



House of Commons
Northern Ireland Affairs
Committee

**'Hate Crime': the Draft
Criminal Justice
(Northern Ireland)
Order 2004**

Fifth Report of Session 2003–04

Report, together with oral evidence

*Ordered by The House of Commons
to be printed 19 May 2004*

HC 615
[Incorporating HC 539–iii, Session 2003–04]
Published on 21 May 2004
by authority of the House of Commons
London: The Stationery Office Limited
£7.00

The Northern Ireland Affairs Committee

The Northern Ireland Affairs Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Northern Ireland Office (but excluding individual cases and advice given by the Crown Solicitor); and other matters within the responsibilities of the Secretary of State for Northern Ireland (but excluding the expenditure, administration and policy of the Office of the Director of Public Prosecutions, Northern Ireland and the drafting of legislation by the Office of the Legislative Counsel).

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Introduction

1. On 12 February 2004 the Committee announced an inquiry into ‘Hate Crime in Northern Ireland’.¹ The terms of reference for the inquiry were to:

Explore the reasons for the reported increase in crimes and incidents motivated by hatred within and between the communities of Northern Ireland

To examine the effectiveness of measures taken by Government and relevant agencies to tackle prejudice, and to support the victims of such prejudice; and

To assess the effectiveness of the existing law and proposed changes to that law.

2. On 9 February 2004 the Government had published its proposal for a draft Criminal Justice (Northern Ireland) Order 2004 which contained ‘proposals to deal with crimes based on hostility of race, sectarianism and sexual orientation’.² The Committee took oral evidence on these ‘hate crime’ aspects of the Government’s draft Order on 12 May.

3. We understand that the Government intends to lay the draft Order in Parliament in the next few weeks with a view to it passing into law by the end of July 2004. This brief interim report sets out our views only on the ‘hate crime’ measures set out in the draft Order.³ We intend to report more fully on the wider aspects of our inquiry later in the year.

‘Hate crime’ – a growing problem

4. ‘Hate crime’—crimes based on hostility of race, sectarianism and sexual orientation⁴—directed towards any group is abhorrent in a civilised society. The Committee received evidence that crime motivated by race, religion, and sexual orientation is a substantial and growing problem in Northern Ireland. For example, according to the Government, the rate of racial incidents in Northern Ireland in 2001/02 was 12.9 per 1000 of the minority ethnic population compared with 6.7 per 1000 in England and Wales.⁵ The Police Service of Northern Ireland (PSNI) provided us with statistics which show that the number of racist and homophobic incidents recorded has more than doubled from 226 and 35 respectively in 2002/03, to 453 and 71 in 2003/04.⁶ In absolute terms these numbers may seem modest but Mr Patrick Yu, the Executive Director of the Northern Ireland Council for Ethnic Minorities (NICEM) pointed out that there was substantial under-reporting of such crimes,⁷ and this was confirmed by evidence from the Equality Commission of Northern

1 Press Notice 13, 12 February 2004

2 Explanatory Memorandum, *Proposal For A Draft Criminal Justice (Northern Ireland) Order 2004*, Northern Ireland Office, 9 February 2004, Part 1

3 The proposed draft Order also contains proposals for increasing sentences for offences of violence, fear and harassment, and creates 2 new offences of vehicle taking (‘joy riding’). These aspect of the draft Order are outside the scope of this report

4 Ibid, Part 1

5 HCR 13. According to Mr Patrick Yu, Executive Director of the Northern Ireland Council for Ethnic Minorities, the 2001 Census may have underestimated the size of the ethnic minority population in Northern Ireland (Q48). If so, this could reduce the apparent difference between the rate of incidents there and in England and Wales as highlighted in official figures

6 HCR 13A. See also, Q 130

7 Q 39

Ireland⁸ and the PSNI.⁹ **The present police figures may underestimate the problem of racial and homophobic attacks in Northern Ireland by a considerable margin.**

5. At the same time, we received evidence that existing legislation, for example, the Public Order (Northern Ireland) Order 1987, was not being used to full effect.¹⁰ This seems to be borne out by the evidence that in 2002/03 there were only 7 prosecutions arising from the 226 racial incidents recorded by the PSNI.¹¹ We understand that not all incidents recorded may necessarily involve criminal offences. Nevertheless the figures for prosecutions appear worryingly small. **There is evidence of a significant and rapidly growing problem of ‘hate crime’ in Northern Ireland. The Committee supports unreservedly the policy of the Government in seeking to address this worrying trend as a matter of urgency.**

Legislative approaches

6. While many of those who have given evidence to us have recognised rightly that an effective solution to the growing threat posed by ‘hate crime’ must also include non-legislative measures,¹² there has been a broad welcome for the Government’s legislative initiative.¹³

7. The legislative approach adopted by the Government in the draft Order is different from the existing law applying to England and Wales. Sections 28 to 32 of the Crime and Disorder Act 1998 made provision for new racially motivated offences which attract higher maximum penalties than non-racially motivated counterpart offences. The Government decided largely for legal ‘technical reasons’ not to apply the 1998 Act to Northern Ireland.¹⁴ Evaluation of the Crime and Disorder Act 1998 has been carried out by the Institute of Criminology at Cambridge University which found that the approach adopted there had been successful in ‘sending a message that racist crime will not be tolerated’.¹⁵

8. The proposals set out in the draft Order adopt a sentence based approach. Unlike the 1998 Act applying in England and Wales, the draft Order creates no new offences but treats hostility based on race, religion or sexual orientation as an aggravating factor which increases the seriousness of the offence:

“The proposals will provide Courts with powers to impose heavier sentences when an offence is aggravated by hostility based on the victim’s actual or presumed

8 Q 18

9 Q130

10 Other relevant, underused legislation referred to by those who wrote to the Committee: the Protection from Harassment (Northern Ireland) Order 1997 and the Protection of the Person and Property Act (Northern Ireland) 1969

11 HCR 13

12 HCR 5, HCR 6, HCR 11, HCR 15. The Government, too, recognises the need for a joint legislative and non-legislative approach, Q 191

13 HCR 3A, HCR 5, HCR 15

14 ‘It was decided during the passage of the [Crime and Disorder Act 1998] *not* to extend these [hate crime] provisions to Northern Ireland. This was largely because of technical difficulties of doing so which made it impossible either to extend directly the provisions in their entirety or to introduce them by negative resolution procedure.’ *Race Crime and Sectarian Crime Legislation in Northern Ireland: A Consultation Paper*, Northern Ireland Office, November 2002, p 7, para 2.5

15 *Racist Offences – How is The Law Working?*, July 2002, in, *Race Crime and Sectarian Crime Legislation In Northern Ireland: A Consultation Paper*, Northern Ireland Office, November 2002

religion, race or sexual orientation. When there has been such aggravation, the proposals will require sentencers to state this in court and to treat this as an aggravating factor in sentencing.”¹⁶

We heard that the Government had chosen a sentence based approach to its proposed legislation for Northern Ireland in an effort to circumvent difficulties of proving racist motivation which had arisen in England and Wales.¹⁷

9. Though we cannot prejudge the likely success of the Government’s sentence based approach, we hope that it will signal that there is to be no tolerance of ‘hate crime’ offences. Much will depend in practice on the priority given to enforcing the proposed law by the police. We were heartened by the evidence we received from the Police Service of Northern Ireland which indicated that the police were taking the matter seriously. For example, sectarian incidents will now be recorded by the police.¹⁸ We were also pleased that officials of the Northern Ireland Office in evidence to us indicated that the Government intended to review the effectiveness of the Order in due course.¹⁹

10. We are convinced that strong laws and effective police enforcement measures against ‘hate crime’ are required to send the strongest possible signal that such activity is completely unacceptable and will not be tolerated. We expect to see the problem tackled more vigorously in the future by the Police Service of Northern Ireland than appears to have been the case in the past.

Exclusion of disability

11. We received powerful evidence from disability groups, for example, from Ms Maureen Piggot, Director of Mencap in Northern Ireland, that people with disabilities are the subject of a wide variety of ‘hate crime’ attacks including:

“kicking, biting, name-calling, teasing, stealing, pushing, threatening, having things thrown at you, being told to leave a building, hitting, being shouted at, swearing, demanding money, hair-pulling, throwing stones, spitting, poking, being punched, being beaten up, having one’s head banged against the wall.”²⁰

12. Mencap’s evidence, collected in a survey in 1999 and which included Northern Ireland based focus groups, indicated that almost a quarter of those surveyed had been physically assaulted.²¹ Unfortunately it is clear that many people with a learning disability consider

16 Explanatory Memorandum, *Proposal For A Draft Criminal Justice (Northern Ireland) Order 2004*, Northern Ireland Office, 9 February 2004, Part 2

17 Q 176. The Government noted that its consultation on hate crime legislation produced ‘wide support for the option that sentencers be given a statutory duty to take aggravation into account when sentencing. It was considered the most effective of the options and the easiest to apply.’ *Race Crime and Sectarian Crime Legislation in Northern Ireland—A Summary of Responses to Consultation*, para 4, further to, *Race Crime and Sectarian Crime Legislation in Northern Ireland—A Consultation Paper*, Northern Ireland Office, November 2002

18 Q 153. See also, QQ 128,191

19 Q 191

20 HCR 20. See also the evidence of the Royal National Institute of the Blind and the Guide Dogs for the Blind Association, HCR 18

21 HCR 20

assaults and bullying as an inevitable fact of life.²² While it appears that neither disabled groups in Northern Ireland,²³ the PSNI, nor the Northern Ireland Office collect statistics on incidents involving disabled people in Northern Ireland, Maureen Piggot was clear that the attacks upon the disabled were numerous, directly comparable with attacks on other groups which were the object of ‘hate crime’,²⁴ and applied to people with a wide range of disability, both mental and physical.²⁵ She also said that consideration should be given to the position of the carers and families of disabled people who were often intimately involved in any attacks,²⁶ and officials appeared sympathetic to that: ‘I would assume that where a carer is an integral part of an individual’s life for whatever reason then an assault on a carer would be very similar if not the same as an assault on the individual.’²⁷

13. The Government’s evidence was that attacks upon disabled people appeared to be ‘motivated more by opportunity than hostility’ and were not the result of ‘hate crime’.²⁸ **We are unimpressed by this line of reasoning.** We do not understand how it is possible to take the ‘opportunity’ to attack a disabled person without feeling ‘hostility’. While the Government believes that problems faced by disabled people can be addressed by the ‘broadening’ of the penalties for violence, fear and harassment which are proposed in the draft Order and are not specific to ‘hate crime’, this approach is sharply at variance with the position in England and Wales where Section 146 of the Criminal Justice Act 2003 explicitly applies ‘hate crime’ provisions to offences against the disabled.²⁹

14. In the absence of statistical information about ‘hate crime’ attacks on disabled people, the grounds for including them within the protection of the draft Order may appear less persuasive than for the other groups. However, the evidence we received from disabled groups suggests that there is a potentially serious problem which is being overlooked by the Government in its proposed legislation. **The Government has failed to establish any grounds for adopting a different approach in Northern Ireland to attacks against disabled people than applies in England and Wales. We are concerned that the Government, by not including hostility against disabled people within the draft Order, is unintentionally encouraging the perception that disabled people in Northern Ireland are less deserving of specific legal protection than in England and Wales.**³⁰ The Government is rightly prepared to legislate on ‘hate crime’ offences in Northern Ireland even where the numbers of recorded incidents, while significant, are numerically modest—as in the case of homophobic attacks.³¹ We believe that hate motivated incidents involving people with disabilities are likely to be on a scale at least comparable to that demonstrated for homophobic incidents.

