

FROM THE OFFICE OF THE JUSTICE MINISTER



Department of
Justice

An Roinn Dlí agus Cirt

Máinnystrie O tha Laa

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Kathy O'Hanlon
Clerk to the Committee for Justice
Room 242
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13 February 2026

Dear Kathy,

SENTENCING BILL – HATE CRIME PROTECTED CHARACTERISTICS

Thank you for your letter of 4 February 2026 in which you requested a response to correspondence from the Commissioner for Older People [COPNI] regarding the inclusion of age as a protected characteristic under the hate crime provisions in the forthcoming Sentencing Bill; and, to provide details of engagement and consultation work the Department has carried out with reference to age as a protected characteristic.

Please see the Department's response to the points raised below.

1. Departmental decision on the inclusion of age as a protected characteristic is pending

Judge Marrinan recommended the inclusion of age (to include all ages) as a protected characteristic in his Review of Hate Crime Legislation in Northern Ireland.

The Department has not yet accepted this recommendation, noting that further policy work is needed in this area: that policy work is ongoing. We acknowledge that policy development has been a lengthy process and has been impacted by pressures on the legislative programme as a result of a reduced mandate and limited departmental resources. Department officials have, however, engaged with a range of age sector

stakeholders on this issue (including discussions about this issue with Ms. Casey's predecessor) and have affirmed the Department's intention to consult fully on this recommendation.

A final decision on whether to include age as a protected characteristic will be informed by findings from evidence-based policy development and the findings from the Phase 2 Hate Crime Consultation. The Minister has previously advised the Assembly that Phase 2 Hate Crime Consultation is scheduled to be progressed following the passing of the Sentencing Bill, due to be presented to the Assembly shortly.

2. Evidence base for the addition of age as a protected characteristic

The Department takes an evidence-based approach to the consideration of the protected groups to which the statutory aggravator model for hate crime will apply. To date, officials considered a range of research and policy resources to determine age related concerns and evidence related to hate crime.

The Department notes there is a range of opinions amongst key stakeholders on this issue.

3. Judge Marrinan's consultation findings and recommendation

Judge Marrinan contended that the inclusion of age as a protected characteristic would be merited for a range of reasons including:

- Findings from research which highlighted that older people are particularly vulnerable to the effects of crime, in part due to the fact that certain offences against older people are less likely to be prosecuted, arguing for the need for increased protection of older people;
- That this approach would be consistent with hate crime legislation in several European countries and internationally;
- That age is included as a protected ground in wider legislation, including the Charter of Fundamental Rights, under Article 4 of the European Convention of Human Rights (ECHR) and under the EU Victims Directive.

Judge Marrinan set out his position in relation to age as a protected characteristic in the Review noting that the inclusion of age as a protected characteristic is likely to be controversial. Whilst he concluded there was sufficient evidence of hostility-based



offences against the elderly to include age as a protected characteristic, there was little evidence of offences being committed against young people because they are young people, but in the end, decided against elder specific protection.

Findings from Judge Marrinan's consultation indicate the majority of respondents (85% overall - 92% individuals and 62% organisations) opposed the inclusion of age as a protected characteristic.

A number of stakeholders from the age and victim sectors questioned the merits of the inclusion of age as a protected characteristic (Hourglass NI - formerly Action on Elder Abuse and Victim Support NI), arguing that 'age' and particularly crimes against older people, did not fall within the definition of hate crime, but were based on the victim's vulnerability.

The PSNI response also noted that they deal with crimes against older persons under the wider category of vulnerability.

Concerns raised against inclusion were that age is primarily a factor in opportunistic forms of crime rather than hate motivated crime: older people are targeted because of their **perceived vulnerability** rather than because of any hate or hostility in relation to their age. Vulnerability may be based on physical frailty, mental capacity, memory difficulties, loneliness and isolation or dependency on others for basic care needs.

Respondents also argue that, unlike other minority groups, older people have not historically suffered disadvantage, prejudice, discrimination and lack of political power or recourse.

In terms of support for the inclusion of age as a protected characteristic, it could be argued that this is in line with academic research that advocates the utilisation of characteristics already present in anti-discrimination legislation.

