

Written Evidence to the Committee for Justice of the NI Assembly on the Justice Bill from the Committee on the Administration of Justice (CAJ)

Proposed addition: Recommendation 15 Independent Review of Hate Crimes Law in Northern Ireland- (statutory duty on relevant public authorities relating to removing racist and sectarian hate expression in public space)

April 2025

1. The Committee on the Administration of Justice (CAJ) is an independent human rights NGO with cross community membership in Northern Ireland and beyond. It was established in 1981 and campaigns on a broad range of human rights issues. CAJ seeks to secure the highest standards in the administration of justice in Northern Ireland by ensuring that the Government complies with its international human rights obligations. CAJ is the UK member of the International Federation of Human Rights (FIDH).
2. This submission is in response to the call for evidence on the Justice Bill by the Committee for Justice. The Bill presently encompasses a range of provisions on DNA, detention and bail of children, police use of live links, and broader provisions on the administration of justice. The Justice Minister intends to amend the Bill following Committee stage to also include a range of other provisions on: restorative justice; serious organised crime; Access NI filtering; reform of rehabilitation periods; repeal of vagrancy legislation; live links for courts and tribunals.¹

Proposed addition to Bill – recommendation 15 of Hate Crimes Review – summary

3. CAJ has a broad body of work in relation to hate crime legislation and was part of the Expert Group which advised the Department of Justice commissioned, judge-led [Independent Review of Hate Crimes Law in Northern Ireland](#), undertaken by Judge Marrinan and published in December 2020 (Marrinan Review).²
 - CAJ recommends that the Justice Bill is amended to include an additional provision to take forward Recommendation 15 of the Marrinan Review, namely that: *“There should be a clear and unambiguous statutory duty on relevant public authorities including Councils, the Department for Infrastructure and the Northern Ireland Housing Executive, to take all reasonable steps to remove hate expression from their own property and, where it engages their functions, broader public space.”*³
 - The predominant form of hate expression in public spaces that the duty would address relates to material facilitating racist and sectarian intimidation from housing.
 - Such materials have long included the use of flags, particularly paramilitary flags, to deter persons from taking up housing in new developments. This has also been accompanied by graffiti including ‘locals only’, ‘no foreigners’ ‘no Taigs’ etc. More recently there has been a particular problem of racist, and specifically Islamophobic intimidation from housing, through the use of posters threatening landlords who rent to migrants and Muslims.

¹ <https://consult.nia-yourassembly.org.uk/justice/justice-bill/>

² <https://www.justice-ni.gov.uk/publications/hate-crime-legislation-independent-review>

³ Department of Justice (December 2020), *Hate Crime Legislation in Northern Ireland: Independent Review*, Final Report (hereafter ‘Hate Crime Review’) para 10.76.

- A further common example of hate expression in public space are the slogans advocating genocide ‘Kill all Huns’ (KAH) or ‘Kill all Taigs’ (KAT). Councils have specific powers around graffiti removal.
- Despite obligations in domestic law and human rights treaties to tackle racist and sectarian expression, relevant public authorities have hitherto largely had a policy approach of non-intervention to removing items, citing staff safety concerns given paramilitary links to the material in question.
- The Department for Infrastructure (DfI), who have a raft of powers to remove material on their property, and the Housing Executive have adopted policy approaches of removing material only if there is ‘community consensus’ to do so.
- The PSNI have a role when the items in question themselves constitute a criminal offence (crime of ‘intimidation’ or ‘stirring up hatred’) or in supporting other public authorities and their contractors in removing material.
- In 2024 CAJ sought to initiate legal action against the policy approaches adopted by PSNI and DfI in relation to removing racist and sectarian expression in public space. The PSNI subsequently reviewed their policy and intend to adopt revised Operational Guidance. The PSNI also removed threatening posters on DfI property from the Rathcoole estate (the posters stated “*TAKE NOTICE ANYONE facilitating the settlement of Muslims or illegals in our areas will be held responsible. WE ARE WATCHING.*” CAJ continues to actively engage with DfI regarding its policy approach of non-intervention without unanimous community consensus, which we consider unlawful given the harms caused by the material in question.
- The formulation of Recommendation 15 recognises that it will not be possible to remove the material in all circumstances, but rather that reasonable steps are taken to do so.
- Recommendation 15 was consulted on as part of the Marrinan review, receiving support from consultees.
- The broad and ‘miscellaneous provisions’ nature of the Justice Bill would appear to bring the subject matter of Recommendation 15 within ambit.
- There are presently no other Department of Justice plans to take forward Recommendation 15.
- The approach under Recommendation 15 involves targeting the expression that constitutes the most harm, rather than regulating all forms of expression.
- After the summer of 2024, the UN Anti-Racism Committee urged Stormont to “adopt robust measures to prevent and combat paramilitary racist violence and intimidation against ethnic minorities and migrants in Northern Ireland.”