22 HCR 20

23 Q 103

24 QQ 91, 109

25 Q 102

26 Q 110

27 Q 187

28 HCR 6

29 HCR 6, Q106. Section 146 of the Criminal Justice Act 2003 has not yet been brought into force

30 Q 170

31 See para 4 above

15. The Government and the Police Service of Northern Ireland (PSNI) should begin to collect statistics for incidents of ‘hate crime’ against disabled people in Northern Ireland without delay in order that the scale of the problem can be ascertained accurately. We were pleased to hear that the PSNI see no particular difficulties in doing so.³²

16. However, the collection of statistical information will take time and we do not believe that the Government should wait before taking legislative action. We found the arguments for the Government to amend the draft Order to include ‘hate crime’ against the disabled compelling. The change is small in drafting terms but could have a crucial effect upon the lives of disabled people in Northern Ireland. The Government should also give consideration to whether the carers and families of disabled people require similar, targeted protection.³³ By taking this action the Government would bring the law in Northern Ireland into line with that in England and Wales and by doing so will provide another signal that in Northern Ireland ‘normal rules apply’. The officials who gave evidence to us indicated that the Government’s mind was not closed on the matter.³⁴ For the reasons set out above we urge the Government to ensure that the proposed draft Order is amended to afford appropriate protection from ‘hate crime’ to people with disabilities.

32 Q 133

33 This would seem to be consistent with the principle on which Article 2(5) of the draft Order is based and which defines “membership” in relation to a racial, religious or sexual orientation group, to include association with members of that group, Explanatory memorandum, *Proposal For A Draft Criminal Justice (Northern Ireland) Order 2004*, Northern Ireland Office, 9 February 2004, Part 3

34 QQ 172–174

Conclusions and recommendations

1. The present police figures may underestimate the problem of racial and homophobic attacks in Northern Ireland by a considerable margin. (Paragraph 4)
2. There is evidence of a significant and rapidly growing problem of 'hate crime' in Northern Ireland. The Committee supports unreservedly the policy of the Government in seeking to address this worrying trend as a matter of urgency. (Paragraph 5)
3. Though we cannot prejudge the likely success of the Government's sentence based approach, we hope that it will signal that there is to be no tolerance of 'hate crime' offences. Much will depend in practice on the priority given to enforcing the proposed law by the police. We were heartened by the evidence we received from the Police Service of Northern Ireland which indicated that the police were taking the matter seriously. For example, sectarian incidents will now be recorded by the police. We were also pleased that officials of the Northern Ireland Office in evidence to us indicated that the Government intended to review the effectiveness of the Order in due course. (Paragraph 9)
4. We are convinced that strong laws and effective police enforcement measures against 'hate crime' are required to send the strongest possible signal that such activity is completely unacceptable and will not be tolerated. We expect to see the problem tackled more vigorously in the future by the Police Service of Northern Ireland than appears to have been the case in the past. (Paragraph 10)
5. The Government has failed to establish any grounds for adopting a different approach in Northern Ireland to attacks against disabled people than applies in England and Wales. We are concerned that the Government, by not including hostility against disabled people within the draft Order, is unintentionally encouraging the perception that disabled people in Northern Ireland are less deserving of specific legal protection than in England and Wales. The Government is rightly prepared to legislate on 'hate crime' offences in Northern Ireland even where the numbers of recorded incidents, while significant, are numerically modest—as in the case of homophobic attacks. We believe that hate motivated incidents involving people with disabilities are likely to be on a scale at least comparable to that demonstrated for homophobic incidents. (Paragraph 14)
6. The Government and the Police Service of Northern Ireland (PSNI) should begin to collect statistics for incidents of 'hate crime' against disabled people in Northern Ireland without delay in order that the scale of the problem can be ascertained accurately. We were pleased to hear that the PSNI see no particular difficulties in doing so. (Paragraph 15)
7. However, the collection of statistical information will take time and we do not believe that the Government should wait before taking legislative action. We found the arguments for the Government to amend the draft Order to include 'hate crime' against the disabled compelling. The change is small in drafting terms but could have

a crucial effect upon the lives of disabled people in Northern Ireland. The Government should also give consideration to whether the carers and families of disabled people require similar, targeted protection. By taking this action the Government would bring the law in Northern Ireland into line with that in England and Wales and by doing so will provide another signal that in Northern Ireland 'normal rules apply'. The officials who gave evidence to us indicated that the Government's mind was not closed on the matter. For the reasons set out above we urge the Government to ensure that the proposed draft Order is amended to afford appropriate protection from 'hate crime' to people with disabilities. (Paragraph 16)

Formal minutes

Wednesday 19 May 2004

Members present:

Mr Tony Clarke, in the Chair

Mr Eddie McGrady
Mr Stephen Pound

Mr Hugo Swire

The Committee deliberated.

Draft Report ('Hate Crime': the Draft Criminal Justice (Northern Ireland) Order 2004), proposed by the Chairman, brought up and read.

Ordered, That the Chairman's draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 16 read and agreed to.

Resolved, That the Report be the Fifth Report of the Committee to the House.

Ordered, That the Chairman do make the Report to the House.

Ordered, That the provisions of Standing Order No. 134 (Select Committees (reports)) be applied to the Report.—(*The Chairman.*)

[Adjourned till Wednesday 9 June at 4.30 pm

Witnesses

Wednesday 12 May 2004	<i>Page</i>
Mr Nicholas Russell, Royal National Institute for the Blind , Ms Maureen Piggot, Mencap in Northern Ireland	Ev 1
Ms Maggie Beirne, Committee on the Administration of Justice , Professor Tom Hadden	Ev 4
Inspector Robin Dempsey, Police Service of Northern Ireland	Ev 8
Mr Adrian Arbuthnot, Mr Jim Strain, Northern Ireland Office , Mr Ken Fraser, Office of the First Minister and Deputy First Minister	Ev 11

Oral Evidence

Taken before the Northern Ireland Affairs Committee

on Wednesday 12 May 2004

Members present

Mr Michael Mates, in the Chair

Mr Adrian Bailey
Mr Gregory Campbell
Mr Tony Clarke
Mr Stephen Hepburn

Mr Iain Luke
Mr Stephen Pound
The Reverend Martin Smyth
Mark Tami

Witnesses: **Mr Nicholas Russell**, Campaigns Officer, Royal National Institute for the Blind and **Ms Maureen Piggot**, Director, Mencap, examined.

Q88 Chairman: Good afternoon to you both; thank you for coming to help us with our inquiry into hate crime in Northern Ireland. We are looking at the provisions contained in the government's proposal for a draft Criminal Justice (Northern Ireland) Order. I must say, speaking personally, that I was very surprised to hear, with one exception, that disabled people are the subject of hate crime. As you know, the thrust of this legislation is to deal with sectarian hate, which is well known and well documented. I should be very interested in your views about this, briefly if you would, and also whether you think there is any difference in Northern Ireland to the rest of the United Kingdom. There is no legislation over here against that sort of discrimination, hate, nor, so far as any of us knows, any need for it. What is special about Northern Ireland in this regard?

Ms Piggot: I am not sure that there is anything special about Northern Ireland in this regard. The crime which people with disability experience, and I do believe that it is hate crime, has been unrecognised in England as well as in Northern Ireland. I am arguing the case for Northern Ireland because that is where I live and work and have had 24 years of experience of working with people with disabilities.

Q89 Chairman: What is your experience? How often has this happened? It is a little more understandable in terms of some people with a mental disability, a mental handicap. To many people it is not the same as someone sitting in a wheelchair and they are afraid of it; it may be behavioural, it may manifest itself in many forms. How prevalent is this? Do you have any figures?

Ms Piggot: We have some figures but we do not have all the figures we should like to have. In Mencap we conducted a study in 1999 called Living in Fear and it included Northern Ireland; it was England, Wales and Northern Ireland. We analysed about 904 responses from and on behalf of people with disabilities and we also conducted focus groups.

The Committee suspended from 3.50pm to 4.05pm for a division in the House

Q90 Chairman: You were telling us about your experience with the disabled. Refer it entirely to Northern Ireland, if you would.

Ms Piggot: You prefaced your remarks by expressing your surprise that disability organisations are asking for crime against disabled people to be included in hate legislation.

Q91 Chairman: Not that they were "asking for it to be included" but that I was surprised it should be necessary.

Ms Piggot: It is necessary because it happens and because of a belief that it is motivated in a similar way to crimes against other people who are picked on because of their perceived membership of a group. The motivation is in some way similar: it has to do with the perception of difference, difference in the way people look, difference in the way they behave or perceived differences in those things. I am not sure that any of us understands exactly where that motivation comes from and it is surprising, or perhaps unthinkable, that people as vulnerable as many people with a disability are, should be picked on in that way. Nevertheless the experience of disabled people is that that is in fact what happens. I mentioned the study we did in Mencap of the experiences of people with a learning disability. In that study, nine out of ten people reported that they had at some stage been bullied, harassed or intimidated in some shape or form. Approximately one quarter of those reported that it was a physical attack, a physical abuse. We shall go on later to talk about the types of abuse, but it was very clear that people's experience was of being picked on simply because they had a disability and the attacks were motivated by that.

Q92 Chairman: When did this survey take place?

Ms Piggot: In 1999.

Q93 Chairman: How far did it go back? If somebody said this happened to them 20 years ago when they were young, would that be one of your statistics?

Ms Piggot: There were people who reported that it happened weekly. Some reported that it happened almost daily and was happening at that time.

12 May 2004 Mr Nicholas Russell and Ms Maureen Piggot

Q94 Chairman: What about Mr Russell and the blind people?

Mr Russell: There are not huge quantities of separate statistics for visually impaired people, but I led a campaign to get the amendment to the Criminal Justice, now Act, 2003 to give extra penalties for this hate crime. We did that based on some quite alarming statistics from the Disability Rights Commission surveys, both in Scotland where they showed that one quarter of disabled people have experienced disability related harassment and England Wales where it showed a figure of 22%. More recently, because in addition to the change in the law which has been agreed in England and Wales, the Scottish Executive have a working party looking at hate crime which has just concluded a consultation, as part of that process Capability Scotland and the Disability Rights Committee in Scotland got together and produced a very comprehensive publication about disability hate crime in Scotland. That showed that 47%—

Q95 Chairman: I am sorry to interrupt, but can we concentrate on Northern Ireland, which is what our brief is? I am sure things are going on in Scotland, England and Wales, but in the short time we have, we really want to try to get any facts, figures, statistics and trends, that you have which concern Northern Ireland. It may be that in your organisation you do not have those separated out.

