender either demonstrates hostility at the time of the offence or is motivated (in whole or in part) by hostility.[13]

Once this is understood, it becomes clear that behaviour that would meet the test for hostility-aggravated offending already occurs in relation to age. For example, if a woman in her 60s is assaulted and the offender shouts ageist abuse during the incident, that would meet the legal test *if age were included as a protected characteristic*. The prosecution would not need to prove that the victim was targeted because of her age or that the entire offence was driven by hostility, only that hostility was demonstrated or formed part of the motivation.

Similarly, if a care worker in a nursing home is found to have assaulted an older resident while using ageist language, that would also meet the test, again assuming age were protected. These examples illustrate that the issue is not whether such conduct exists, but whether the legal framework is equipped to recognise it as hostility aggravated.

[11] Marrinan, D. (2020) *Hate Crime Legislation in Northern Ireland: Independent Review*. Department of Justice.
[12] https://www.niassembly.gov.uk/globalassets/committee-blocks/justice/2022-2027/primary/crim-justice-sentencing-etc-bill/20260120-copni---sentencing-bill_redacted.pdf
[13] Criminal Justice (Sentencing etc) Bill clause 33(2).

2. The argument that age can be addressed through the vulnerability aggravator is flawed

Some of the debate to date has suggested that age should be dealt with under the new statutory vulnerability aggravator**,** rather than through a hostility-based provision.[14] That argument misunderstands what the two aggravators are designed to do.

The vulnerability aggravator applies where the victim was vulnerable and the offender was aware of that vulnerability. The Bill defines a vulnerable person as someone whose ability to protect themselves from "violence, abuse, neglect or exploitation is significantly impaired through physical or mental disability or illness, old age or any other reason." [15]

That definition is important. It does not mean that all older people are legally vulnerable. Many older people will not meet that threshold. A person in their 60s, 70s, or even 80s may be active, independent, and fully capable of protecting themselves, yet still be subjected to age-based hostility. In such a case, the vulnerability aggravator may not apply, but the age-based hostility would remain unrecognised.

The distinction is also one of principle. The vulnerability aggravator focuses on the victim's impaired ability to protect themselves. Hate crime law focuses on hostility based on membership, or presumed membership, of a protected group. These are different wrongs. Treating age solely through vulnerability risks reinforcing stereotypes that older people are inherently frail or dependent.

This can be illustrated by comparison with disability, which is already protected under hate crime legislation.**[16]** It would be widely regarded as inappropriate to suggest that offences against disabled people should be addressed only through a vulnerability aggravator. While some offences against disabled people involve exploitation of vulnerability, others are clearly driven by hostility. The law recognises this by providing for a hostility-based aggravation in addition to any consideration of vulnerability.

There is no principled basis for treating age differently. As with disability, some offences involving older victims may involve vulnerability, while others involve hostility, and some may involve both. A framework that recognises only vulnerability fails to capture the full range of wrongdoing.

The two aggravators should therefore not be treated as mutually exclusive. There may be cases where both apply: for example, an older person whose ability to protect themselves is significantly impaired because of old age is assaulted by someone who is aware of that vulnerability and, during the offence, uses ageist abuse. In that case, the vulnerability aggravator would capture the victim's impaired ability to protect themselves, while an age hostility aggravator would capture the hostility demonstrated towards age. The law should be capable of recognising both.

[14] Criminal Justice (Sentencing etc) Bill clause 36(2).
[15] Criminal Justice (Sentencing etc) Bill clause 36(7)(b).
[16] The Criminal Justice (No. 2) (Northern Ireland) Order 2004 Art. 2(3)(a)(iv); Criminal Justice (Sentencing etc) Bill clause 33(1)(d).

3. Age-based hostility causes the kind of harm hate crime law is designed to address

Victims of hostility-aggravated offences often experience greater psychological impact than victims of comparable non-hate offences.[17] For older people, even relatively minor incidents can have serious consequences, affecting independence, confidence and willingness to engage in everyday life.[18]

Research by Kevin J. Brown and Faith Gordon carried out on behalf of the Commissioner for Older People for Northern Ireland reinforces this point.[19] Their work shows that where there is a cluster or spate of offences involving older victims within a neighbourhood, the impact extends beyond those directly affected. Awareness of such incidents can generate heightened fear among older residents, leading to changes in behaviour, such as heightening security measures, reducing social interaction, or withdrawing from community life.