We would therefore urge the Committee to recommend the Justice Bill be amended to include taking forward Recommendation 15 of the Hate Crimes Review.

Racist and Sectarian Expression in Public Space

4. In 2022, CAJ produced a research report into the questions of public authority practices in relation to removing racist, sectarian and other hate expression from public space, including expression used for intimidation from housing.⁴
5. This included examining racist and sectarian slogans in graffiti or banners (e.g., 'locals only' or '[x] out') and the use of flags, including paramilitary flags, for the purpose of intimidation. This encompassed both individual incidents - such as a flag being placed outside the home of the only ethnic minority family on a street - and more generalised forms, where, for example, flags are positioned at the entrance of new housing developments (including those specifically designed to be 'shared') with the intent or effect of deterring the 'other' from moving into the area. One such example was a shared housing scheme in South Belfast, where the placement of paramilitary flags for this purpose was followed by the violent intimidation of Catholic families out of their homes, an act the PSNI attributed to the UVF.⁵
6. The proliferation materials used for racist and sectarian intimidation in particular areas have become even more prominent.⁶ In the last year there has been a prevalence of racist posters on public authority property inciting discrimination in housing by threatening public and private landlords who rent to migrants or Muslims.⁷ Two examples are included as an appendix to this submission.
7. In Summer 2024, the UN Committee on the Elimination of Racial Discrimination (CERD) issued its Concluding Observations on the UK, raising concerns regarding paramilitary involvement in racist violence, including housing intimidation, in the following terms:

While noting the efforts by the State party to tackle paramilitarism in Northern Ireland, the Committee is concerned about reports of paramilitary groups and affiliated individuals perpetrating acts of racist violence and intimidation to deter persons belonging to ethnic minorities and migrants from taking up housing or establish business in certain areas.⁸

8. The UN Anti-Racism Committee consequently recommended that:

⁴ CAJ, [Dealing with hate expression in public space in Northern Ireland May 2022](#)

⁵ "PSNI: 'UVF behind intimidation of Catholic families'" <http://www.bbc.co.uk/news/uk-northern-ireland-41515142> see also <https://www.belfasttelegraph.co.uk/news/northern-ireland/psni-approach-to-removing-loyalist-flags-frustrating-38319474.html> , see also: <https://www.belfasttelegraph.co.uk/news/northern-ireland/alliance-disappointed-by-police-response-to-uvf-flags-in-cantrell-close-38318559.html>

⁶ See for example investigative reporting in *The Detail*: [Race hate victims 'enduring months of attacks' - Investigations & Analysis - Northern Ireland from The Detail](#); [Race hate victims 'failed' by justice system - Investigations & Analysis - Northern Ireland from The Detail](#); [Race hate crimes in one area of Belfast have doubled since 2017 - Investigations & Analysis - Northern Ireland from The Detail](#)