Mr Russell: There has not been collection of a huge number of statistics for Northern Ireland. What I would suggest is that in the statistics we have for the other parts of the United Kingdom there is nothing to suggest that the situation is any better in Northern Ireland. You did ask me about the visually impaired people and the statistics and that Scottish survey I was mentioning showed that 57% of vision impaired people have been subject to hate crime.

Q96 Chairman: Perhaps concentrating a bit on you, Ms Piggot, because you are over there, you started to give us a thumbnail sketch of bullying and harassment. Any other particular forms?

Ms Piggot: People report also attacks against their property and being intimidated out of their houses. People have been forced to move because of persistent attacks against them and their families.

Q97 Chairman: Because of their mental disability.

Ms Piggot: Because of their disability. They believe they are being picked on because they are seen to be different and that is because of their disability.

Q98 Chairman: I am trying to differentiate between mental and physical disability but you do not have any Northern Ireland statistics for physical disability.

Ms Piggot: I do not have any figures on physical disability. I can refer you to a study which covered all disabilities. It was a study of disabled children undertaken by Barnardo's in 2002 and in that report, bullying, which was referred to as bullying specifically related to the child's disability, was one of the chief concerns of children and their families.

Q99 Chairman: Let us turn to the nature of the attacks. Any trends of statistics as to who carries out these attacks? Are any of them associated with paramilitary organisations in your experience?

Ms Piggot: I would not have evidence that the paramilitaries feature heavily in the attacks on people, but I also would not have evidence to suggest that they do not. The people would tend to be identified as young people and young people in groups would be the most commonly identified perpetrators of the abuse and attacks. People also report that attacks happen on public transport, happen in public places, so it is really quite widespread, it is not confined to urban areas, it is not confined to particular housing estates, it is a common experience of disabled people regardless of where they live.

Q100 Chairman: Again you are referring to your organisation, people your organisation is responsible for.

Ms Piggot: In Northern Ireland. I would have greater knowledge of the people in my organisation, but I also work closely with other disability organisations and in my experience people do not stop to distinguish which kind of disability people have; they make assumptions about disability. Anyone who has a communication impairment is generally assumed also to have a mental impairment. The general public does not make those fine distinctions.

Q101 Chairman: As opposed to someone who is in a wheelchair because they have lost a leg. Do you sense that there is a difference in the way such people are treated?

Ms Piggot: I can believe that there might be, but I do not believe that people who are in wheelchairs are subjected to less intimidation or harassment than other people.

Q102 Chairman: So you think it is common to all people, whatever their disability.

Ms Piggot: I think it is.

Q103 Chairman: Are there statistics which would support that?

Ms Piggot: Not to my knowledge, except these studies of children and their concerns and the bullying amongst children.

Q104 Chairman: Is this something that the young do more, in terms of bullying and harassment, than older people?

Ms Piggot: That would seem to be the case, although it is not confined to young people.

Q105 Mr Pound: If you think that perhaps we are going into this in some depth, it is because you are describing a set of circumstances which are almost unique in the experience of most of us and uniquely terrifying as well. I appreciate that this is between anecdotal and empirical and I understand the response you just gave to the Chairman. Are these attacks taking place within communities or across communities? I think you know where I am going

12 May 2004 Mr Nicholas Russell and Ms Maureen Piggot

with this. Do you have any evidence that this is one community attacking a member of another community who happens to be differently abled, or is this an attack within the community?

Ms Piggot: It is both. People with disabilities are being attacked as being members of the other community whichever that is, as well as being attacked within communities on the grounds of their disability alone.

Q106 Mr Pound: Is it possible, and I appreciate that it may not be possible, to indicate whether the attack would have taken place had the person not had a visual impairment or been differently abled? Do you think this is part of the normal—if one can use that word without weeping—inter-community aggression?

Ms Piggot: No, I do not think it is. I think it is motivated by the perception of difference which is related to the disability.

Q107 Mr Pound: Overriding community orientation.

Ms Piggot: Yes; irrespective of community orientation I might say.

Q108 Mr Pound: Even more terrifying.

Ms Piggot: Yes.

Q109 Chairman: Do you think that the definition of hate crime is sufficiently precise to accommodate hate crime against disabled people?

Ms Piggot: The concept of it being an aggravating circumstance or an aggravating factor applies equally to people with disabilities as it would to people on grounds of race or sectarian difference.

Q110 Chairman: Another concern we have had expressed to us is that the Order has not been extended to the carers or the families of disabled people. Would you want them included in legislation?

Ms Piggot: I am not sure it needs to be included in the legislation, but perhaps some consideration might be given in looking at the seriousness of the offence to the impact on carers or other family members. Quite often family members are also targeted as part of the attack because of being in the same household or accompanying the person. We should also remember that people with disabilities are in families, people with disabilities might be parents and the children of parents with a disability might be targeted because their parents are disabled. Other family members, siblings accompanying the person with the disability might similarly experience attacks.

Q111 Chairman: I think the Committee is sympathetic in principle to trying to make legislation similar and compatible throughout the United Kingdom. Therefore the fact that it has been included in the Criminal Justice Act 2003, although not yet implemented, is quite a strong point in favour of what you are saying. Assuming that it was

included in the Order and it required the police to gather data on attacks on disabled people, what other initiatives would be required in your view to make the introduction of such legislation effective?

Ms Piggot: One of the most important things is letting people with a disability know that their complaints will be taken seriously. In our experience people with disabilities often find that their complaint is dismissed, or that the complaint is not investigated because of police officers' concerns that they may not be able to substantiate the complaint, or their assessment of the person's reliability or credibility as a witness. There needs to be training of police officers first of all in assessing the ability and knowing how to obtain evidence from the witnesses or from the victim. Also awareness should be raised amongst disabled people that they have the right to be protected and that they can make a complaint and also public attitudes, which are the source of the hate crime in the first place, they need to understand more about disability and to understand that it is a crime to pick on people because of their disability.

Mr Russell: One thing, particularly from the point of view of vision impaired people who are subject to hate crime, or indeed any crime, is the difficulty they face because they cannot see the person who attacked them. For that reason, during the passage of the Criminal Justice Bill we worked on the issue of voice identity parades, indeed a voice identity parade was used successfully to secure a conviction for murder in the Old Bailey. On the basis of that, Home Office circular 57/2003 has been issued giving guidance to all police forces in England and Wales on the use of voice identity parades. That has not been extended to Northern Ireland and it would be useful if this Committee could encourage that guidance to be issued in Northern Ireland. There is also further work going on looking at Code D under the Police and Criminal Evidence Act 1984 to make a formal revision to that. A lot of research is required and it would be good to encourage Northern Ireland to adopt the results of that research as well.

Chairman: Thank you both very much. What you have said to us has been extremely helpful, but it is rather sad that we do not have enough statistics. One of the things you could usefully do even at this late stage would be to try to pick out concrete facts and figures because it is important to know whether the trend is increasing or whether it is standing still and to know in relation to what Mr Pound said and what I said to you earlier how much of this is caught up in the sectarian arguments which remain in Northern Ireland. Someone goes and has a go at a family in a household from the opposite community not specially because there is a disabled person there, but perhaps because it is easier if there is one there, is a different type of motivation from the straight "I'm going to be difficult and rude and harass and bully anybody who is not like me". If we are going to come to sensible and sensitive conclusions, statistics would be an enormous help in that. Thank you both very much for coming and we shall be reporting when we have finished our inquiry. Thank you.

Witnesses: Ms Maggie Beirne, Committee on the Administration of Justice (CAJ) and *Professor Tom Hadden*, examined.

Chairman: Welcome Ms Beirne and Professor Hadden. Thank you for coming to help us. We have some questions for you about your experience as leading—and long-term if I may say so—members of the Committee on the Administration of Justice; I can remember us meeting when we were a lot younger.

Q112 Mark Tami: Could you begin by briefly giving us details of the work carried out by the CAJ and the Northern Ireland Human Rights Commission in relation to the whole issue of hate crime?

Ms Beirne: CAJ would not monitor hate crimes closely. Our involvement has been at a distance, both commenting on proposed legislation, commenting on policy initiatives by government and we work closely through a number of mechanisms with organisations which work on racism in society, homophobia, sectarianism, but we do not directly monitor this.

Q113 Mark Tami: In your submission, you do mention that you have undertaken a number of projects relevant to the inquiry into hate crime.

Ms Beirne: Over the years we have produced a number of research projects, particularly into racism and we have made numerous submissions to the UN Committee on the Elimination of Racial Discrimination. In fact we were one of the groups which were quite instrumental in ensuring that race legislation was extended to Northern Ireland 20 years after it was introduced in Britain. Those were the kinds of things we were thinking about. We have also done work around issues of harassment by the police and army, where issues around sectarianism may have arisen, but not hate crime in quite the same way.

Professor Hadden: I should start by saying that my status here is not entirely clear. I am a member of the Human Rights Commission, but I am not sure that I am speaking exactly for them. I shall probably be saying the same thing anyway. I can certainly explain what the Human Rights Commission has or has not been doing about this. The primary responsibility in this area is the Equality Commission in the sense that they look after discrimination on the grounds of race and other grounds. We had a very useful joint discussion with the Equality Commission two or three months ago which was primarily concerned with putting pressure on the UK Government to develop a national action plan against racism and hate crime is clearly one aspect of that. The direct responsibility for monitoring the extent of discrimination and hate crime in respect of the various groups you are concerned with is the Equality Commission. We take a superior view. We comment on what other people are doing rather than being directly involved in monitoring or enforcing.

Q114 Mark Tami: Turning to the draft Order itself, do you feel that the range of groups covered by that and the hate crimes covered by that are adequate?

Professor Hadden: There is an important distinction which is being missed, or was certainly being missed in relation to your discussions in respect of disability and mental disability, that this draft Order is about increasing sentences in respect of existing criminal offences, whereas some of the things which are being talked about in relation to hate crime are about raising the standards so that harassment and attacks which are not directly physical become criminal. It seems to me that by jumping to disability, you would in a sense be jumping the gun, because disability is not covered under the ordinary hate crime legislation.

Q115 Mark Tami: Do you think it should be?

Professor Hadden: I would be more sympathetic to the idea of extending the lower level of hate crime, that is activities which harass or which bring into disrepute, that kind of thing in respect of disabled people and mentally disabled people, rather than jumping immediately to increasing the penalty. I shall come back to the increased penalty point later.

Ms Beirne: When we commented on the legislation, we were very keen that it cover race, sectarianism and homophobic crime and that was already an extension. We did discuss disability. We actually looked at all the potential groups, because obviously the elderly are frequently vulnerable to criminal attacks and so on and should this count as hate crime? We felt that it was really if individuals were being targeted because of membership or presumed membership of a group. I was very interested in the last exchange because we were not sufficiently aware of the extent to which this was an experience of people with disabilities. I think we shall be going back thinking about whether we should have proposed that disability be included, but we would not argue for it to be extended more generally to elderly, the young, and such groups. It is individuals who are targeted because of their membership or presumed membership of a group and that that should be recognised through sentencing. I think I am saying that we are probably still open to discussion like the Committee.