This pattern closely mirrors what is already recognised in relation to other protected characteristics: the harm is not confined to the individual victim, but is communicated across the wider group, affecting feelings of safety and belonging.[20] This is precisely the kind of wider, group-based harm that hate crime law is designed to recognise.

4. Early Scottish evidence confirms that age-based hostility offences occur in practice

There has been some scepticism about whether hostility-aggravated offences actually occur in relation to age, in part due to a misunderstanding of the legal test. The experience in Scotland is instructive in this regard. Age was recently added as a protected characteristic under the Hate Crime and Public Order (Scotland) Act 2021, but the relevant provisions only came into force in April 2024.[21]

Despite this very recent commencement, early police and prosecutorial data already record charges and prosecutions where the age aggravator has been applied.[22] This is significant. It shows that, once the legal framework is in place, cases do come forward and can be identified and prosecuted.

---

[17] Brunton-Smith, I., Jolliffe, D., & Garland, J. (2025). How does hate hurt more? National evidence for the varying emotional impacts of hate crime. *European journal of criminology*, 14773708251334266. Sullaway, M. (2004). Psychological Perspectives on Hate Crime Laws. Psychology, Public Policy, and Law, 10(3), 250–292.
[18] Brown, K. J., & Gordon, F. (2022). Improving access to justice for older victims of crime by reimagining conceptions of vulnerability. *Ageing & Society*, *42*(3), 614-631; Commissioner for Older People for Northern Ireland. (2023). A Different Crime: Offending Against Older People. COPNI; Gordon, F., & Brown, K. J. (2023). Older victims, legal need and access to justice in rural communities in Northern Ireland. In D. Newman , & F. Gordon (Eds.), Access to justice in rural communities: global perspectives (pp. 101-109). Hart Publishing.
[19] Brown, K. J. & Gordon, F. (2019). *Improving Access to Justice for Older Victims of Crime: Older People as Victims of Crime and the Response of the Criminal Justice System in Northern Ireland.* Commissioner for Older People for Northern Ireland.
[20] Perry, B. (2014). Exploring the community impacts of hate crime. In *The Routledge international handbook on hate crime*(pp. 47-58). Routledge.
[21] Hate Crime and Public Order (Scotland) Act 2021 s1.
[22] Crown Office and Procurator Fiscal Service. (2025) *Hate crime in Scotland, 2024-25.* Crown Office; Scottish Government. (2025) *Safer Communities and Justice Statistics Monthly Data Report: July 2025. A summary of justice and safer communities statistics. Scottish* Government.

The Scottish experience therefore provides concrete evidence that hostility-based offending against older people is not merely theoretical. It also demonstrates that the reform is both workable and capable of operating effectively within an existing system.

5. Public opinion supports extending protection to age

Research based on a representative survey of 1,000 adults in Northern Ireland provides a strong empirical foundation for reform.[23] The findings include specific analysis of which groups the public believe should be protected by hate crime legislation and show substantial support for extending protection to a broader range of characteristics, including age.

More broadly, respondents demonstrate a clear understanding of the psychological and social harms associated with hostility-aggravated offending and support enhanced sentencing in such cases. A majority also view hate crime as a serious and growing issue in Northern Ireland, while expressing concern about the effectiveness of current responses.

Conclusion

The exclusion of age from the list of protected characteristics in clause 33 is difficult to justify on any principled basis. The Bill already recognises that hostility based on race, religion, sexual orientation and disability warrants a distinct legal response. Age-based hostility is no different in character, no less harmful in its effects, and no less real in its occurrence. Treating it differently reflects not a principled distinction but an incomplete framework.

The reform proposed here is modest and workable. Scotland has already taken this step and the early evidence confirms that cases come forward and can be prosecuted effectively. The public in Northern Ireland supports extending protection to age. The Commissioner for Older People has made the same case to this Committee.

The question for the Committee is a straightforward one: is there a good reason to leave age-based hostility unrecognised in law when race, religion, sexual orientation and disability are all recognised? The Marrinan Review recommended that age should be added, alongside other characteristics. This submission does not address every characteristic recommended in that Review, but the case for age is clear, well-evidenced, and supported by the Commissioner for Older People. The Committee should recommend adding age as a protected characteristic.

[23] Haynes, A., Schweppe, J., Brown, K. J., & MacMillan, R. (2023). *Public understandings of hate crime: Ireland, north and south*. University of Limerick.