Respondents arguing in favour of inclusion of hate crime protections identified some of the broader benefits that such legislation would provide in addressing the challenges of dealing with crimes against older people. COPNI, the Equality Commission for Northern Ireland and the Women's Regional Consortium highlighted a range of arguments including:

- The value of potential legislation in communicating the message that targeting older people is unacceptable, which would help to address the concern that crimes targeting older people are often not treated seriously enough or sentenced appropriately.
- Age is a protected ground under the anti-discrimination legislation in Northern Ireland as well as being a ground on which due regard to the need to promote equality of opportunity must be provided under Section 75 of the NI Act 1998.
- The sort of hostility, contempt and prejudice against older people can foster an environment that allows ageism, age discrimination and crimes against older people to grow, become permissible and lead to a dehumanising of older people.

4. Review of policy and research documents

As part of the policy development process, officials have considered a range of relevant policy and research resources and provisions in other jurisdictions. To date it has been difficult to identify findings which evidence the need for age related protections in respect of hate crime. Even in regions which have introduced hate crime provisions, there is little data recording cases where age was the motivation for hate crime.

5. Sources included data from Northern Ireland, the UK and International regions:

- Department for Communities – ‘Active Aging’ Strategy. Based on DfC engagement with interested groups, the issue of hate crime, on the basis of age, has never been raised in the context of any of these stakeholder engagements.
- COPNI’s, ‘*Crime and Justice – Experience of older people in NI – Commissioner’s Report*’. The report does not make reference to hate crime.
- COPNI’s ‘*A Different Crime*’ which asserts that crime has a distinctive significance for older people. This report included some case studies which DoJ officials discussed with colleagues from the PSNI and PPS who agreed that these examples would not be constitute a hate crime or hate incident but related to the vulnerability of the victim and to financial exploitation and extortion.

- Lived Experience Survey - The findings from this survey focused on what matters most to the older people. Hate crime was not identified.
- Engagement with the Age NI Consultative Forum indicated a general consensus that this is a complex issue and that (perceived) vulnerability of older people is key when considering the inclusion of age as a protected characteristic.
- Following engagement with the Northern Ireland Commissioner for Children and Young People (NICCY), it was noted that there was no compelling evidence of crimes against younger people due to hostility towards their age.
- The inclusion of age as a protected characteristic in other jurisdictions: Scotland is the only jurisdiction in the UK and Ireland which includes age as a protected characteristic in hate crime legislation.
- Age protection for hate crime was not recommended for inclusion by the Law Commission in England and Wales.

Further research undertaken by officials on the inclusion of age in other jurisdictions indicates that provision on age hatred/prejudice offences are found in: New South Wales in Australia, Canada, New Zealand, as well as 14 states in the USA including the District of Columbia, Florida, Iowa, Louisiana and Vermont.

Several European countries, including Austria, Latvia, Lithuania and Belgium have also introduced legislation prohibiting hate crime based on age. However, although these countries report their hate crime statistics to the Organisation for Security and Co-operation in Europe [OSCE], analysis of the data showed that they have reported no information relating to cases where age was the protected characteristic of the victim of hate crime.

The addition of any new group as a protected characteristic in hate crime legislation is something that requires careful consideration, as arguably this law should primarily protect disadvantaged minorities. The inclusion of 'age' to include all age ranges would in essence cover the whole population and it could be contended that extending these



protections so extensively, when there is no compelling evidence to do so, may dilute the function of hate crime legislation.

6. Hostility threshold for hate crime offence

Hostility is the current threshold used in legislation for determining if a crime is deemed to be a hate crime in Northern Ireland. The court's threshold for proving an offence aggravated by hostility, by the offender, is '*demonstration of hostility*' or '*motivated (wholly or partly) by hostility*' towards the victim. DOJ have agreed to retain this, as recommended by Judge Marrinan. Hostility is the threshold used in the provisions drafted for the Sentencing Bill.

Hostility is a high threshold, and initial policy development work on the issue has shown that crimes against older people are rarely due to hostility towards their age, rather they are due to opportunity or vulnerability.

7. Strengthening legislation for vulnerability related offences

It is important to recognise that there has been significant progress in strengthening protections for older people and vulnerable persons since Judge Marrinan's review. A different legislative landscape now exists where additional protections for vulnerability related offences are currently being progressed, which it is hoped will provide greater protection for vulnerable victims (including older people) as well as a more robust deterrent to offenders.

In considering the need for legislative protections for older persons who are victims of crime, one of the risks that the Department needs to consider in future policy development for this recommendation is the risk of duplication of legislative provisions.