Q116 Chairman: As indeed we are.

Ms Beirne: We shall be learning and listening to the Committee's deliberations.

Professor Hadden: The Human Rights Commission submission on the Order suggests that it might be extended to all section 75 groups. I have a slight concern about that because all section 75 groups would include women, would potentially include children, would potentially include people with dependants or without dependants. It does seem to me that the purpose of a measure like this is to highlight a particularly serious problem and if you include everybody, then you have lost the point. Your questions to the previous witnesses were to the point that it is important to establish that there is a particular problem of attacks against a particular group which require the courts to take account of them and to make public that they have taken account of them. One point to which I would draw

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your attention which I do not think is in the Human Rights Commission summary is the requirement under the Crime and Disorder Act 1998 in England, section 84, sub-section 3, which requires the court, when increasing the penalty for a particular offence on one of the stated grounds, to make a statement openly in court that that is what they are doing. Rather than rolling it up in an increased sentence, the court is obliged under that sub-section to draw public attention to the fact that the sentence has been increased as a result of the attack on the particular group. It is a requirement of a statement in open court that the sentence is being imposed in the light of the aggravated nature of the offence. So the Draft Order does provide for this.

Q117 Mark Tami: Moving on to international law, how does the UK address the whole issue of hate crime in that respect, but also then perhaps looking at Northern Ireland? Does it fall short in even covering that? Do you feel that the draft Order helps to address that problem or are we still falling short even of a UK perspective?

Ms Beirne: I would not say that hate crime has been clearly defined in international human rights law either, but certainly in making recommendations we would draw on the non-discrimination provisions and things like the two international covenants and the conventions on racial discrimination. Equally, at the Council of Europe level, you have important provisions through the Framework Convention. Those are ones where there is definite responsibility on the state to protect people. They would not have defined it in the same formulation as hate crime, but it clearly would be in conformity with the UK's international obligations that legislation be introduced to improve and build upon the provisions that already exist.

Professor Hadden: I can expand on that a little bit. As you know, the submission from the Human Rights Commission makes reference to the Convention on the Elimination of All Forms of Racial Discrimination (ICERD), articles 4 and 5, which require signatory states to make criminal not only attacks on people on the basis of their race, but also the dissemination of ideas of racial superiority. It is quite clear that the UK, as far as I can discover, has not done that in respect of the dissemination of ideas of racial superiority or the dissemination of ideas in respect of the other groups we are talking about. I am not sure they should. I have a feeling that to criminalise the dissemination of ideas is perhaps a step too far and that it is better to focus on criminalisation of incitement to violence, of harassment, of things like that. Even though the UK is not technically complying with its international obligations, I am not sure that I personally would—

Q118 Mark Tami: You would not want to see more state action in this area.

Professor Hadden:—to the dissemination of information about superiority or lack of superiority of these groups. ICERD, the Convention, also makes a distinction between things which are to be criminalised, which are attacks, harassment,

incitement to violence, that kind of thing, which is article 4, and article 5 is about a state obligation to deal with discrimination. That distinction is important. There are some things which are better dealt with as criminal offences and other things which are better dealt with by way of civil discrimination legislation. There is no international obligation, for example, to make criminal the act of discrimination. The international obligation is to make criminal harassment, incitement to violence, things of that nature. That is about right.

Q119 Mark Tami: Would you agree with that as well or would you take a slightly different view?

Ms Beirne: I would take a slightly different line. We have a lot of material in Britain and certainly in Northern Ireland which is hate filled and inciting hatred and I should be quite concerned at not addressing those issues of dissemination of hate literature.

Professor Hadden: That is clearly covered; I am not disagreeing on that. It is just the dissemination of ideas seems to me to be a slightly too wide a formulation and that it should be tied to the kind of harassment, incitement to which Maggie has just referred.

Q120 Reverend Smyth: I often wonder whether there is much difference between people in any place. If certain things get out of hand anywhere, the same thing comes to the surface. I notice that CAJ have specialised in looking at the sentencing rather than the aggravation. Do you think that is a wise decision, bearing in mind that it is bringing us out of line with the English legislation? Would we not be better keeping these aggravated offences so that it is getting a message across that things are seriously wrong and have to be dealt with?

Ms Beirne: I would certainly agree with The Reverend Smyth that we have to get a strong message across that the offences need to be seriously addressed. Our concern in looking at the experience, because we have now had the experience in England and Wales of legislation where you have racially aggravated offences, is that it seems problems have arisen in a number of instances, for example if you cannot prove the racial element within the crime then the whole crime falls. Someone may have been the subject of a very, very serious assault, but it has not been possible to prove there is a racial or sectarian element and therefore it falls. We thought it would be much better to look at the finding of fact on the issue of the alleged crime and then look at the question of sentencing. If you like, one always looks at the exacerbating or mitigating factors at the moment of sentencing and it seems to us that the motivation of the crime and the fact that society wants to give a particularly strong statement in regard to motivation might be the point at which you would introduce it. There are then problems in that we have maximum sentences and we actually propose how that might be addressed. It is precisely on the basis of having had the advantage of some experience in England and Wales that we think we need to bear that in mind in introducing the

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legislation in Northern Ireland. It may be the Northern Ireland experience will then be transposed back.

Q121 Reverend Smyth: So legislation has been passed in Northern Ireland which has never been used and one has to face facts: if we change the legislation will it be implemented? Do you actually agree that the maximum sentences for offences aggravated by racial and homophobic hostility should be higher than the maximum sentences for the same non-aggravated offences?

Ms Beirne: Yes, we do think that they should be higher, that there should be potential for giving higher sentences.

Q122 Reverend Smyth: Do you think this will be the effect of the proposed Order as presently drafted?

Ms Beirne: I supposed the answer is yes and no. Yes, that is obviously the intended effect, but I could not agree with you more that one of our concerns in responding to this particular consultation is that we would seem on the face of it to have legislation which outlaws very serious offences which does not seem to have been very actively used. It was not clear to us from the consultation document whether there had been a very detailed survey of why that might be and therefore how we could ensure that whatever additional legislation is introduced does in fact meet the problems which have been experienced in the past.

Q123 Reverend Smyth: Shakespeare had a word for it: intention.

Professor Hadden: I have three comments I would make on that line of questioning. I have been trying desperately to find out over the last two or three days how many prosecutions are actually carried out under this kind of legislation. I must say I have not been making a lot of progress. I gather that there are some representatives of the PSNI, who are here who may be able to assist you on that. There is apparently a difficulty about the release of statistics tomorrow, but not today. I have not been able to ascertain any figures at all as to how much the existing hate crime legislation has been used, so I cannot help you on that. On the question of the increase of sentences, I had some discussions yesterday with some representatives of the Crown Prosecution Service. Their attitude was that judges in sentencing in this area tend to look at the picture overall and to come to what they think is an appropriate sentence. It may be an attack on a woman, it may be an attack on a young child, it may be an attack on an old person. They look at the situation in the round and then come to what they consider to be the appropriate sentence, rather than going through the process of saying, if this had not been a disabled person it would have been X, but now it is X + 1. That is why it seemed to me that section 82B in which the court is required to say they have specifically taken into account that this is a racially motivated or homophobic attack or crime is the useful bit. The third point is that I am not actually convinced that increasing the sentence is the best way of dealing

with people who commit this kind of offence. Criminologists, penologists and probation officers do not always take the view that simply bumping up the sentence, putting the chap away for an extra year is going to help to resolve the problem. If you think of drink driving offences, people are devising better methods of discouraging people from engaging in drink driving than simply putting them away for an extra year or two, so I would urge the Committee to think of encouraging the courts to develop better ways of dealing with people who are racially motivated or motivated on homophobic or any of these other grounds to change their ways. I am not sure that putting on an extra year or two will always do that. I am interested that there is a conference in Belfast in July run by the National Association of Probation Officers which is specifically looking at the way in which the system can help and persuade and encourage and deter people who are offending in this way from continuing their activity. My inclination would be to say that simply putting them away for another year probably would not do that.

Q124 Mr Clarke: If we are going to increase sentences for those who carry out aggravated crime, hate crime, then we are going to need to provide the evidence, yet Northern Ireland has less monitoring and less evidence to put forward than other regions in the UK. Last week we interviewed the Northern Ireland Council for Ethnic Minorities who said that there was no real monitoring and that attacks were carried out and the true nature of an incident was often hidden, or not recorded, and that the police simply followed up with a crime record which ignored the fact of the hate crime. Would you welcome closer monitoring and better ways of recording race and hate crime from the victim's perspective? Surely it is for the victim to decide whether or not they had been a victim of a hate crime rather than the police? The police may wish it not to be recorded, but surely the individual should have some recourse, some way of presenting to a body that they believe they have been the victim of a hate crime? Would you welcome that or agree that is the way forward?

Professor Hadden: The PSNI does produce figures. I was making a distinction between incidents and prosecutions. We do have figures in the Chief Constable's report, which you probably have, of racial incidents from 2000 to 2003 and homophobic incidents from 2000 to 2003. I have those figures which I could hand over to you if you wish.

Q125 Mr Clarke: We have seen the figures. Our question is that even the incidents do not paint the full picture.

Professor Hadden: That comes down to the argument over the McPherson test. Is it the perception of the victim that matters most or is it some evidence that either the circumstances or the intent of the offender is relevant. That is quite a difficult one. Certainly in terms of strict criminal law it would be quite difficult to convict somebody of an aggravated offence on the basis simply of the assertion by the victims that they were attacked on

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those grounds and without any other evidence. It seems to me that the Order itself and the British legislation is about right in saying either proof of intent on the part of the offender or else surrounding circumstances. Simply to say that because the victim claims it was, does not seem to me to pass the test of proof beyond reasonable doubt for criminal purposes. It may be that you would want to collect statistics in relation to that, but there is a distinction between the proof in a court for the purposes of making this statement or a different kind of sentence rather than increasing the sentence. There is a distinction there which is important.

Ms Beirne: May I pick up on a point which the Chairman made with the last panellists, asking how useful it would be to get statistics and to have a sense of how big a problem this is? That is actually a very strong argument for recording incidents and crimes. One of the real problems we have is that race attacks have only been recorded officially in the last few years; homophobia for even less time; we are now trying to determine definitions to record sectarian crime. It seems particularly surprising perhaps in the Northern Ireland case that sectarian crime has not been recorded to date. It is extremely important to have shared definitions and to record this information. I obviously agree with Professor Hadden that we have to make a distinction between how that then follows through in terms of evidence in court, but all the more reason why it is extremely important from the earliest possible phase of an incident, a crime or an alleged crime for the police to be recording that a racial, sectarian or homophobic element is imputed so that they will be looking to see whether there is any evidence to back that up when it eventually comes to court. One last thing is that I think there is some confusion which seems to be developing. The CAJ had correspondence with the PSNI around the definition of sectarian incidents and the recording of sectarian incidents and crimes. They have just now responded to that and that debate is ongoing. It does seem as though we are having different groups of people having different discussions about the definition and the legislation will perhaps be slightly narrower than what is being recorded. There may be some advantage in the Committee urging for a co-ordination between these various debates so at the end we can ensure that the evidence is being effectively gathered, that we can see what the trends and changes are, and that we can then prove cases in court where necessary.