⁷ [Belvoir: Anti-migrant signs treated as 'hate incident' - BBC News](#); [Belvoir: Windows and doors smashed in Belfast tower block - BBC News](#); [Co Tyrone: Police probe hate incidents after anti-immigrant signage erected and home targeted in Moygashel | BelfastTelegraph.co.uk](#); [Co Antrim Portrush: Police investigating after anti-asylum seeker flags erected in Portrush | BelfastTelegraph.co.uk](#); <https://www.bbc.co.uk/news/uk-northern-ireland-67566360>; <https://www.irishnews.com/news/northern-ireland/union-flags-erected-beside-new-houses-an-attempt-to-intimidate-nationalists-VZ3N46PE4VG2BH4Y36P3O2GDEA/> <https://www.belfasttelegraph.co.uk/news/northern-ireland/racist-anti-immigrant-posters-erected-in-newtownards-in-suspected-co-ordinated-uda-campaign/a475331134.html>

⁸ CERD/C/GBR/CO/24-26, CERD Concluding Observations on UK, 2024, para 25.

...the State party, particularly the government of Northern Ireland, adopt robust measures to prevent and combat paramilitary racist violence and intimidation against ethnic minorities and migrants in Northern Ireland, systematically collect information on these acts of intimidation and ensure that cases of paramilitary racist violence and intimidation are promptly and effectively investigated, prosecuted and punished with appropriate sanctions, and that victims have access to effective protection and redress.⁹

9. In other spheres of racist hate crimes there have been official attempts to downplay the involvement of paramilitary elements. By contrast, in relation to the above racist and sectarian materials, the rationale for non-intervention by public authorities is precisely because of the risks of doing so in the context of paramilitary involvement.

The Policy Approach of PSNI and DfI

10. The 2022 CAJ report criticised the non-intervention practices of relevant public authorities. Specifically, it critiqued the PSNI's approach at the time, which was based solely on a public order perspective rather than giving due consideration to the harms of racist and sectarian expression. According to the 2019 Operational Guidance, the PSNI would typically refrain from removing hate expression if doing so was a risk to public order and could even *prevent* the removal of paramilitary-approved expression if its removal posed a public order risk. While acknowledging public order as a legitimate concern, we raised concerns that this approach incentivises paramilitaries to create threats as a means of controlling what types of expression are permitted in a given area. Furthermore, the policy failed to account for the *harms* of racist and sectarian expression, including cases where such expression meets the threshold of a criminal offence.
11. Additionally, the report found problematic policy approaches by the Department for Infrastructure (DfI) and the Housing Executive that condition the removal of items to 'community agreement'. This was not intended to criticise the often challenging on-the-ground work, nor to dismiss the benefits of community dialogue, engagement, and broader efforts to address prejudice and promote understanding. However, as a matter of policy it would be inappropriate to contain a precondition that the removal of hate expression will only take place with the 'permission' of others, potentially including those who placed the items in the first place. Public authorities are bound by human rights duties to tackle racist, and sectarian expression regardless of whether there is support for such material. It is also concerning that such policy approaches tend to conflate paramilitary actors with 'the community'.
12. Following the escalating situation of housing intimidation through racist posters, and our concerns the approaches by PSNI and DfI were unlawful, we initiated correspondence on a legal challenge with both public authorities. The PSNI subsequently have reviewed their policy and intend to issue revised Operational Guidance. DfI, who have a raft of powers to remove material, have retained their existing policy position and we have remained engaged with them regarding our concerns that their position is unlawful.

⁹ As above, paragraph 26.