Sentencing guidance provisions already require the courts to take into consideration the vulnerability of older people (victims) when sentencing offenders. In addition, two key provisions are due to be passed by the end of this mandate. These are:

- The introduction of a vulnerability aggravator in the Sentencing Bill
- Offences in the forthcoming Department of Health [DoH] Adult Protection Bill



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The Department's Sentencing Bill will introduce a new vulnerability aggravator. The provisions will recognise a victim's vulnerability as an aggravating factor for sentencing purposes where the offender knew or ought reasonably to have known that the victim was a vulnerable person.

A vulnerable person is defined in the Bill as someone whose ability to protect themselves from violence, abuse, neglect or exploitation is significantly impaired "through physical or mental disability or illness, *old age* or for any other reason".

The DoH's Adult Protection Bill will go some way to providing a more robust response to crimes committed against older people. These provisions will introduce new offences relating to harm done through abuse, neglect or ill-treatment. The forthcoming provisions will provide enhanced protection for older people whether living at home or in a care setting when they are at risk of harm from abuse, exploitation or neglect and are in need of protection.

It is hoped that the introduction of a vulnerability aggravator in the DoJ's forthcoming Sentencing Bill and provisions in the DoH's Adult Protection Bill will address many of the concerns which prompted the initial recommendation for inclusion of age as a protected characteristic in hate crime legislation made in 2020.

Officials plan to monitor the impact of vulnerability aggravator provisions in both the proposed Sentencing Bill and the Adult Protection Bill in the context of crimes against older persons.

8. DOJ engagement and consultation work undertaken on age as a protected characteristic

The Minister met with NI Youth Forum in 2022 which included a focus on hate crime issues. DoJ officials have had ongoing engagement with a wide range of age sector stakeholders on Judge Marrinan's recommendation for the inclusion of age as protected characteristic in hate crime legislation.

In December 2022 officials delivered a presentation on hate crime to 16 participants representing age sector advocacy organisations including representatives from COPNI, Age NI, NI Youth Forum, NICCY and Hourglass. The workshop provided an overview of Judge Marrinan’s hate crime legislation review report, updates on policy work, work on the Phase 1 and 2 consultations work and a timeline of future milestones. In addition to a focus on hate crime, the workshop discussed the introduction of legislation relating to the protection of vulnerable adults and proposed relevant sentencing guidance. Officials also offered a follow-up meeting with individual organisations following this presentation.

In 2023 DOJ Officials also had direct engagement with staff from COPNI to discuss their concerns regarding the age-related provisions and a meeting with the NI Commissioner for Children and Young People to discuss the inclusion of age as a protected characteristic in hate crime legislation.

Officials also engaged with key criminal justice partners including the PSNI, PPS, NIHE, PBNI and VSNI to assess the operability of adding age to the list of protected characteristics and identify any practical out-workings and impact on processes, systems and resources within organisations and their system as a whole.

In 2023, Officials also led a workshop for members of the Age NI Consultative Forum to discuss age related hate crime provisions.

In 2024, engagement with key stakeholders and policy development on age related provisions was paused following the decision to prioritise work on foundational hate crime provisions in the Sentencing Bill to ensure these provisions would be included in legislation in this mandate.

Further engagement is planned including through the Phase 2 Hate Crime consultation which will be progressed following the passing of the Sentencing Bill and will seek views on the inclusion of age as a protected characteristic.

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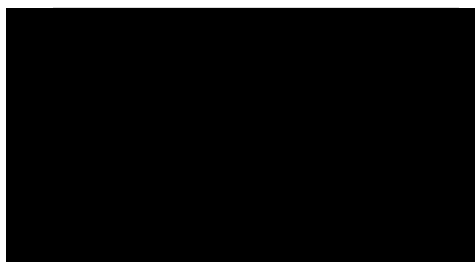
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Yours sincerely



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**Northern Ireland Assembly
Committee for Justice**

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4 February 2026

Dear ██████████

SENTENCING BILL – HATE CRIME PROTECTED CHARACTERISTICS

At its meeting on 29 January 2026 the Committee for Justice considered correspondence from the Commissioner for Older People regarding the Sentencing Bill. In the correspondence, the Commissioner has raised concerns that age is not included as one of the protected characteristics under the hate crime provisions in the forthcoming Sentencing Bill.

The Committee agreed to forward the correspondence to the Department to seek its views on the points raised by the Commissioner. The Committee also asked what engagement and consultation work the Department has carried out with reference to age as a protected characteristic, since Judge Marrinan's Independent Review of Hate Crime Legislation in Northern Ireland in 2020.

I would be grateful of a response by 16 February 2026.

Yours sincerely

Kathy O'Hanlon

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