Q126 Reverend Smyth: We are aware that article 4 of the Order would increase the maximum penalty for a number of offences, regardless of whether or not they are aggravated. This would mean that the

potential sentence for non-aggravated offences in Northern Ireland would significantly exceed that in England and Wales. Does this concern you?

Ms Beirne: Since we have made the proposal, no, not particularly. It is very unusual for civil liberty groups to be arguing for more prison and more sentencing, and certainly there are always better responses than prison and long sentences. However, we think that when these crimes have been proven, they need to be effectively responded to by the courts. No, it does not worry us to have these disparities.

Q127 Reverend Smyth: You both suggest that in addition to legislative change, other measures are needed to tackle prejudice and to support the victims of hate crime. Could you please explain briefly—and that might be difficult, but just try to keep it brief—the type of changes which should accompany legislative changes?

Professor Hadden: I cannot say that I am an expert on the best way of dealing with these types of offenders. You would be better to ask probation officers and other people who are dealing with that kind of treatment of offenders as opposed simply to banging people up in prison. I am not at all persuaded that it will not perhaps make matters worse. There is a slight danger of creating martyrs if somebody is put away. He or she may come back to his peer group later on with the idea that they have been put away for doing this, they have not changed their views at all so let us get on with it. I would much prefer you and the penal services to focus your minds on better ways of encouraging people to cease this sort of activity, perhaps working with members of minority communities would be one way of doing it to get across the idea that they are not devils and not so different as perhaps the people thought when they embarked on the attacks. That kind of approach would be much more useful than simply increasing the sentence and putting people away longer and filling up the prisons.

Ms Beirne: CAJ proposed a number of measures. We obviously emphasised the importance of a Bill of Rights, single equality legislation, human rights education, the need for training programmes within the police and the criminal justice system, more public education programmes, improved representation of people from under-represented groups on public bodies and obviously the very fact that this legislation would be going through and there would hopefully be better recording and reporting and following up will also give signals about the need to support victims and to support the organisations which work with these different constituencies.

Chairman: Thank you both, Professor Hadden and Ms Beirne, for coming to help us with this rather difficult inquiry.

Witness: **Inspector Robin Dempsey**, Community Safety Branch, Police Service of Northern Ireland (PSNI), examined.

Chairman: Moving on quickly, good afternoon and thank you for coming.

Q128 Mr Hepburn: May I open up by asking how effective you think the proposed draft Order will be?

Inspector Dempsey: Certainly this Order was something which the police supported because we recognised the need to have legislation as a deterrent. When we put our submission to the government in respect of the legislation, we supported it in its present form in relation to increased sentencing. Clearly the effectiveness of the legislation will be very much determined by how the police respond to the legislation and get those offences into the court system.

Q129 Mr Hepburn: Do you have any figures on the scale of the crime against the disabled?

Inspector Dempsey: Yes. Perhaps I might clarify one point in respect of these statistics. The statistics which the Committee have before them for 2003–04 were passed to the Committee at a very late stage because they are not publicly available until tomorrow but I felt it was important that the Committee had the up-to-date statistics. What the up-to-date statistics have shown is that there has been a doubling in both reported incidents of racial motivation and homophobic motivation. What I should like to say is that the police have been working very hard—

Q130 Chairman: May I just interrupt you for a minute to get it on the record? Double does not mean very much, but it means for example that 56 verbal abuse cases were reported in 2002–03, 109 in 2003–04; written material three last year, 10 this year; physical assault 50 last year, 103 this year; attacks on homes 59 last year and 148 this year. These are just racial attacks. The homophobic attack statistics are very much smaller, but show exactly the same trend. I am just summarising this for you so we get it on the record. Verbal abuse up from 10 to 14, physical assault from 16 to 35, attacks on the home from five to 10, attacks on property from two to 10. Still small, but alarmingly rising trends. Would you agree with that as a summary?

Inspector Dempsey: Yes, we would recognise that there is an awful lot of under-reporting.

Q131 Chairman: My question is: have I given a fair summary of your statistics, because we have only looked at them very briefly and it is important that people understand that in these two areas, racial incidents and homophobic incidents the figures are getting significantly worse. I repeat what I said earlier: I wish we had more statistics about other groups. I just ask this question before I hand back to Mr Hepburn. Do you have any indication of the scale of hate crime against the disabled? Have you recorded any such incidents? You are not required to, but have you in fact done so?

Inspector Dempsey: Not at this stage. We do not have any statistics in relation to crimes or incidents against people with disabilities.

Q132 Chairman: Any particular reason why not?

Inspector Dempsey: It is not something we have recorded to date. What we have been doing is reviewing our policy in respect of the investigation and monitoring of hate crime and it is an area we are presently considering and consulting with our mainland colleagues to look at this area of recording.

Q133 Chairman: What do you foresee as the difficulties in taking that group on as opposed to the homophobic crimes or the racial crimes?

Inspector Dempsey: I see no particular difficulties. What it will require is the police to put in place procedures to enable them to record that.

Q134 Chairman: It is just a bureaucratic exercise but without any great difficulties.

Inspector Dempsey: There would be no difficulties. What we would need to ensure is that people within Northern Ireland who have disabilities recognise that the police do and are interested in recording these incidents to ensure that they are in fact recorded.

Q135 Chairman: Would you consider doing this anyway, whether or not it goes in the legislation?

Inspector Dempsey: It is something we are presently considering.

Q136 Chairman: Can you go further than that?

Inspector Dempsey: I expect that it will be included in our policy.

Q137 Chairman: You do. You expect that the police will start recording these statistics, whether or not disability is included in the legislation.

Inspector Dempsey: Yes.

Chairman: Thank you; that is very helpful.

Q138 Mr Hepburn: Do you think it would be helpful if the draft Order were widened to include disabled people? Can you give us an overview on how effective existing legislation has been?

Inspector Dempsey: At the minute there is no hate crime legislation in Northern Ireland as such. What the police use is the existing spectrum of legislation which exists. If an assault is racially motivated, the person will be charged with assault, or if it is criminal damage, they will be charged under the criminal damage Order. We do not have that legislation at this time.

Q139 Mr Hepburn: Do you think it would be helpful if there were greater statutory guidance on the terms of the draft Order for your officers?

Inspector Dempsey: What we would want to see is a deterrent put in place. We recognise that there are many more incidents occurring which are not reported to the police and we would want to see that deterrent in place and we believe the legislation is a way of doing this.

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Q140 Mr Hepburn: How do you actually go round investigating a hate crime on the disabled? Can you give us an idea of how you get evidence? Do you take any special factors into consideration? What practical problems might you come across?

Inspector Dempsey: We do not currently record incidents against disabled people, but I could outline what we do in respect of racial and homophobic incidents.

Q141 Mr Hepburn: Yes; please.

Inspector Dempsey: The way the Police Service recognise an incident is racist or homophobic is on the perception of the victim. That can cause some difficulties because there may not necessarily be evidence to suggest that it is either racial or homophobic. We will record it if the victim or any other person reports it as such. That is in line with the Stephen Lawrence inquiry report. The police will then mark the motivation in their system against the incident and that is how we then collate the number of incidents which have either a racial or homophobic motivation.

Q142 Chairman: So it is up to the victim to decide, whatever the crime, whether it is has been committed because the victim is from an ethnic minority or from the gay or lesbian community.

Inspector Dempsey: It can be the victim, but it can also be a police officer or it could be someone who is not involved—

Q143 Chairman: Does that give you problems? It is relatively easy for a police officer to say that the assailant is white and the victim is Chinese or Black or Indian or Asian or whatever, but rather harder to determine his sexuality.

Inspector Dempsey: Certainly in relation to racist incidents people are usually visibly from a minority ethnic group and it makes it easier.

Q144 Chairman: That is what I am trying to say.

Inspector Dempsey: In relation to homophobic incidents the reduced number of reports at 71, which is the new statistic released, probably reflects that those incidents are usually reported by the victim in the majority. However, we would get reports from third parties.

Q145 Chairman: So it would be for the victim to say they have been assaulted because they are gay.

Inspector Dempsey: That would certainly be our experience; that would be the case in the majority of reports.

Q146 Mr Hepburn: In light of that answer to the Chairman can you tell us how satisfied you are with your recording process and how you think it could be improved?

Inspector Dempsey: We are certainly working to improve it at the minute. Because we deal with incidents and crimes and record both, what we are looking at currently is the introduction of a new IT system. We are looking to develop our indicative crime information system because what we have now

is a crime analyst in each police area and also within our headquarters departments. In order to ensure that we can analyse those incidents properly we must make sure they are on the system. We are extending our system in order that incidents and crimes of a racial and homophobic nature are on the system and that will allow us to do that. The reality is that we are not completely satisfied at the minute, but we are working to address what we see as shortfalls.

Q147 Mr Hepburn: Can you give us a picture, an overview, on the role of minority liaison officers? How effective do you believe they have been, what are your recruitment policies for these officers and how do you deploy these officers throughout Northern Ireland, because I think Belfast has a predominance of the crimes we are talking about?

Inspector Dempsey: In every police district in Northern Ireland there is at least one minority liaison officer. The minority liaison officers were brought into post in 1997 for racial incidents and then in 2000 they took on the additional responsibility of supporting victims of homophobic incidents. In Belfast the majority of racial incidents would be concentrated in South Belfast; new statistics suggest 147 such attacks reported. In that area there clearly is a need to have more than one minority liaison officer if we are going to support people in the right manner. There would be a number of additional officers within each of the sectors across South Belfast. Their role is primarily one to support victims, to provide them with information, both in respect of support services and also in relation to the progress of investigations. They also have a role to build relationships within their particular area with minority ethnic groups, lesbian, gay, bisexual and transgender groups as well.

Q148 Mr Hepburn: In your experience have you ever come across any evidence of institutional racism within the Northern Ireland police force?

Inspector Dempsey: Certainly within the Police Service of Northern Ireland we have looked very closely at the recommendations of the Stephen Lawrence inquiry report and the definition of institutional racism. We have looked very closely and what we endeavour to do is learn from the experiences of our mainland colleagues and from the criticisms which have been directed at some of them. This is certainly not something which can be addressed as a one-off. It is something which needs to be addressed continuously. The definition refers to police officers being professional at all times and that is underpinned in section 75 of the Northern Ireland Act. Also it requires police officers to be professional, they need to have no stereotypes, no prejudices and what the Police Service of Northern Ireland are working to is to ensure that our officers are both trained in respect of those areas and that they recognise that they must be professional to ensure that these things are dealt with in the appropriate manner.