Legal framework

13. There are specific duties on public authorities to take positive steps to tackle racist and sectarian expression.¹⁰ This includes positive obligations under the European Convention on Human Rights (ECHR), which are directly enforceable in the courts due to the Human Rights Act 1998 (HRA). By virtue of the HRA, public authorities must interpret and give effect to all other legislation, insofar as possible, in a way that is compatible with ECHR rights.¹¹
14. Human rights duties can be characterised as either negative or positive. Negative in that they impose duties on States *not* to do particular things (e.g. torture people or imprison without a fair trial), positive when they impose duties to take action to protect and secure rights. In relation to the ECHR, it has been established that there are positive obligations under ECHR Article 8 (right to private life) to protect persons from racist expression.¹²
15. ECHR Article 8 therefore places positive duties on public authorities to take steps to tackle racist expression. These provisions should be read and interpreted in line with other relevant human rights standards. This would include Article 6 of the Framework Convention for National Minorities which obliges public authorities to:
 - ...take appropriate measures to protect persons who may be subject to threats or acts of discrimination, hostility or violence as a result of their ethnic, cultural, linguistic or religious identity.
16. The domestic incorporation of the ECHR, and the scope of Article 8 duties relating to racist expression, are referenced in the official report of the Hate Crimes Review as follows:
 - [The ECHR] is given further legal effect by the Human Rights Act 1998, so, for example, Article 8 of the ECHR, the right to a private life, provides for positive obligations to intervene to tackle racist expression by providing obligations that engage with the rights of individuals to the peaceful enjoyment of their private life.¹³
17. Racist expression constitutes a form of racial discrimination under ICERD (the UN anti-racism convention).¹⁴ Duties on public authorities under Article 2 of ICERD include pursuing “*by all appropriate means*” policies of eliminating racial discrimination in all its forms; this includes measures to “*prohibit and bring to an end*” racial discrimination by third parties, and undertaking not to “*sponsor, defend or support*” such discrimination.
18. Under Article 4, ICERD states there are specific duties to take “*immediate and positive measures*” to eradicate incitement to or acts of discrimination, including banning expression (‘*propaganda*’) that promotes racial hatred and discrimination. There are also specific duties not to assist racist activities. These provisions can be read as placing

¹⁰ The Council of Europe and UN anti-racism committees have held that sectarianism in Northern Ireland is to be considered as a form of racism, and hence duties flowing from ICERD and the ECHR also apply to sectarianism in Northern Ireland.

¹¹ Human Rights Act 1998, sections 3 & 6.

¹² The increased codification of Article 8 ECHR rights as providing for positive obligations for intervention to protect against actions that include being subjected to racist expression has been a feature of Strasbourg jurisprudence (see for example *Asku v Turkey* (app no 4149/04, 41029/04) 15 March 2012, and *Király and Dömötör v Hungary*, 2017).

¹³ Hate Crimes Review, Vol 2, paragraph 10.9.

¹⁴ CERD/C/GC/35 *General Recommendation 35* (Combating racist hate speech).

duties on public authorities not to assist racist (including sectarian) expression by third parties, by for example facilitating its presence on their property.

19. The most serious forms of racist, sectarian, homophobic or disablist expression can reach the threshold of the criminal offence of stirring up hatred under Part III of the Public Order (Northern Ireland) Order 1987.¹⁵
20. Other criminal offences relevant to hate expression include the offence of *intimidation* under the Protection of the Person and Property Act (NI) 1969, whereby it is an offence to unlawfully cause “*by force, threats or menaces, or in any way whatsoever*” a person to leave their home, employment, to terminate a person’s employment or “*refrain from doing any act*”.¹⁶
21. Further positive obligations to tackle racism and sectarianism are placed on designated public authorities in Northern Ireland by the ‘good relations duty’ under Section 75(2) of the Northern Ireland Act 1998.¹⁷ Whilst the ‘good relations’ duty is regularly misinterpreted its meaning has been authoritatively interpreted both by the Equality Commission and international standards. In international standards, the Council of Europe anti-racism body has stated that:

*Promoting good relations between different groups in society entails fostering mutual respect, understanding and integration while continuing to combat discrimination and intolerance.*¹⁸
22. Similarly, the Equality Commission, which has a statutory function to advise on the Section 75 duties, has promoted an interpretation of the Good Relations duty as constituting a duty that involves ‘tackling prejudice’ and ‘promoting understanding.’ This interpretation is drawn from the definition of good relations set out in the Equality Act 2010 (which applies in Great Britain). Furthermore, drawing on other legislation in Britain, the Equality Commission has stated that “*Good relations can be said to exist where there is a high level of dignity, respect and mutual understanding; an absence of prejudice, hatred, hostility or harassment; a fair level of participation in society.*”¹⁹
23. These definitions therefore provide a sound basis of how ‘good relations’ should be interpreted by public authorities, as a duty to take positive action to tackle prejudice, hatred, hostility, discrimination and intolerance. The good relations duty applies within a public authority’s ‘functions’, which include, but are not limited to, actions in relation to its own property. This would include promoting good relations in the exercise of its

¹⁵ This covers offences of ‘stirring up hatred’ or ‘arousing fear’ against a group of persons on grounds of religious belief, sexual orientation, disability, colour, race, nationality (including citizenship) or ethnic or national origins. The categories of sexual orientation and disability were added in 2004.

¹⁶ <https://www.legislation.gov.uk/apni/1969/29/section/1>

¹⁷ The Section 75(2) duty provides that designated public authorities (including DfI, NIHE and Councils) in carrying out their functions are to “*have regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group*” (without prejudice to the duty to promote equality of opportunity under s75(1).) There is also a duty (on district councils only) under Article 67 of the Race Relations (NI) Order 1997 to eliminate unlawful racial discrimination and promote good relations between different ‘racial groups’.

¹⁸ [ECRI General Recommendation no 2 \(revised\), explanatory memorandum](#), para 21

¹⁹ Equality Commission (September 2015), *Equality Commission Advice on Good Relations in Local Councils*.

specific public authority powers (e.g. on graffiti removal, or removal of items from lampposts), but also through its broader remit.

24. Commenting on the scope of the Section 75(2) 'good relations' duty, the Hate Crime Review report highlights that:

Clearly, it is unarguable that any public authority which tolerates incitement to hatred in its functions is not promoting good relations. Indeed, it is also arguable that inaction or inactivity may also have a similar effect of allowing fear and distrust to fester in communities.²⁰

25. The Hate Crimes Review also references the support of all NI Executive parties in the New Decade New Approach (NDNA) deal to tackling sectarianism as follows:

The main political parties also reaffirmed their support for the right to freedom from sectarianism, sectarian harassment and intimidation, and the need to tackle sectarianism, prejudice and hate in seeking to eliminate discrimination.²¹

Recommendation of the Hate Crimes Review

26. In light of all the above, Recommendation 15 of the Hate Crimes Review recommended a statutory duty on relevant public authorities to take reasonable steps to remove hate expression from their own property and, when engaging their functions, broader public space. Recommendation 15 is framed as follows:

There should be a clear and unambiguous statutory duty on relevant public authorities including Councils, the Department for Infrastructure and the Northern Ireland Housing Executive, to take all reasonable steps to remove hate expression from their own property and, where it engages their functions, broader public space.²²

27. The Hate Crimes Review report records support for the proposed statutory duty among the criminal justice system with the Public Prosecution Service (PPS) referencing the unsatisfactory nature of the current situation in the following terms:

Hate expressions should be removed as quickly as possible to avoid further harm and distress being caused to protected groups. The difficulty at present is that the roles and responsibilities in respect of the removal of hate material is vested in a number of different departments/agencies, and it appears that a piecemeal approach is currently adopted in relation to addressing the problem.

PPS consider that consistency of approach is required. The powers and duties in respect of the removal of the material should be clearly outlined and codified and the law strengthened to achieve that end.²³

CAJ would therefore urge the Committee to consider recommending the inclusion of Recommendation 15 within the Justice Bill.

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April 2025

²⁰ Hate Crime Review, Vol 2 para 10.4.

²¹ Hate Crime Review, Vol 2 para 10.22

²² Hate Crime Review, Vol 2 para 10.76.

²³ Hate Crime Review, Vol 2 para 10.38

Appendix: examples of racist intimidation in posters.