Mr Campbell: I just want to ask a question on the statistics which you have released and understand the reason for the timing of them. On some occasions when statistics like this are used it can lead

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to sensationalist reporting in the media. Each of the tables for each of the years shows that on the racial incident table there has been an increase year on year and quite rightly you said that they doubled last year. On the homophobic incidents, is it true, as the table seems to indicate, that up until this year the number of homophobic attacks was actually declining? I see that in 2000–01 it was 57, then the following year 40, the following year 35 and it is only in the past 12 months that there has been an increase. I am wondering about two things from that. Is what it appears to be in the table right? Secondly, are we seeing a blip and will we not know for some time whether that is the case?

Q149 Chairman: Or is it, as with so many statistics, that you are paying more attention to it?

Inspector Dempsey: What we would say is that in the last couple of years the police service, recognising under-reporting, have worked very hard to address this. It was certainly concerned that the number of homophobic incidents fell from 40 to 35. We are encouraged that it has risen and we would see that as a combination of reporting and incidents. The racial incidents have doubled and certainly we would be encouraged that that was a combination of reporting and actual incidents. We would have been very concerned, given the recognised under-reporting, if either of those two statistics had continued to fall.

Q150 Chairman: Would you then say that the statistics, because Mr Campbell is quite right that these are the sort of things which make headlines, are more a result of the PSNI getting their act together about reporting and collating these statistics than the fact that there is a significant increase in racial and homophobic crime?

Inspector Dempsey: It has to be said that it is probably a combination of both. In the racial incidents, for example, the increase has mainly been in criminal damage and physical assault, which are both crimes which we would have hoped would have been incidents reported to the police anyhow, although there have been occasions when that has not been the case. What we have resisted is being asked to ask for a reduction in those statistics, because we still feel that there are many more incidents which go unreported and we would even want to see, not an increase in incidents clearly, but an increase in reports, which would be fine.

Q151 Chairman: Why have you not recorded sectarian incidents?

Inspector Dempsey: There has been no recording of sectarian incidents by the police up to this time. It is something we are currently looking at.

Q152 Chairman: At what stage is that consultation on proposals to monitor and record these incidents? It is extraordinary that you are now concentrating on racial ones, you are concentrating on homophobic ones, quite rightly so I may say, yet the sectarian incidents go unrecorded.

Inspector Dempsey: It is surprising to note that despite all that has happened in Northern Ireland over the various years, when we started to look at this there was no agreed definition. What the police had to do was decide firstly how we were going to define this and how we were going to record it. Would it include just matters of religious motivation or would it include political motivation as well? What we did was consult with a number of organisations in respect of how we proposed to do that. We have a broad agreement now on how we can take this forward and this is something which will be included in—

Q153 Chairman: What is the broad agreement?

Inspector Dempsey: What we would intend to do is record sectarian incidents in a similar way to the way we record racial and homophobic incidents, along the Lawrence line of “perceived to be sectarian”. What we will then do is record incidents both of a religious and political motivation.

Q154 Reverend Smyth: On that very point, you are aware of the recent situation in South Belfast. What about the possibility of police officers not recording things when they are reported to you?

Inspector Dempsey: We would hope that every report of a racial or homophobic nature, and indeed sectarian when it comes in, would be recorded. We certainly ensure that there is a means to do that and it is not just down to the perception of the police officer, but down to the perception of the victim. Where it is reported, we will record it, we will monitor it and we will look to see how it has been dealt with.

Q155 Reverend Smyth: The point is that it is not recorded. When people go in and report and it is not recorded and then immediately police officers or a spokesperson say that there have been no complaints, then it is obvious that complaints which were made were not recorded. Surely it is important to keep that record too.

Inspector Dempsey: It is absolutely important. One of the areas in respect of racial incidents, where quite often people will comment publicly about what the police did not do about this or that, is that when we look at our records we realise it was not recorded. If the police are to prevent attacks they must be recorded. If we do not know about them we cannot prevent further attacks or deal with those which have already taken place.

Reverend Smyth: I am dealing with ones which were reported and ultimately it was admitted they were. Guidance has been given to people now that when they go into a police station they should make sure they take the number of the person to whom they reported it.

Q156 Mr Hepburn: Could you give us an idea of what training is provided to your police officers in dealing with hate crimes?

Inspector Dempsey: Training is delivered to student officers in the police college at Garnerville in relation to racism and diversity training, cultural awareness training. We then have district

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trainers in each of the police districts who deliver training to existing police officers by way of initial training in areas like this or updating training as well. Our department has a specific role in relation to training for minority liaison officers and we look after that. We have carried out religious diversity training. Recently we held a seminar where we invited representatives of all the main minority ethnic and homophobic support groups in to speak to those officers. I was recently involved in the training of all detectives. One afternoon was set aside specifically to focus on the importance of investigating hate crime.

Q157 Chairman: You talked to us earlier about minority liaison officers. How many of them come from ethnic minority communities?

Inspector Dempsey: None.

Q158 Chairman: Would it be helpful if some of them did?

Inspector Dempsey: It would be helpful to get police officers with a minority ethnic background into the police service regardless of what role they would play. There is obviously an agreed under-representation; we have in the region of 20 officers who would be visibly from minority ethnic backgrounds. Clearly we recognise that it would be important that that be representative of the community. However, the whole legislation in respect of recruitment does not specifically cater for that at the moment.

Q159 Chairman: We are well aware of that. That is one of your problems. Of those 20, has anybody considered making one of them a minority liaison officer?

Inspector Dempsey: The minority liaison officer in most police areas would be an additional role in community safety and a post within the community safety department. The post is advertised and every police officer has an opportunity to apply for that post. When they apply for that post and are

successful, they then would be appointed a minority liaison officer. Certainly it is a post they could apply for and I think it would be a great encouragement to the different groups that a police officer from a minority ethnic background was involved.

Q160 Chairman: But you do not as the police service make any positive efforts to encourage police officers from the ethnic minorities to come and take part in this work which they could obviously do with a greater sensitivity than someone not from one of those minorities.

Inspector Dempsey: It is an opportunity for them and obviously our selection procedure is open and transparent and they can apply for that post. It would be a good step for one to do that.

Q161 Chairman: Is there any carrot for a police officer applying to do this job?

Inspector Dempsey: Not that I am aware of.

Q162 Chairman: I am just asking these questions because there are some jobs in large organisations which are unpopular so it is made clear that if someone does that job for a bit they might get promoted and then move on to a job which would be attractive. You have to do something, do you not, to try to get more of them in—and I understand the problem with that, as I understand the problem of the Patten reforms and the strict 50/50 which does give you real difficulties. Having got 20 officers in, should you not make use of their ethnicity for your own benefit?

Inspector Dempsey: We do make use of it. It is not the minority liaison officers who investigate these incidents, it is the operational police officers and these 20 would be operational police officer who would be involved perhaps at the outset of an investigation. I can see that being a very positive encouragement to a victim if an officer who was visibly minority ethnic appeared at a racial incident. The police service has tremendous opportunities for everybody and community safety is something some particular individual could be motivated to undertake.

Chairman: Thank you very much indeed.

Witnesses: **Mr Adrian Arbuthnot**, Head of Criminal Justice Policy Division and **Mr Jim Strain**, Legal Assistant, Criminal Justice Policy Division, Northern Ireland Office (NIO) and **Mr Ken Fraser**, Head, Race Equality Unit, Good Relations Division, Equality Directorate, Office of the First Minister and Deputy First Minister (OFMDFM), examined.

Q163 Chairman: We shall continue. Do you want to make a brief opening statement?

Mr Arbuthnot: Perhaps briefly, if you would permit. I am here representing the Criminal Justice Policy Division of the Northern Ireland Office, which is the division responsible for the current draft Order. I am supported on my immediate right by Jim Strain, one of our senior legal advisers and on my far right by Ken Fraser, who is not of the NIO but of the Office of the First Minister and Deputy First Minister. Obviously there is a lot of liaison between the NIO and OFMDFM and that is represented here in our delegation. The minister has set a very high priority

on the present draft Order and, as you are aware, we have very recently completed a consultation process in Northern Ireland. The minister welcomes the opportunity for NIAC consideration of the draft Order and is looking forward to receiving views as a result of their present investigations.

Q164 Chairman: Perhaps you could start by explaining how the present law tackles hate crime in Northern Ireland and what the deficiencies are which this proposed Order is designed to address?

Mr Arbuthnot: The legislation which is being brought forward is obviously intended to bring the present law up to date with current trends in

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Northern Ireland. We have in very recent times been seeing an increased ethnic minority population in Northern Ireland and indeed a greater awareness of racial attacks. This has been a longer standing issue for England and Wales, but here in Northern Ireland social changes are coming about and therefore the law as it currently stands does need to be updated to take into account this very significant social change which is happening. We wanted to ensure that we have an up-to-date body of law which provides for society as it is evolving and underpins standards for social life, public behaviours, service provision, etcetera. It is not so much that the current law is necessarily wrong, but that we feel it is now time to ensure that the future law is responsive to the needs of society.

Q165 Chairman: You heard what was said earlier about disability.

Mr Arbuthnot: Indeed.

Q166 Chairman: Are you considering including it?

Mr Arbuthnot: May I say that disability has been an issue that we have considered very carefully in the process of developing the draft Order and I should say at the outset that the absence of disability from the Order as presently drafted does not in any way signify a lack of importance to that issue on the part of the Minister. Attacks on people who have various types of disabilities are particularly reprehensible attacks, indeed it is fair to point out that under present guidelines sentencers may take into account the vulnerability of a particular victim when coming to a conclusion on the length of a sentence. People who are vulnerable, and that will include many people who have disabilities and also people who are elderly and living alone, and we can think of other categories as well, do already receive a certain degree of protection through sentencing guidelines. The draft Order will increase the maximum penalties for a variety of crimes against individuals and it will also require courts to take account of aggravating factors in terms of a person's racial background or racial community, religious grouping or indeed sexuality. Ministers have taken the view that we wanted to keep a very firm focus on hostility towards particular groups and have to date taken the view that violence against people with disabilities can more often be motivated by opportunism occasioned by the individual's vulnerability than by hate as such. It was really for that reason that disability was considered, but at this stage not included in the draft Order.

Q167 Chairman: May I just ask Mr Fraser whether he could comment from the other side of the fence on that? Would you agree with that assessment that it is not necessary?

Mr Fraser: I must say that I have no particular knowledge of the issues around disability; my area is race equality.

Q168 Chairman: That is fine. That is a very helpful answer. Why, when it is in the England and Wales Order, do you not think it should be in the Northern

Ireland Order? Let me put two reasons. First of all, we are all struggling to get the corpus of law in Northern Ireland matching more closely the rest of the United Kingdom. Secondly, is there not a perception that perhaps you take this form of hate crime less seriously in Northern Ireland than the rest of the United Kingdom does?

Mr Arbuthnot: I do not think it is the case that we take it less seriously.

Q169 Chairman: I did not say that you did. I said would there not be a perception when this is in the law of the rest of the United Kingdom and not in Northern Ireland law?

Mr Arbuthnot: At the risk of repeating myself, sentences are being increased for assaults and vulnerability is—

Q170 Chairman: That is not the question. It is not the level of sentence, it is the inclusion or not of people with disabilities. If you do not include it, will there not be a perception that Northern Ireland does not consider it necessary, either because they do not care enough or because they want to be different, when everything else is moving towards trying to make the law within the United Kingdom as similar as possible.

Mr Arbuthnot: There very well may be a perception; I could not dispute that. We heard earlier witnesses talking in those terms. I think also that disability is a very wide term and definition of disability can in many respects be problematical. For example, two individuals have the same medical condition: one may consider himself disabled and the other may not. In terms of defining disability and catering for it in the same way we have catered for the other aggravating factors it may prove problematical.

Q171 Chairman: They are all problematical. If someone complains that he has been harassed or assaulted because he is gay, you have to take his word that this is therefore a homophobic attack. If he does not say he is gay, then it is not. Would it not be exactly the same in the example you have given about two similar people with a disability, one of whom acknowledges it and the other who is determined not to? What about the gay person who is not "out" who nevertheless has been attacked and does not claim that is homophobic harassment?

Mr Arbuthnot: The consultation we had in Northern Ireland demonstrated a groundswell of concern and views in favour of legislation in relation to race and religion and indeed homophobia was added as a result of the consultation and responses. We did not perceive the same groundswell of views regarding the inclusion of disability. There did not seem to be, in terms of this legislation and at this time, a compelling case to include disability.

Q172 Chairman: Of course one of the problems which I do acknowledge you have is the lack of hard statistical evidence. If that were forthcoming, presumably your mind is not closed on this matter.

Mr Arbuthnot: We are in the closing stages of the consultation process.

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Q173 Chairman: So your mind is closing, but is not quite closed.

Mr Arbuthnot: The shutters are very slowly coming down; they are not down yet.

Q174 Chairman: The government's mind is ajar. Could I put that phrase on your lips?

Mr Arbuthnot: I am sure you could.

Q175 Mr Luke: The Chairman has questioned all groups about statistics and specifically to do with disability and we have struggled to find hard statistics about the harassment of these disabled groups and how they are treated. Has the government any proposals to start collating that kind of information?

Mr Arbuthnot: Another arm to our work is our community safety strategy and our community safety unit has been very busy in recent times setting up local community safety partnerships. Through those partnerships, we shall be gaining much more information at local level about the types of incidents and perceptions and issues which affect local communities in relation to racial and other abuse. In that way we shall be building up a picture of what is happening on the ground. We heard an earlier witness talking about how the PSNI equally will be building up its statistical records on similar issues.

Q176 Mr Luke: We have talked about the draft Order. Why are you not proposing to replicate for Northern Ireland the aggravated offences category of crimes which exists in England and Wales under the Crime and Disorder Act 1998? Does the lack of that inclusion not suggest that there is a less than thorough approach in Northern Ireland compared with the approach adopted in England and Wales?

Mr Arbuthnot: I might even make the opposite case. Sometimes there are disadvantages in legislating behind the rest of the United Kingdom; sometimes there are advantages. Current research in England and Wales on this issue of aggravated offences is showing that proving a racist or other motivation for an offence can be at times problematical. We have therefore taken a slightly different approach to it: increasing the sentences but requiring the courts to take into account aggravating circumstances, aggravating factors when pronouncing a sentence. There are technical issues in the rest of the United Kingdom as to what sort of charges are laid. There is the ordinary charge and then an aggravated charge. Sometimes in issues where, for example, there might be plea bargaining, the "aggravated" could possibly be dropped. In Northern Ireland the approach we are adopting tries to get round that problem. I should also say that our approach has been very positively supported in local consultation. It has been welcomed by the police and prosecutors and other groups.

Q177 Mr Luke: Would you accept though that it has been argued that there is an ambiguity in the sentencing policy, which undermines the approach being adopted by the government?

Mr Arbuthnot: An ambiguity in the way we have drafted our legislation?

Q178 Mr Luke: An ambiguity in the sentencing. Underneath article 4 of the Order the higher maximum sentences would be restricted to crimes which are aggravated by hostility.

Mr Arbuthnot: I would not call it an ambiguity. I would like to think it was more in terms of flexibility which is given to the courts to take into account aggravating factors but also factors relating to an individual's vulnerability.

Q179 Mr Luke: Would you accept that the evidence produced by the Cambridge Institute of Criminology, which suggested that the Crime and Disorder Act as it is in England and Wales does send a very strong message that racist crime will not be tolerated, could be the approach promoted in your part of the world?

Mr Arbuthnot: Yes, I would agree with that and indeed the draft Order does place a requirement on the court to state openly in court if an aggravating factor has been taken into account. So it will be bringing to the fore and publicising offences which have been aggravated by the various factors listed.

Q180 Chairman: Just before we move on to the sentencing side, you said just now that you did not think that there was a groundswell of opinion wanting disability to be included in this Order. Have not the people whom you have heard made representations to us this afternoon also made representations to the Northern Ireland Office?

Mr Arbuthnot: Yes, we have indeed received those submissions in the course of the consultation.

Q181 Chairman: Ms Piggot, for example, with a lot of local knowledge, on the ground, at the coal face one might say, gave us some very compelling reasons why disability needed to be included. Why do you remain so unpersuaded of this, never mind what the others have said in a slightly more academic tone? When you get representations from people who live amongst and work for people with these disabilities is that not very persuasive?

Mr Arbuthnot: It is indeed and that is why we are still at the stage of considering the replies to the consultation and weighing up the evidence. The earlier witnesses have said that there is a lack of statistics available in relation to disability in general and the evidence we heard earlier from Mencap referred to a very specific and narrowly defined aspect of disability.

Q182 Chairman: Yes, I made that clear in my questions to her; you will remember that. At the same time, she said that she is in touch with all the other bodies which deal with disability and it was as bad for someone who had lost a leg and was sitting in a wheelchair, as I put it to her just to try to find as clear a distinction as I could make between someone with a mental disability or mental handicap and someone whose disability was purely physical. She said no, that there was a real problem. If there is a

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real problem, then the perception that you are not prepared to do anything about it because you find it is difficult as a question of identification or classification does not really hold water, does it, since in other areas which can be difficult, homophobia for example, it is by definition self-classification which is the criterion, which you heard Inspector Dempsey talk about? Inspector Dempsey said you cannot expect—I am putting words into his mouth—the PSNI to be able to recognise gays and lesbians on the streets. However, if they come and say this is an aggravated crime because this is what they are, then that is self-classification. Why can that not work just as well for disabled people, either with a mental handicap or a purely physical one?

Mr Arbuthnot: Of course we shall take very seriously all the representations made to us.

Q183 Chairman: No; you are allowed to come here and give us an opinion. I am asking you what your opinion is about the relative difficulty. I know you have a very fine party line to follow, but you are a very senior adviser to the government and you must have an opinion.

Mr Arbuthnot: I should like to be convinced that there is hostility involved as opposed to what I might describe as opportunism flowing from a person's vulnerability as a disabled person. I think that the draft Order that we have at the moment is very much intended to deal with cases of hate and hostility towards groups of individuals. I have heard the evidence today where that type of hate and hostility may extend toward people with mental handicap of one sort or another, but we would want to make sure that the draft order deals with hate crime rather than opportunistic crime and that is where the sticking point has been up to now.

Q184 Chairman: I do want to press this a little more. I put to you the problem of perception which you acknowledged. It might be perceived that in Northern Ireland it is not taken as seriously as in England and Wales and you have acknowledged that very fairly. Let us put it the other way round. If you were to include disability with the same criteria of hostility and hate, is that going to give you any more problems than including homophobia? You say your perception is that disability is not so big a problem as homophobia, but let us say you are wrong about homophobia and it is just that they have been shouting louder. Intrinsicly what I am putting to you is that if there were no difference in the difficulty level you would still have to take the same precautions to ensure that people who were alleging that this hatred was because of homophobia or disability were sound and would be able to stand up in court. Is there any fundamental difference between the two?

Mr Arbuthnot: I understand the similarities you are drawing out, but I have to go back to thinking that homophobia gives rise to violent attacks and perhaps there is less clear-cut evidence that disability has a similar effect.

Q185 Chairman: Yes, the statistics for homophobia, as we have had displayed to us today, are that with a population of 1.5 million we are talking about 35 physical assaults, which is a miniscule number compared for example with sectarian ones which are not even recorded. Given what Ms Piggot said about some of the people with disabilities having this hostility shown to them constantly, daily and weekly and in a way one had hoped that sort of attitude had gone out 20-odd years ago, but it obviously has not, even if it half that figure, it does not make it more compelling to deal with homophobia than it does with disability, does it?

Mr Arbuthnot: I understand the point you are making.

Chairman: However hard I try I can see that I am not going to get your opinion. I hope I get marks for trying.

Q186 Mr Clarke: I just wondered whether I might be helpful to you but not too helpful to our guests inasmuch as the neo-fascists, the far right, the extreme right, do not consider the disabled to be anything other than victims of hate. They take their teachings from groups such as November 11 and some of Hitler's teachings where if you were gay, if you were disabled, if you were of a different race, then you were not worthy, you were worthless, therefore they hate you. That is not opportunism. Do you accept that the neo-fascists and the right-wing groups will hate people because of their sexuality, because of their disability, because of their racial origins? On that basis surely action should be taken?

Mr Arbuthnot: Yes and if that hate manifests itself in Northern Ireland, then yes, I would agree with you.

Q187 Reverend Smyth: Still on the disability aspect, I have seen suggestions that in that case it should also extend to the carers and relations. How far can you legislate in such a situation, that a person who may be a victim can then be extended to include carers, relatives and so on? It opens a wide door, does it not?

Mr Arbuthnot: Yes, that would take us into a much wider group of victims. I would assume that where a carer is an integral part of an individual's life for whatever reason then an assault on a carer would be very similar if not the same as an assault on the individual. I am not sure I can go much further than that.

Reverend Smyth: I was thinking about legislation which has to cover once you open a door. It is part of an integral family: if a person is attacked for race, for sectarianism the whole family is attacked. That is why I am raising it so we are clear in our thinking.

Q188 Mr Luke: May I briefly turn to the issue of sentencing, which we were talking about briefly earlier? In the consultation paper on the Order you suggest that the maximum penalty for an offence could be exceeded by a certain amount, say two years, if racial or sectarian aggravation were proven. I think the rationale behind this was that it would more effectively differentiate between aggravated

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and non-aggravated crimes. I believe you are not progressing with that situation. Can you give us the background as to why not?

Mr Strain: This was our earlier consultation, the original one. I see your point. I thought you meant the explanatory document. It was not a runner. The problem with it was that unless you introduced the actual racial aggravation at the beginning of the charge, you could not increase the envelope for an extra two years because the defendant would not know what case he had to answer. It was that the evidential burden had shifted onto him and we dropped it and went with this proposal we have now, which increases the penalties for all that class of offences, whether racially aggravated or not, by two years to allow the court to reflect the racial aggravation and they just generally increase the sentence.

Q189 Mr Clarke: You have just said that the Crime and Disorder Act 1998 was not a runner.

Mr Strain: No, that the Crime and Disorder Act 1998 did not do what we had suggested in our earlier consultation document. Are you referring to what Mr Luke said?

Q190 Mr Clarke: Yes. One of the problems for many people who have been the victims of hate crime is that they do not believe that the law to date has protected them very well, so they are a little bit under-enthusiastic about the new law. If I were to mention to you the Protection from Harassment (Northern Ireland) Order 1997, I would say to you that there has been little evidence that it has been used, or at best you could say that it has been under-used. For those communities which have seen new laws brought into being without necessarily being put into effect in the past, what practical differences are those communities going to see post the introduction of the Criminal Justice (Northern Ireland) Order 2004?

Mr Strain: I cannot comment in relation to the harassment legislation; I just do not know. Certainly in relation to something Mr Luke referred to, the Cambridge report, it did say that it made quite a big difference in relation to the target groups which were victims of racial and indeed now sectarian attacks. We were greatly influenced by the Cambridge report in the way we brought forward our legislation. The Cambridge report actually recommends that the type of thing we are doing is considered rather than this technical difficulty that if you only put the racially aggravated offence on the indictment you lose the whole offence and you do not get punished for anything.

Q191 Mr Clarke: I am still trying to convince this community which has been harassed in the past that this new Order will make any difference and it certainly will not unless there is a commitment from the police, the prosecution service and the courts to use the new powers which are given to them. Can you give me some confidence that the government will commit itself not just to putting in the new

Order, but to reviewing its operation and acting on inactivity by the police and the courts, should that be the case?

Mr Arbuthnot: Yes, I think I can give that reassurance and agree that putting the legislation in place is only one part of the jigsaw. We have consulted very closely with the police and the police welcome the legislation as it is drafted and, as we have already heard, will be renewing its efforts to address this type of violence. The enforcement is part of the legislation and it will be important once the legislation, in whatever shape or form it finishes up, comes into effect to publicise it, to explain to local communities, to encourage local communities to have the confidence to use the legislation, knowing that there are more severe penalties for people who commit aggravated offences against them. There is a range of initiatives which needs to be put in place to ensure total effectiveness.

Q192 Mr Clarke: If we are going to review success, we need to have something to measure that success against. At the moment there is a lack of a robust reporting system for those who believe they have been victims of hate crime. Could I ask you about the multi-agency working group on recording and monitoring of incidents motivated by crime? Could you update us on your links and work with that group? Do you believe, as some have said, and I have said, that there needs to be a victim-led reporting system, so victims can make sure that their concerns are recorded, so that crime can be measured against people's own perceptions as to whether or not they are victims?

Mr Arbuthnot: The multi-agency group to which you refer is being taken forward by my colleagues in the Northern Ireland Office and they are in the process of establishing and working with local safety committees set up in the various areas to collect a variety of information relating to racism and other types of aggravated offences. Through those grassroots committees we shall get a full picture and I take your point on board that including the views and experience of victims as well would be an important part of that process and I shall gladly pass that on.

Q193 Mr Clarke: May I turn very quickly to restorative justice. We have already talked about severe sentencing or increased sentences, but the Cambridge Institute of Criminology also looked at the role restorative justice can play and education can play in bringing the perpetrator and the victim together to give the opportunity to apologise and to understand and share experiences. What is your view in terms of what is being done to allow robust restorative justice systems to be part of the new Order's work?

Mr Arbuthnot: I would certainly agree that restorative justice systems are part of the wider picture to which I referred. We are currently piloting a youth conferencing service in Belfast and in Fermanagh and Tyrone with a view to rolling it out to all parts of Northern Ireland and it is quite a legitimate part of that youth conferencing process

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that individuals may be required to undertake some form of education relating to racism or whatever. So I would agree with you that that is another important aspect and it is something which is being taken forward through the youth conferencing service as it develops.

Q194 Mr Pound: You rightly say that the key to tackling racial incidents is action by the PSNI. If we look at the figures for 2002–03 we swiftly discover that out of 226 reported incidents there were seven prosecutions. What do you think that tells us about the way in which this problem is being addressed at the moment?

Mr Arbuthnot: Obviously we should like to ensure that the law we have in place is the law the PSNI feel comfortable with and are able to use so that the number of prosecutions can ultimately increase.

Q195 Mr Pound: May I interrupt you a second? What do you mean by “feel comfortable with”? Do you think they feel it is sufficiently robust? Do you think it is appropriate? Do you think there might actually be a resentment within the PSNI of some of the—

Mr Arbuthnot: No, sorry, that was not the implication of what I said.

Q196 Mr Pound: I am glad we can clear that up.

Mr Arbuthnot: I was thinking in terms of the robustness and effectiveness of legislation.

Q197 Mr Pound: Do you have any evidence that there are aspects of the legislation which the prosecuting officers are unhappy with?

Mr Arbuthnot: As far as I am aware at present, we have the support of the PSNI on the present proposals.

Q198 Mr Pound: What do you think could be done to improve the prosecution rate? Seven out of 226 is a rather terrifying headline figure, is it not?

Mr Arbuthnot: It is important, in order for the legislation to become effective, that it is well understood that officers are trained appropriately and that it is effectively implemented.

Q199 Mr Pound: I should say for the record that quite clearly I cannot make any generalisation out of those cases because it is entirely possible that the best ordered police service in the world could get a ratio like that in a particular year. I am not saying anything other than that this is an indicative series of statistics. What about community safety partnerships? Do you think they have been successful, particularly in the area of hate crime?

Mr Arbuthnot: Before I answer that, it has just been drawn to my attention that of the 226 cases to which you refer, not all are necessarily criminal incidents. We may need to explore those figures in a bit more detail and I do not have that knowledge in my head.

Q200 Mr Pound: That is useful. It is just that the raw data we had simply lumped them together and I assumed that they were criminal incidents. That is

very helpful. Could you have a word about the community safety partnerships? Do you envisage an expanded role for the CSPs?

Mr Arbuthnot: Yes, I think the safety partnerships are still very much in their infancy, but they are a very important key role in the overall criminal justice system. Therefore I would see the role of those partnerships developing and particularly developing in respect of hate crime. That is a specific role that they have and as recently as yesterday, or possibly the day before, grants were given out to certain groups by our community safety unit for special initiatives to promote community safety, particularly in relation to hate crime.

Mr Campbell: Do you think that you could provide, or would it be the police, the evidence of the 226 you said you did not currently have information about? Can you supply that to us, or would we need to get that from the police?

Chairman: We can sort that out.

Q201 Mr Campbell: I referred earlier to sensationalism and sometimes the clarification of a figure can prove to be somewhat illuminating. I just want to ask two questions on government strategies to deal with hate crime. What is the status of the government’s race equality strategy?

Mr Fraser: The race equality strategy which covers the full range of issues which may impact upon minority ethnic people in Northern Ireland was developed within a Promoting Social Inclusion working group which included representatives from minority ethnic communities and the community and voluntary sector as well as government departments. It was put out to consultation last year on 25 February. The consultation period was extended to allow focused, targeted consultation with minority ethnic communities as well as the public at large. We have been analysing the input from the consultation and are busy re-drafting the race equality strategy. We anticipate that the race equality strategy should be published some time this summer. The minister has committed himself to publishing it this summer. Within the race equality strategy we will develop, through the race equality forum which has been set up to monitor and oversee the implementation of the race equality strategy, an implementation action plan to take the strategy forward, an implementation action plan which will initially be for government departments but which we hope might be extended to others within Northern Ireland society. It is fair to say that it dawned on us at a fairly early stage of drafting this that minority ethnic people on the street did not really care about the constitutional arrangements, whether a matter was excepted [as defined within the Northern Ireland Act 1998], reserved or devolved for that matter. I am pleased to say that the race equality strategy will cover both Home Office matters, Northern Ireland Office matters and those which are for the Northern Ireland Administration. The race equality forum will also have representatives from the Home Office and from the Northern Ireland Office as well as the Northern Ireland Administration sitting on it and it will have

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representatives from a wide range of minority ethnic groups and from the community and voluntary sector and key agencies such as PSNI, the Equality Commission and the Northern Ireland Human Rights Commission.

Q202 Mr Campbell: Quite apart from the intended impact one would presume of trying to deal with hate crime and reduce it, what other impacts would you see the strategy having on the wider community in Northern Ireland and dealing with hate crime?

Mr Fraser: As the memorandum said which the NIO and OFMDFM submitted jointly the key response for government is the criminal justice response. Of course there is a wide range of equality issues, confidence building issues around this, letting minority people have access to the services to which they are entitled, encouraging and allowing minority ethnic people to participate in the wider Northern Ireland society. We have a number of key aims within the race equality strategy: to eliminate racial discrimination; to promote equality of opportunity for people with different ethnic backgrounds in Northern Ireland; to increase equality of opportunity for minority ethnic people in accessing and benefiting from public services including training, education and employment opportunities; to combat racism and to provide protection against racist crime; to promote good relations and mutual respect between people of different ethnic backgrounds including Irish travellers; to increase awareness and understanding of and respect for different minority ethnic groups within Northern Ireland and their cultures and traditions; to increase participation of people from minority ethnic backgrounds in the social, public, economic and cultural life of society.

Chairman: We do have the strategy document and we are able to draw from it in writing our report. I just thought you might be going to read the whole of it to us.

Q203 Mr Campbell: I want to go on to the strategic action plan on sexual orientation and where we are in terms of the status of that document.

Mr Fraser: I must say that action plan is at a fairly early stage. The document Building on Progress, Priorities and Plans 2003–06 committed OFMDFM to bringing forward a cross-departmental strategy to tackle gender inequalities. Initially the gender equality strategy appeared to be the most appropriate vehicle to tackle issues of sexual orientation, but in the opinion of departments and the Equality Commission and various other groups which were consulted, it was decided this was not appropriate and the minister approved that sexual orientation issues should be treated separately from the gender strategy. OFMDFM now has met representatives of the various sexual orientation groups who have highlighted these issues and the department is working with these groups to develop proposals for action. It is at a fairly early stage. One of the key issues here is an issue which the Committee has already mentioned in other respects which is a difficulty in actually getting much information or solid data on these particular issues. OFMDFM has already commissioned research on the issue of sexual orientation in relation to the promotion of equality and is seeking to plug various information gaps.

Q204 Chairman: In other words, we have not get very far yet.

Mr Fraser: I think I said that.

Q205 Mr Campbell: You say it is at a very early stage. When do you expect to see a conclusion?

Mr Fraser: I am afraid I would have to get back to you on that.

Mr Campbell: Before you conclude.

Chairman: Gentlemen, thank you very much for your help. I am sorry we detained you rather late. The Committee is adjourned.

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